



Department  
for Education

# **Free school admissions guidance**

## **Mainstream admissions**

**September 2014 (v3)**

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## Introduction

1. This guide should help you to draft your first set of admission arrangements, when read in conjunction with the other documents on the [free school admissions website](#).
2. These documents are :
  - The Free School Admissions Template; and
  - The Free School Admissions Models.
3. The rules governing the school admissions system are set out in the [School Admissions Code](#). The rules governing admission appeals are set out in the [School Admission Appeals Code](#). Your funding agreement requires you to comply with the Codes. We have referred to key paragraphs within the Codes throughout this guidance.
4. The overriding purpose of the Codes is to ensure that all school places are allocated and offered in a clear, open and fair way. It is therefore essential that those responsible for admissions at your school are familiar with the requirements of the Codes and ensure that headteachers, staff and directors comply at all times with the Code provisions.
5. Determinations on the [Office of the Schools Adjudicator](#) site will provide further guidance on acceptable (and unacceptable) admission arrangements.
6. This guidance applies to free schools with mainstream admissions. It does not apply to 16-19 free schools, AP free schools and SEN free schools (unless those SEN free schools also admit children without a statement of SEN/an Education, Health and Care plan).

## Adopting clear and fair admissions

7. The first thing to ensure, every year, is that admission arrangements are **determined** and **published**, whether or not the Academy Trust makes any changes to them. Parents will not be aware of the criteria that are to apply or the places available unless arrangements are published prominently on the school's website.
8. **Determination** requires the Academy Trust to consider the proposed final arrangements and to reach a formal decision to adopt them. While it may not be possible to meet all the normal deadlines in the first year of opening, determination should still take place and, in subsequent years, take place on or before 15 April. The determination should be minuted and the final arrangements be published on the school's website and be sent to the LA by 1 May. More detail on determination is set out at the end of this document.
9. The second thing to note is that anyone can object to determined admission arrangements if they believe they are unfair and, if found by the Schools Adjudicator (the 'OSA'), to breach the Admissions Code (from hereon 'the Code'), schools are required to amend their admission arrangements in order to comply. It is worth setting out here that

those admission arrangements, while adopting *criteria* that appear to be Code compliant in themselves could still be judged to be non-compliant with the Code by the schools adjudicator if, for instance they are:

- not *'fair, clear and objective'* (paragraph 14); or
- (paragraph 1.8) *'disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group'*.

10. For example:

- setting a catchment that sought to exclude a local area could breach these provisions, especially if areas further away from the school were given priority;
- a feeder school system that bypassed local schools in favour of ones further away could breach these provisions;
- a complex set of admission arrangements that were hard to understand could breach these provisions.

11. Schools should therefore always think about what would be fair in the local context in setting their Code-compliant arrangements. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.

## **Adopting oversubscription criteria, things to note**

12. In their first year of operation, Ministers have agreed that free schools can be outside of local authority co-ordination (if they wish) and handle applications directly. For their second and subsequent years of operation free schools will be fully within local co-ordinated admission systems.

13. It is a requirement of the Academies Act (2010) that academies (including free schools) provide places for children of all abilities the majority of whom are from the 'area'. This means that their admission arrangements must allow for over 50% of pupils to be from the area<sup>1</sup>.

14. All new faith free schools (or faith independent schools converting to become free schools) must adopt admission criteria that, if the school is oversubscribed, will ensure that at least 50% of the intake is admitted without reference to faith.

15. All new free schools may give priority for admission to children attracting the service and pupil premiums. They may also prioritise by any sub-group of those eligible

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<sup>1</sup>'Area' is not defined in law. It can be broader for boarding schools than for day schools. It can also be broader for 'technical' schools such as UTCs than for schools without such a specialism. Transport guidance says that 'statutory walking distance' is 3 miles for those over 8 or 2 miles for those under 8 (i.e. regardless of LA boundaries). It would therefore be reasonable – as a starting point at least - for the 'area' to be such a radius around the school if it is not a boarding school or a school with a particular specialisation. It could be wider if the school could justify it.

for the premiums (e.g. pupils eligible to register for free school meals, children of serving UK service personnel, etc). This priority may only be applied after the criterion giving priority to looked after ('LAC') and previously looked after ('PLAC') children.

