

By email: [AdmissionsCode.CONULTATION@education.gov.uk](mailto:AdmissionsCode.CONULTATION@education.gov.uk)

Thursday 8 October 2020

## **ADCS response to the admissions code consultation**

1. The Association of Directors of Children's Services Ltd. (ADCS) is the national leadership organisation in England for directors of children's services (DCSs) appointed under the provisions of the *Children Act (2004)*. The DCS acts as a single point of professional leadership and accountability for services for children and young people in a local area, including children's social care and education. ADCS welcomes the opportunity to respond to the Department for Education's (DfE) consultation on amendments to the admissions code.

### **In-year admissions**

2. ADCS welcomes the focus on in-year admissions in the draft code and is generally in agreement with the proposed changes. Co-ordination of in-year admissions remains voluntary for both the LA to organise it, and schools to participate. Most LAs already undertake a degree of co-ordination and the changes give a clear expectation that own-admissions authority (OAA) schools are expected to deal with casual admissions themselves, even if they don't participate in a collective scheme. The proposal to require admissions authorities, or co-ordinating bodies, to inform parents of the outcome of an application within 10 days will help to ensure greater timeliness for children and families. Schools should make every effort to respond in this timescale but it is recognised that this may not always be practicably possible e.g. during holiday periods.
3. The section on in-year admissions does not address the question of repeat applications and appeals. Paragraph 2.28 indicates that if a casual application is refused, a right of appeal is then generated. It doesn't, however, state what happens if the appeal fails, but the parent immediately makes a fresh application thereby generating a further right of appeal. This issue is addressed in the admissions appeal Code [Page 23 Paragraphs 5.1 to 5.3] which provides for only one appeal per school year unless there has been a material change in circumstances. It may be helpful to ensure there is read across both the Codes.
4. The new requirement on LAs to provide parents with a list of available places within two school days assumes LAs have a real-time overview of available places across many hundreds of schools in the case of some of the larger counties. In the first instance there are likely to be challenges in getting such information from all schools on a regular basis to meet the prescribed timescale. However, beyond that, the definition of "available places" is far from straightforward.
5. Currently it is widely assumed that the number of places in a year-group at the point of entry (i.e. the figure beyond which a school year-group is deemed to be 'full') remains the same as that group moves up the age range. The draft new code correctly clarifies that the published admission number (PAN) is only applicable to each 'relevant age group' at the initial point of entry. Thereafter, and consequently for all casual admissions, admissions authorities can legitimately refuse an application only if admission would be "prejudicial". That judgement must be made with reference to all relevant factors (of which, the PAN on entry is only one). Therefore, it is strictly not possible to determine exactly how many places could be said to be "available" at any one time. However, given that admission authorities are now to be required to declare the number of places they regard as available, many will be tempted to use the argument of prejudice (which it will now be clear can apply to an "available" in-year place) to refuse admission to some children, such

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as those with low previous attainment. There is an opportunity to make this less likely by reinforcing the list of prohibitions regarding refusals to admit in-year in paragraph 2.26 e.g. by referencing the contents of paragraph 1.9g.

## **Fair Access Protocols**

6. Clarity that all admissions authorities must participate in the Fair Access Protocol (FAP) is most welcome. Many FAPs have been developed in accordance with local systems and there is a risk that reducing local flexibility may disrupt already effective arrangements with little benefit. However, where existing arrangements are not working as effectively as is hoped, a greater degree of prescription may be beneficial.
7. ADCS supports the 20-school day timescale in which a school place must be allocated once it has been agreed that a child will be considered under the FAP. The proposed changes to expand the list of children eligible under the FAP will further help to ensure that vulnerable children have access to an appropriate school place in a timely manner.
8. Paragraph 3.9 of the draft consultation states that admission authorities must not refuse to admit a child on behavioural grounds, but then goes on to say it: “... *may refuse and refer the child to the Fair Access Protocol*”. This paragraph would benefit from a redraft making it explicitly clear that an admissions authority cannot refuse to admit on such grounds, and referral to the FAP should only take place for children who meet the criteria; not merely those a school “does not wish to admit.” In its current form this paragraph also appears to be encouraging the use of the FAP process to manage admissions for children with challenging behaviour; ADCS members would not want this to be accepted standard practice.
9. In the absence of a common, national understanding of what constitutes challenging behaviours, admissions authorities will need to work together to agree a local definition and the parameters around its appropriate use by schools. However, issues remain such as what does ‘particularly high proportion’ and ‘prejudice the provision of efficient education’ actually mean. There is no indication if alternative provision is deemed to be within the usual range of interventions to address pupil misbehaviour.
10. If there is a legislative opportunity linked to the proposed changes within the Code, powers of direction must be addressed. LAs do not have the power to direct an academy or free school to admit a child and the established route of challenge with the Education and Skills Funding Agency (ESFA) is not fit for purpose and can result in a gap in formal schooling. This gap can last weeks or even months and once lost, this learning cannot be regained. Consequently, Directors of Children’s Services cannot fulfil their corporate parenting responsibilities in terms of improving attainment and providing stable education placements for children in care. ADCS believes LAs should have the power to compel any state-funded school to admit a child in care.
11. LAs also have specific responsibilities for children with special educational needs and disabilities yet do not have the power to direct in relation to this group of learners who may be more likely to display behaviour that challenges and therefore are more likely to be excluded. LAs should be given meaningful powers of direction and regulation of admissions / exclusions over all state funded schools in relation to excluded pupils, and pupils with education, health and care plans (EHCP), in the spirit of the Timpson Review (2018).

## **Children who have been adopted from state care outside of England**

12. The changes within the code to include children who have been adopted from state care outside of England within oversubscription criteria, and the associated clarification, is welcome. This also applies to children who have left care via a children arrangement order or a special guardianship order.

## **The admission of service children and children of crown servants**

13. The changes outlined are welcome and will offer increased flexibilities to service families and children of crown servants who are more likely to apply for a school place outside of the normal admission round due to relocation requirements.

## **Minor policy and technical drafting changes**

14. Footnote 21, page 11 of the draft Code, is a helpful new footnote clearly detailing what constitutes a parent providing 'practical support' that must not be considered during the admissions process.
15. The planned clarification on the use of an LAs powers of direction, rather than the appeals process, for children in care who are refused a school place, is helpful. However, as mentioned earlier in this response, the process by which an LA secures a school place for a child in care should not be obstructed by the designation of the school. LAs should have the power to compel any state-funded school to admit a child in care or a child with an EHCP, where there is space to do so.
16. The paragraph referencing children returning from overseas (para 2.19 in the current version) has been completely removed from the draft Code and with that, any reference to "*Home Office rules for non-European Economic Area nationals*" who may have arrived in the country and are seeking a school place. This is now an obvious gap.

## **Other issues**

17. **School closures** – the current wording in paragraph 2.32 suggests that, where a school is closing, the LA must collaborate with all schools in the area to consider how the displaced children can best secure provision in an alternative school. LAs have an overarching duty to secure sufficient schools in the area. On this basis, it would be welcome if the code could also require all schools to work with the LA to enable it to fulfil its duty.
18. ADCS would welcome the opportunity to discuss any of the points raised in this response in further detail. Please contact [esther@adcs.org.uk](mailto:esther@adcs.org.uk) to arrange.