

School Admissions

- a guide for constituents

September 2021



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Contents

1. School admissions.....	1
Legislation and guidance	1
Some terms explained	1
Are there any rules about how admissions authorities set their arrangements?.....	2
When do I have to apply for a school place?	2
Can a parent choose a particular school for their child?	3
Are parents guaranteed their school of choice?	4
What happens if there are more applications than there are places at the school?	4
Are there any oversubscription criteria that can't be used by admission authorities?	4
Are there any requirements for some children to be given higher priority than others?.....	4
Is a child with special educational needs (SEN) or additional learning needs (ALN) guaranteed a place at a particular school?.....	5
Can admission authorities for faith schools give higher priority to children of the same faith?.....	6
Where can I find admissions information for schools in my area?.....	7
At what age must a child start school?	7
Can a child start school later than when they are 5?	7
Is this different to 'deferred entry'?.....	7
Are admissions to nursery school different to those for primary and secondary schools?.....	8

Are there limits on the number of children who can be admitted to infant classes? 8

Are arrangements for sixth form different?..... 9

2. School admission appeals 10

Can I appeal if I am not offered my choice of school?..... 10

What can I expect from the appeal?..... 10

Can I be accompanied by someone to the appeal?..... 11

If I lose the appeal, how can I take the matter further?..... 11

1. School admissions

This briefing provides some background information on the school admissions process for maintained schools in Wales and answers some frequently asked questions.

Legislation and guidance

The law relating to school admissions is set out in the School Standards and Framework Act 1998. The Welsh Government has published the statutory **School Admissions Code** (July 2013) and the **School Admissions Appeals Code** (December 2013). The Codes impose requirements and offer guidance in respect of the discharge by local authorities, the governing bodies of maintained schools, admission forums, and admission appeal panels of their school admissions and appeals functions. These bodies must 'act in accordance with' the Codes.

Some terms explained

Admission authority - The entry of children to schools is controlled and administered by an 'admission authority'. Who the admission authority is depends on the type of school. Local authorities are admission authorities for community and voluntary controlled schools (unless this function has been delegated in full to the governing body). The admission authority for foundation and voluntary aided schools is the school's governing body.

Admission arrangements - Admission arrangements are set by the admission authority. The arrangements set out how children will be admitted, including the criteria that will be applied if there are more applications than places at the school.

School capacity - The capacity of a school is the number of pupil places it contains. The Welsh Government has published guidance, **Measuring the capacity of schools in Wales** that sets out a method that all community, voluntary aided, voluntary controlled and foundation schools in Wales use to work out their capacity.

Admission number - A school's admission number is the number of pupils that can be admitted to a year group. Admission authorities must have regard to the 'indicated admission number' for each year group. The indicated admission number is calculated in line with the capacity assessment method set out in the measuring capacity guidance. The admission number is calculated by dividing the capacity by the number of year groups to be accommodated at the school.

Are there any rules about how admissions authorities set their arrangements?

Admission authorities must set their admission arrangements in accordance with principles that are set out in the School Admissions Code. Arrangements must be:

- clear;
- objective;
- fair and equal for all pupils;
- provide parents with access to information on arrangements; and
- comply with the law.

Once an admissions authority has decided on its arrangements, they must consult on them. Admission arrangements must be consulted on for each maintained school between 1 September and 1 March, and set by 15 April, of the school year (the 'determination year') beginning two years before the school year in which the arrangements will apply.

Local authority admission authorities must consult each year for their schools. The rules are slightly different for governing body admission authorities. They must also consult annually unless they have consulted on their arrangements within the previous two determination years, the arrangements are unchanged, and there has been no objection made to the Welsh Ministers in the preceding five years.

The School Admissions Code provides information on who must and who should be consulted and the detail that should be included in the consultation. These include neighbouring local authorities and other local admission authorities, governing bodies, and religious bodies. Following consultation, the admission authority must 'determine' its arrangements, with modifications if necessary.

When do I have to apply for a school place?

Timetables for making an application can usually be found in local authorities' information for parents booklet and on their websites. Most admission authorities open their applications system during September and October. Admissions authorities consider all applications together after the closing date.