## Drafting your admission arrangements

16. In essence, a free school **must**:

- Adopt a **clear, fair<sup>2</sup> and objective** set of admission arrangements/oversubscription criteria (paragraphs 14, 1.8 and 1.26 of the Code).
- Have an **admission number** ('PAN') for each 'relevant age group' (typically reception, year 7, and/or year 12) - paragraph 1.2 of the Code. This is the minimum number of pupils a school must admit each year if there are sufficient applications. If the number of pupils applying are equal to or fewer than PAN, they must all be admitted. If more pupils than PAN apply then oversubscription criteria must be applied to determine who is admitted.
- Adopt **oversubscription criteria** for each point of entry, including for year 12 if the school admits external pupils into that year group. These are a series of criteria against which places will be allocated when, but only when, there are more applications than places.
- Admit pupils with a **statement of Special Educational Needs/Education, Health and Care plan** which names the school<sup>3</sup> – paragraph 1.6 of the Code; and
- Give highest priority, in each relevant age group, to looked after children and previously looked after children. Faith schools are permitted, to give highest priority to looked after children and previously looked after children of their faith, followed by other pupils of their faith before giving priority to other looked after children and previously looked after children. Paragraphs 1.7 and 1.37 of the Code.
- Require parents of children in any nursery unit attached to the school to apply for a place in reception (paragraph 15(d) of the Code).
- Not have infant classes (classes with a majority of children aged 5, 6 and 7) bigger than 30 pupils to a teacher. Note, there are exemptions for children of multiple birth and other groups as set out in paragraph 2.15 of the Code.
- Where the free school admits into a reception year (normally a year group for 4 and 5 year olds), explain in their arrangements (paragraph 2.16 of the Code):

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<sup>2</sup> It is impossible to be comprehensive about this but arrangements that deliberately bypass children living next to the school or which target schools some distance away as feeders over those closer to the school are likely to be unfair.

<sup>3</sup> Including into the sixth form.

- that parents can request deferral of entry until the child reaches compulsory school age<sup>4</sup>, and
- parents can request that their child takes up the place part-time until the child reaches compulsory school age.<sup>4</sup>
- Include waiting list arrangements (paragraph 2.14 of the Code).
- Explain the right of appeal to an independent appeal panel and set out a contact for such appeals (paragraph 2.24 of the Code).

## Admission oversubscription criteria

17. Set out below are the types of oversubscription criteria and processes one would normally expect to see in a set of admission arrangements.

18. Free schools are permitted to give priority anywhere in their oversubscription criteria, after LAC and PLAC to children attracting the **pupil premium and service premium**<sup>5</sup>. They can prioritise equally based on every category of child eligible for the premiums or based on just one or more criteria falling under the definition.

19. **Faith membership or practice**, but only in a designated faith Free school (paragraph 1.36 of the Code)<sup>6</sup>, and in line with any guidance of the faith body (paragraph 1.9(i) of the Code). Acceptable criteria may include:

- Attendance at a church, synagogue, mosque etc on the basis of a priest/rabbi/imam reference;
- Membership of a faith – baptism etc.

20. **Siblings** – of former pupils or where the applicant’s brother or sister will still be in the school when the child is admitted (paragraph 1.39 of the Code).

21. **Children of staff** who have been employed by the school for at least 2 years (which is unlikely to be applicable for new free schools) or where they are children of staff

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<sup>4</sup> Note that Admissions is an annual process, so entry cannot be deferred until the next academic year.

