

## School Admissions Code of Practice and Academies

The new School Admissions Code came into force on 28<sup>th</sup> February 2007 and will apply to all maintained schools and Academies for 2008 admissions.

The Code applies to admissions authorities, governing bodies, local authorities, Admissions Forums, Schools Adjudicators and admission appeal panels. Admissions authorities are required to act in accordance with the mandatory provisions of the Code. However, it should be noted that Academies are not maintained schools and are not subject to the same legislation as maintained schools. Instead, their obligations are set out in their Funding Agreements, which are private legal agreements between the Secretary of State and the Sponsor, and cannot be altered by either party unilaterally. Although we are confident that existing Funding Agreements commit Academies to comply with future as well as current statutory codes of practice on admissions, exclusions and SEN, there may be individual early Academies to which this does not apply. CASE would be very interested to hear about this.

### **Main points in Code**

- Arrangements, practices and criteria used to allocate school places should actively promote equity
- New statutory duties on local authorities to promote the fulfilment by every child of their educational potential, including ensuring fair access to educational opportunity, securing diversity and increasing opportunities for parental choice, (effective from May 2007, and including a duty to respond to parental representations).
- A new statutory duty on governing bodies of maintained schools to promote community cohesion (from September 2007.) (NB This new duty also forms part of the 2007 revised Model Funding Agreement for Academies as new clause 13A) (b). The DCSF (Department for Children, Schools and Families) say that the Secretary of State (SoS) would not sign a Funding Agreement which did not have this clause.

- However although the current Secretary of State believes that 90% of existing Academies will comply with the new law, he admits that he has no power to change Funding Agreements unilaterally if this clause is not included. )
- It extends to parents the right to object to the Adjudicator if they consider arrangements do not comply with the law or the mandatory provisions of the Code
- It prohibits 'first preference first' arrangements and a range of over subscription criteria
- It extends the possible use of banding
- It requires the transfer of educational records when a child moves school
- It extends the membership, role and powers of Admissions Forums
- It requires local authorities to produce an 'in-year fair access' protocol (formerly known as a 'hard to place' protocol), and all schools to participate in them, including Academies.
- It requires admissions authorities to give 'looked after children' the highest priority in oversubscription criteria, and outside the normal admissions round gives local authorities the power to direct admissions authorities of any maintained school to admit these children to the school which best suits their needs.

### **1. Academies Admissions**

- Admissions arrangements for Academies are approved by the Secretary of State as part of their funding agreement
- They must consult annually on their arrangements in the same way as other admissions authorities, but these may not be altered without the approval of the Secretary of State
- Academies are required to participate in local authorities' schemes for co-ordi-



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nating admissions of all primary and secondary maintained schools in their area, and local authorities must include them in their annual consultation on admissions. CTCs must also be invited to participate in the consultation. (NB Local Authorities must inform the Secretary of State by April 15<sup>th</sup> 2008 that it has adopted a co-ordinated scheme, or risk having one imposed.) Local authorities and admissions authorities must work together to ensure that schools' arrangements meet the needs of all parents and children. Consultation must be complete by March 1<sup>st</sup> and arrangements determined by 15<sup>th</sup> April in each calendar year for the following school year

- Local authorities are required to publish in hard copy the admission arrangements for all maintained schools and Academies in their area and admissions authorities must follow the determined, published arrangements
- Parents have a right to express a preference for a maintained school, Academy or CTC.
- The prohibition on interviews of applicants and /or their parents applies to Academies.
- The use of supplementary application or information forms is still permitted, but these must not include questions on any of the prescribed selection criteria, that is, around areas such as academic achievement, ethnicity, parental background, marital status, disabilities.
- *(CASE members are urged to monitor what happens with existing Academies. Good practice would be for any supplementary application forms to be returned via the home LA with the common form. Ideally any supplementary questions to establish any admissions criteria specific to any schools which are their own admissions authority should be included on the Local Authority's common application form.)*

## **2. Setting fair over-subscription criteria**

The Code sets out a list of practices which the code says must not be used in setting

over subscription criteria. (*paragraph 2.13*). These include

- a) no account should be taken of which other schools are given preference
- b) no account should be taken of order of preference for a school,
- c) no priority according to promised parental support of the school's ethos, financial support or any other support,
- d) no priority according to occupational, financial or marital status of parents,
- f) no account taken of reports from primary or nursery school as regards pupils past behaviour, attendance, attitudes or achievement,
- g) must not discriminate against children with SEN or disabilities,
- h) no priority for the siblings of former pupils, even if they are at the school when the application is made,
- i) no account should be taken of the behaviour of other members of the child's family, or their good or bad attendance at the school,
- k) no priority must be given to current or former staff or governors' children,
- l) no priority according to a child or their parents particular interests, specialist knowledge, or hobbies, except as regards faith in faith schools,
- m) there should be no priority on the basis of the order in which applications are received.

## **3. Academies and Admission of pupils with Statements of SEN**

Advice from DCSF states that: 'Academies are unable to 'contradict current law' with regard to children with statements of SEN and excluded pupils. All Academies must have regard to the SEN Code of Practice and statutory guidance on inclusion.' Maintained schools and Academies must admit a child with a statement of SEN which names the school, whether or not they have places; this is not an oversubscription criterion.

However, Academies, like maintained schools, must be consulted if it is intended to name them on a Statement of Special Educational Need.

