

Pupils' entitlement to a school place

Every child is entitled to a school place and should be registered on the roll of a school/academy. A local authority virtual roll is illegal.

The principle of free, full-time education for all pupils which is relevant to their needs, irrespective of their characteristics, is part of our educational heritage. This means that schools must take responsibility for those pupils on roll and only transfer the legal responsibility to the local authority when there are clear justifiable reasons to do so. Our joint responsibilities in this respect are both legal and moral.

Legal position NCC

Parliament is clear that all children should engage in compulsory education and should be on a school roll, other than those whose parents have chosen to electively home educate.

All children, regardless of their circumstances, are entitled to an efficient, full time education which is suitable to their age, ability, aptitude and any special educational needs they may have.

'Children missing education' Statutory guidance, September 2016

Local authorities therefore have a duty to arrange suitable full-time education, is either at a mainstream school or alternative provision. With either provision, the pupil should be registered so that they are not deemed missing from education.

These principles and legal entitlements can be found in combinations of successive Education Acts, the Admissions Code and the Registration Regulations.

Under Section 436A of the Education and Inspections Act 2016, local authorities have a duty to identify children not receiving a suitable education and return them to either a school or alternative provision. Alternative Provision is set out in the Alternative Provision government guidance of 2013 and includes:

- education arranged by the local authority for pupils who because of exclusion, illness or other reasons would not otherwise receive a suitable education;
- education arranged by the school for pupils on fixed term exclusion;
- pupils directed by schools to of-fsite provision to improve behaviour.

'Other reasons' do not include a school not wanting a student.

If the local authority finds that a child is not receiving a suitable education they can make a direction to enforce an Attendance Order and name a school on the Order (Section 437 Education Act).

Under section 86 of the School Standards and Framework Act 1998 local authorities are

under an obligation to comply with the wishes of a parent expressing a preference for a particular school unless it would prejudice the provision of education or the efficient use of a resource.

Admissions Code

The legal admissions responsibilities of schools and the local authority are clarified in the Admissions Code. However, the abiding principle is that all pupils are entitled to free, full-time educational provision, as per the legislation. This means that pupils' safeguarding and general welfare must be protected and hence they must be registered and on the roll of a school or an approved alternative provider (approved by the local authority).

3. This Code imposes mandatory requirements and includes guidelines setting out aims, objectives and other matters in relation to the discharge of functions relating to admissions by the bodies listed below:

a) Admission authorities of maintained schools as defined in Section 88(1) (a) and (b) of the SSFA 1998

b) Governing bodies and local authorities (when not admission authorities)

c) Schools Adjudicators d) Admission Appeal Panels.

*These bodies have a **statutory duty** to act in accordance with the relevant provisions of the Code.*

Academies are required by their funding agreements to comply with the Code and the law relating to admissions, although the Secretary of State has the power to vary this requirement where there is demonstrable need'

Compliance with the Code:

9. The Schools Adjudicator may investigate the admission arrangements of any school that the Adjudicator considers do not or may not comply with the mandatory requirements of this Code or the law.

Purpose of this Code:

*12. The purpose of the Code is to ensure that all school places for maintained schools (excluding maintained special schools) and Academies are allocated and offered in an open and fair way. **The Code has the force of law**, and where the words 'must' or 'must not' are used, these represent a **mandatory requirement**.*

Section 1.9 of the over-subscription criteria:

*1.9 It is for admission authorities to formulate their admission arrangements, but they **must not**:*

a) place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements;

b) take into account any previous schools attended, unless it is a named feeder school;

c) give extra priority to children whose parents rank preferred schools in a particular order, including 'first preference first' arrangements;

- d) *introduce any new selection by ability;*
- g) *take account of reports from previous schools about children's past behaviour, attendance, attitude or achievement, or that of any other children in the family;*
- h) *discriminate against or disadvantage disabled children, those with special educational needs, or those applying for admission outside their normal age group where an admission authority has agreed to this under paragraphs 2.17 to 2.17B;*
- i) *prioritise children on the basis of their own or their parents' past or current hobbies or activities (schools which have been designated as having a religious character 21 may take account of religious activities, as laid out by the body or person representing the religion or religious denomination);*

Schools must not refuse to admit children in the normal admissions round on the basis of their poor behaviour elsewhere.

page 29, School Admissions Code, December 2014

Legislative background

- the Elementary Education Act 1870 section 5 required there be provided in every school district 'sufficient amount of accommodation in public elementary schools' for all children resident in the district
- 1880 Act made school attendance compulsory
- 1944 Act raised school leaving age to 15 and provided free education to all secondary age children. The Act states a parent's duty was 'to cause him to receive efficient full time education suitable to his age, ability and aptitude, either by regular attendance or otherwise.'
- 1996 Education Act section 436A – *local authorities have a duty.....to make arrangements to establish the identities of children in their area who are not registered pupils at a school and are not receiving suitable education otherwise. This duty only relates to children of compulsory school age...The local authority should consult the parents of the child when establishing whether the child is receiving suitable education. Those children identified as not receiving suitable education should be returned to full time education either at a school or in alternative provision. Prompt action and early intervention are crucial to discharging this duty effectively and in ensuring that children are safe and receiving suitable education.*
- Under section 437 an Attendance Order where the local authority names the school the child must attend can be issued to parents to force parental responsibility for attendance at school. Each child therefore has to have a school place to attend. Where a maintained school is named in a school attendance order the local authority shall inform the governing body and the headteacher. Where a maintained school is named in a school attendance order the governing body shall admit the child to the school. In these circumstances the local authority or school can apply to the Secretary of State for direction.

Statutory framework

School exclusion

- [Exclusion from maintained schools, academies and pupil referral units in England, statutory guidance 201](#)

Admissions

- [School Admissions Code, December 2014](#)

Attendance and absence

- [Children missing education, September 2016](#)
- [School exclusion, February 2015](#)

Behaviour and discipline

- [School behaviour and attendance: parental responsibility measures, January 2015](#)

Alternative provision

- [Alternative provision, June 2016](#)

Ofsted

- [inspection of services for children in need of help and protection, children looked after and care leavers, and the LSCB, February 2017](#)
- [School Inspection framework](#)

Equality Act 2010

- <https://www.gov.uk/guidance/equality-act-2010-guidance>

Human Rights Act 1998

- <http://www.legislation.gov.uk/ukpga/1998/42/contents>

Key non-statutory guidance

- [Fair Access Protocols, November 2012](#)
- [School attendance, November 2016](#)
- [Elective home education, November 2007](#)
- [Behaviour and discipline in schools, January 2016](#)

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