<sup>5</sup> This will include looked after children (although they will already have priority under the LAC criterion, so won’t need to be given additional priority here), children currently registered as eligible for free school meals (or eligible to be registered, for children not yet at school) ; children who have been registered as eligible for free school meals at any point in the past six years; children whose parent(s) are serving in the regular UK armed forces, children whose parents are ex regular UK armed forces personnel who were serving within the past 3 years or children where one of their parents died while serving in the UK armed forces and the child is in receipt of a pension under the Armed Forces Compensation Scheme (AFCS) and the War Pensions Scheme (WPS).

<sup>6</sup> Note that faith free schools must adopt admission arrangements which prioritise at least 50% of their places without reference to faith.

who are recruited to fill a post for which there is a demonstrable skill shortage (paragraphs 1.8 and 1.26 of the Code).

22. **Aptitude selection.** Free schools with a relevant specialism (MFL, sport, performing arts, visual arts) can admit 10% of their intake based their **aptitude**<sup>7</sup> for that specialism (paragraph 1.24 of the Code).

23. **Medical or social needs** (paragraph 1.16 of the Code). This means that, typically, a doctor or social worker etc should write supporting the application on the basis that for medical or social reasons (family breakdown, bullying, abuse, psychological etc) the child needs to go to the school above all others because of the child's particular need or, if the school wishes, the parent's need.

24. **Named feeder schools** (paragraph 1.15 of the Code):

- Feeder primary schools are schools formally linked to a secondary school by being set out within the admission arrangements. The Code says that *'The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds'* (paragraph 1.15 of the Code).
- The Admissions Code rules out 'conditionality'. You can't state a child has to attend a type of school to have priority. Instead you can name feeders (paragraphs 1.9(a) and 1.9(b) of the Code).
- The Admissions Code rules out having 'fee-paying independent schools as feeder schools' (paragraph 1.15 of the Code).
- Those in nurseries should not normally be given priority for admission, especially if they filled the reception class (or filled a significant proportion of places) so that those choosing not to send their children to nursery found it hard to get in. This would breach the fairness requirements within (paragraphs 1.8 and 1.26 of the Code).
- Non maintained nursery and pre-school provision are not schools. It is not possible to give priority to children from a nursery where there is any element of fee paying (paragraphs 1.8, 1.9(e) and 1.26 of the Code).

25. **Residence in a catchment or priority area** (paragraph 1.14 of the Code):

- Catchment areas are geographical areas drawn up by the school to prioritise pupils living within them. It might be difficult to justify that a catchment was fair if it did not include the area in which the school was located, but catchments need not necessarily **all** be next to the school – i.e. if a school has an inner and outer catchment.

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<sup>7</sup> Aptitude measures potential. Ability measures attainment or what has already been achieved. The two should not be confused.

- Case law (notably the Greenwich Judgement 1989), statute (section 86(8)(a) of the School Standards and Framework Act 1998), and the Code (footnote 25) requires that children are not treated less favourably for admission just because they live outside the LA in which the school is located. In practice, this means a catchment area would be likely to breach the Code if it was the same as an LA area.
- Note that the school sets the catchment. The arrangements should not therefore say it 'follows the LA catchment' or anything similar: the catchment must be a part of the school's own determined admission arrangements and be published as such.
- Nodal points (e.g. a geographic point in the school grounds and two or 3 others in key catchments within the local community) may also be used as a form of catchment to ensure a school not only serves pupils close to the school but others slightly further away with little or no priority access to other schools. Care needs to be taken to ensure nodal points do not unfairly discriminate against particular social groups (paragraph 1.8 of the Code).