Advice from the DCSF states: 'When a local authority names an Academy on a statement, the Academy has 15 days in which to re-

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spond. The large majority of Funding Agreements require that Academies must consent to be named unless to do so would be 'incompatible with the provision of efficient education for other children and no reasonable steps may be taken to secure compatibility'.

If the Academy believes this to be the case, it must provide evidence to this effect in the 15 day limit. If the local authority disagrees with the Academy's contention, then it can refer the case to the Secretary of State for a determination which is binding.'

## **4. Academies and Exclusions**

Academies are required to have regard to the same exclusions guidance as maintained schools and must adhere to the new statutory duty to arrange provision from the sixth day for excluded pupils. As with maintained schools, with permanent exclusions from Academies, it is the home Local Authority which is responsible for arranging educational provision from the sixth day.

We understand that some early Funding Agreements do not provide parents' right to access to an independent exclusions appeal panel. CASE is interested to hear from parents who are affected by this.

## **5. Admission arrangements in-year and outside the normal admissions round and fair access protocols**

Local Authorities can ask an Academy to admit a child in their care if they think the school is the one which best suits the child's needs, even where the Academy is full. If the Academy disagrees with the LA and refuses to admit the child, the case can be referred to the Secretary of State. In such cases the SoS can direct the Academy to admit the child.

Where a child is permanently excluded from two or more schools, a parent can still express a preference for a school place, but the requirement to comply with that preference is removed for a period of two years from the date of the last exclusion. This does not apply to children with statements of SEN. (*See above note on Academies and pupils with Statements of SEN.*)

Exceptionally, outside the normal year of entry, and where the application is made outside arrangements covered by an In-Year Fair

Access Protocol, admission authorities may decide to refuse to admit a child with challenging behaviour even though there are places available, on the grounds that admission would prejudice the provision of efficient education or the efficient use of resources. Normally this will only be appropriate where a school has a particularly high concentration of children with challenging behaviour or previously excluded children and one or more exceptional circumstances exist. These include that the school is a Fresh Start school or Academy open for less than two years. i.e. *other Academies must take these pupils.*

All admissions authorities and Admissions Forums must have Fair Access Protocols in place by September 2007. All schools and Academies must participate in their local authority area's protocol in order to ensure that unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible.

Where a governing body disputes a direction from a local authority to admit a child in accordance with a locally agreed protocol, the matter is referred to the Adjudicator (for VA and Foundation schools) or the Secretary of State (for Academies or for Community or VC schools).

Where an Academy refuses to admit a child as directed by the Local Authority, the LA can refer the matter to the Secretary of State.

## **6. Ensuring a fair admissions system**

The Code emphasises that ensuring a fair admissions system is the responsibility of all those who have a duty to act in accordance with the Code, including Academies.

Local authorities must use their powers to refer objections to the Schools Adjudicator if they consider, or are made aware of any admission arrangements proposed by any other admission authority that are unlawful, that do not comply with the mandatory requirements or guidelines in the Code, or that appear to be unfair, unclear, subjective or encouraging social segregation. If the objection refers to the arrangements at an Academy, the referral would be to the Secretary of State.

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Local authorities must consider carefully any representations they receive from parents about the admissions arrangements for schools for which they are not the admission authority and whether they will use their power to make an objection to the Adjudicator. In the case of complaints about Academies the objection would be addressed to the Secretary of State. We are assured by the DCSF that if the cause of complaint is enshrined in the Funding Agreement of the Academy the duty of all Academies to comply with the Admissions Code of Practice would over-ride this.

## **What CASE Thinks**

CASE welcomes the aspirations of the new Admissions Code to promote equity actively in the allocation of school places. However, we are concerned that:

- it may not prove feasible to ensure that schools which are their own admissions authorities adhere to the Code's provisions in spirit and in practice
- Academies, because of the nature of their funding agreements, as outlined above, could be less constrained by the Code, because they are not classed as maintained schools, although we are assured by DCSF that this should not be the case.
- CASE believes that all state funded schools should be directly accountable to their local communities through their governance arrangements and the local democratic process. So, all state funded schools should be subject to the same laws and be classed as maintained schools, including Academies. Specifically, Academies should share the new responsibility put on the governing bodies of maintained schools to promote community cohesion and work collaboratively with other schools in their area to make this effective.
- CASE calls on the Government to bring Academies back into the family of local authority schools, so that they can play their full part in the new statutory duties on local authorities to promote the fulfilment by every child of their educational potential, which includes ensuring fair access to educational

opportunity, securing diversity and increasing opportunities for parental choice.

## **What You can Do.**

- Monitor what schools are doing in your area and encourage parents to refer any breach to the Schools Adjudicator for maintained schools or the Secretary of State for Academies
- Obtain a copy of the Funding Agreement of any local academies. These should be available on the DCSF website or can be obtained from the DCSF through a Freedom of Information request. Check whether new agreements do contain the relevant clauses. In the case of older agreements monitor whether academies do abide by the new Code.
- Try to make parents in the local area aware of their rights under the Code and the expectations on all schools.

## **Further Information**

- DfES School Admissions Code of Practice, February 2007
- See DCSF The Standards Site Academies Publications and Documents for : The Model Funding Agreement -2007 – (traditionally procured and BSF procured versions and Annexes on Admissions, Pupils with SEN and disabilities, and Behaviour)

Feedback on this document will be gratefully received. You can contact CASE by post, c/o 98 Erlanger Road, London, SE14 5TH, by phone on 07932 149 942, or by email at

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*CASE has been campaigning on education issues for over 40 years and relies entirely on membership fees to fund its activities.*

January 2008