

Consultation on the proposed School Admissions Code

A response from the Special Educational Consortium

The Special Educational Consortium (SEC) is a membership organisation that comes together to protect and promote the rights of disabled children and young people and those with special educational needs (SEN). Our membership includes the voluntary and community sector, education providers and professional associations. SEC believes that every child and young person is entitled to an education that allows them to fulfil their potential and achieve their aspirations.

SEC identifies areas of consensus across our membership and works with the Department for Education, Parliament, and other decision-makers when there are proposals for changes in policy, legislation, regulations and guidance that may affect disabled children and young people and those with SEN. Our membership includes nationally recognised experts on issues including assessment and curriculum, schools and high needs funding, the SEN legal framework, exclusions and alternative provision.

SEC is pleased to have this opportunity to respond to the consultation on the proposed revision to the School Admissions Code. We have chosen to respond through an open text response as many of the points we want to raise require some explanation.

In-year admissions

In broad terms, SEC welcomes the changes to the arrangements for in-year admissions, with clearer timescales, a clearer process, and better information for parents.

Fair Access Protocols

In relation to Fair Access Protocols, SEC also welcomes the broad intentions to clarify purpose and process, introduce timescales, extend the groups of children admitted via the Fair Access Protocol and to clarify the use of Fair Access Protocols for children with challenging behaviour.

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SEC also welcomes the emphasis on the requirement for all admissions authorities to take part in a Fair Access Protocol, once it is agreed.

However, when we consider some more specific aspects of the text in the School Admissions Code, SEC has some concerns.

Definition of challenging behaviour

Both the SEN framework and the Equality Act are relevant to the definition of challenging behaviour in the School Admissions Code, yet are not reflected in the text.

The SEND Code of Practice recognises the importance of identifying learning difficulties and disabilities that 'left unaddressed may lead to frustration, which may manifest itself as disaffection, emotional or behavioural difficulties'. The Code also recognises the potential for undiagnosed leaning difficulties, difficulties with communication or mental health issues to contribute to persistent disruptive or withdrawn behaviour.

Under the Equality Act, a pupil whose behaviour arises in consequence of a disability is likely to have protection under the Equality Act and schools should be making reasonable adjustment for this pupil.

The definition of challenging behaviour in the footnote in the Schools Admission Code refers to the 'normal range schools can tolerate' and the 'usual range of interventions' without a steer about the variability in schools' interpretation of such ranges. At the same time it does not refer to relevant statutory duties: it does not take into account Equality Act considerations and does not make explicit the need to make reasonable adjustments. Nor does it make explicit a consideration of whether these duties have been adequately taken into account at earlier stages where behaviour has been defined as 'challenging'.

Explicit links between behaviour and the need for reasonable adjustments under the Equality Act

It is crucial that, in the main text of the School Admissions Code, and not in a footnote, links are made between behaviour that arises in consequence of a disability, the need for reasonable adjustments and wider Equality Act considerations. These considerations are vital to planning successful admission to school and for positive planning for success for a pupil's future.

Information, Advice and Support for parents

The Schools Admission Code sets out a tight set of requirements, including requirements to send information about the appeals process when parents are informed of a decision to refuse a place at the school to which they have applied. Many parents do not know what an appeal might involve and they need information, advice and support through this process. Parents should be informed about local sources of information and support, and parents of children

with SEN and disabilities should be informed about the local Information, Advice and Support Service, which should be able to support them on admissions.

Outside the formal processes

Whilst the formal admissions process is tightly regulated, outside the formal process, often on an informal visit to a school, there are groups of children whose parents are discouraged from applying to the school. Disabled children and children with SEN are amongst those most likely to be unwelcome and to be encouraged to explore other schools. It is some time since the Office of the Children's Commissioner published a report entitled 'It might be best if you looked elsewhere' (OCC, 2014) but members of SEC still get reports of this happening. SEC considers that the following actions are needed:

- The DfE should establish the extent to which this practice still happens. DfE should gather information and data about the admission of disabled children, children with SEN, and other vulnerable groups. This information should inform the DfE's objectives under the Public Sector Equality Duty.
- Within the Code there should be reference to school visits and a reminder to schools that they should be careful not to discourage parents of particular groups of children from applying as this may amount to discrimination.

Out-of-year admissions

SEC has reviewed the recently published DfE guidance on the admission of summer born children to school and the advice for parents of summer born children who may be considering delaying their child's start in reception.

Whilst SEC recognises that it may be appropriate to admit some summer born children out-of-year, our concerns are about whose decision this really is, what information and advice parents receive, and what DfE knows about the age at which children are admitted to reception.

On who decides:

Members of SEC report instances of parents of children with SEN and disabilities being told that their child is not ready for school, where it appears that the school is not willing to consider, or make, adjustments to make the school ready for the child. Members are concerned that there should be more of a focus on schools making adjustments.

Whilst some parents may actively seek delayed admission, members report significant pressures on some parents to accept a delay which appears to be for the convenience of the school.

Equally some members report instances of schools putting pressure on parents to accept part-time education on the admission of their child to reception.

On information and advice for parents:

In this context, it is important that parents have all the information that they need in order to be able to make an informed request for out-of-year admission. It is a significant decision with significant consequences.

Decisions need to be informed by a consideration of the complexities of the key stage 2 to key stage 3 transition and the early application for secondary, and the post-16 considerations about loss of entitlement to school transport, and the potential for an exclusion in year 11 to lead to loss of access to GCSEs.

Parent need impartial information, advice and support in making a request.

What the DfE knows about the age of children admitted to reception:

SEC is not sure that the DfE has sufficient data on the age at which children are admitted to reception to be able to monitor the impact of the changes in the guidance. SEC believes the DfE should gather and monitor data on the age at which children are admitted to reception, should hold sufficient information to understand the characteristics of pupils who are educated out of year, and should be able to understand patterns in delayed admission.

For more information, please contact:

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This submission is made on behalf of the Special Educational Consortium (SEC). SEC has no objection to the content of this response being shared.

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