26. **Tie-breaks.** Paragraph 15(a) of the Code states that '*All schools **must** have admission arrangements that clearly set out how children will be admitted*'. Arrangements cannot achieve this in the cases of applicants tied for admission without a tie-break. Tie breaks are normally one of the following:

- **Distance** (paragraph 1.13 of the Code)
  - Many schools will operate a simple 'distance' criterion from the school gates to the child's home. If the school is relying on the local authority to measure this, it needs to ensure that the LA can actually measure any distance criterion it chooses to use, otherwise it will need to put procedures in place itself to measure distance. Distance may also be measured from local 'nodal points' which may enable a school to fine-tune its admission criteria to serve a wider range of local pupils.
- **Random allocation** (paragraphs 1.34 and 1.35 of the Code)
  - The children's names go into a hat (metaphorically) and the first ones drawn out by someone unconnected with the school get in.
  - This is normally only used as a final tie-break or as a tie-break within catchment areas. If it is not limited by distance or a catchment it could lead to transport issues (i.e. anyone, anywhere could gain admission and LAs will usually only fund transport to the nearest available school).
- **Banding** (paragraphs 1.25- 1.29 of the Code):



- In banding all pupils are tested for ability and put into an ability band based on their score. Oversubscription criteria are then applied to each band to determine who gets in.
- For example. A school with an admission number of 100 decides to have 5 ability bands of 20 ranging from the highest ability pupils to the lowest. It has 200 applicants, tests them all and ranks them in order of their scores. It puts the top 40 in the first band and the next 40 in the second band and so on. It then applies its oversubscription criteria to determine which 20 of the 40 children in each band are offered places.
- Schools will need a method of tie-breaking within these criteria (because two applicants may otherwise have the same priority for entry) and so may use other criteria – such as proximity to the school or random allocation (lottery) to decide.
- Schools should also explain in their policy what their process will be if pupils do not sit the test. For example options might be:
  - Those refusing to sit the test will only be considered after other applicants, except where there is a clear reason for a child not sitting the test (illness or bereavement etc) in which case they will either (1) be tested on another date or (2) the school will place them in an appropriate band as a result of SATs scores or (3) an assessment of ability from the current school; or
  - Those not sitting the test will (1) be placed in the appropriate band according to an assessment of ability from their current school or (2) according to their SAT tests. This option could, however, be a disincentive for pupils to sit a test. This may not be a problem if other ways of assessing ability are easily accessible.
- We recommended that schools run tests on more than one day to assist applicants.

## Determining admission arrangements

27. Before a set of admission arrangements can be applied the admission authority, in this case the academy trust, has to determine them. All admission authorities must determine (i.e. set) their admission arrangements by 15 April each year, even where no changes have been made and no consultation has been undertaken. The determination year is the year in advance of the one in which the arrangements are to apply: so 15 April 2014 for arrangements for admission in September 2015.

28. What is determination and who is responsible for it?

- The academy trust, or any committee of the trust to which the trust has formally delegated responsibility for admissions, is responsible for determining admission arrangements. To reach a decision the trust must be quorate according to the

terms of its articles (or if the decision is delegated to a committee, quorate according to any rules set by the trust). Each trust will need to check its own articles as to what constitutes a quorum but within article 114 of the model [free school single academy articles](#) it is defined thus:

‘.... the quorum for a meeting of the Governors, and any vote on any matter thereat, shall be any three Governors, or, where greater, any one third (rounded up to a whole number) of the total number of Governors holding office at the date of the meeting.’

- At the meeting of the trust (or committee), the governors (or committee members) must have the actual admission arrangements among their papers. They must be asked to consider them and whether they agree to determine them as final.
- A decision must be minuted and once taken:
  - the trust must notify those set out in section 1.44 of the [School Admissions Code](#) and any persons/bodies consulted;
  - the trust must publish the arrangements on the school website;
  - if a faith school, the trust must send a copy of the arrangements to the body or person representing their religion or religious denomination;
  - the trust must send a copy of the arrangements to the local authority as soon as possible before 1 May;
- Once the objection period is over (30 June), the trust must provide the full arrangements to the local authority before 8 August for inclusion in the local admissions prospectus.

29. As mentioned above, determination has to take place each year regardless of whether the trust is changing its admission arrangements. A trust is required to consult on its admission arrangements whenever it proposes a change or every 7 years if no change is proposed. The procedures and timelines for consultation are set out in sections 1.42 to 1.49 and on pages 32-33 of the Code.



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