Can a parent choose a particular school for their child?

Admission authorities must allow parents of children in their area to express a preference for a particular school. This is sometimes known as 'parental preference'. Also, pupils going into sixth form may themselves express their preference for a specific school.

Where a parent or young person express a preference, local authorities and governing bodies must comply with that preference. But, there are exceptions:

- Where arrangements for entry to a school's sixth form are based wholly on selection by ability or aptitude and compliance would be incompatible with selection under those arrangements.
- Where a child has been permanently excluded from two or more schools and the latest exclusion took place within the last two years.
- Where compliance would prejudice the 'provision of efficient education or the efficient use of resources'. This includes prejudice which might arise because of relevant measures that need to be taken to ensure the school complies with the infant class size limit, for example, having to employ an additional teacher or create another classroom. Further information on infant class sizes can be seen below.
- In a normal year of entry, a child must not be refused admission to a school on the grounds of prejudice to efficient education or the efficient use of resources except where the number of applications for admission exceeds the admission number. However, it may be reasonable for an admission authority to exercise discretion, in exceptional circumstances, to admit more pupils than the admission number indicates. This may be, for example, where there are a significant number of surplus places across the year groups in the school or if there is a temporary shortage of a particular type of provision in an area, for example Welsh medium education, while additional provision is being established.

All maintained schools that have enough places available (up to and including the admission number) must offer a place to every child who has applied (except where they are twice excluded).

Are parents guaranteed their school of choice?

While parents can state a preference for a particular school, if there are more applications than there are places available a parent may be unsuccessful and not be offered their preferred option.

What happens if there are more applications than there are places at the school?

As part of their admission arrangements, admission authorities must have criteria to decide on how places are allocated if there are more applications than there are places. These are known as '**oversubscription criteria**'. While admission authorities have discretion over the criteria, they must be clear, objective, procedurally fair, and comply with legislation. The Admission authority must consult on and then publish its oversubscription criteria.

Are there any oversubscription criteria that can't be used by admission authorities?

Admission authorities must ensure that arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with special educational needs/additional learning needs. The criteria must not require any 'interpretation' and must be clear and unambiguous.

The School Admissions Code includes a list of 'undesirable oversubscription criteria' that admission authorities must not consider or use, such as selection by ability or aptitude. There are some exceptions to this, such as sixth forms. They also include where pupils should or should not be given priority over others (such as children of staff, pupils who have had behaviour issues, particular faiths (with exceptions), or pupils with special educational needs).

Are there any requirements for some children to be given higher priority than others?

The School Admissions Code recognises that looked after children are amongst the most vulnerable and therefore requires admission authorities to give the highest priority in their oversubscription criteria to looked after children and previously looked after children.

Admission authorities for faith schools **may** give first priority to all looked after children and previously looked after children, even if they are not of the same faith as the school. However, they **must** give first priority to looked after children and

previously looked after children of their faith above any other children of their faith. If they give first priority to looked after children and previously looked after children of the faith, then they **must** give a higher priority to looked after children and previously looked after children not of the faith than other children not of that faith.

The Code provides some guidance on setting fair oversubscription criteria. While it does not state that the criteria listed should be the preferred criteria, it offers guidance on their appropriateness. Included in the list of potential criteria are:

- Siblings of pupils still at the school;
- Medical need;
- Distance from home;
- The use of catchment areas.

Is a child with special educational needs (SEN) or additional learning needs (ALN) guaranteed a place at a particular school?

Arrangements for special educational needs are changing. Instead of a three tiered system, as currently with SEN, every learner with ALN will be given a statutory Individual Development Plan (IDP) setting out their needs and what interventions they require. The new arrangements are due to be implemented over a three year period from September 2021 to July 2024.

Guidance on the admission of children with statements can be seen in the **Special Educational Needs Code of Practice for Wales** (2013). Where a maintained school is named in a statement of SEN, schools cannot refuse to admit the child even if by doing so they would exceed their admission number.

Similarly, the **Additional Learning Needs Code for Wales 2021** states that a local authority may name a maintained school in an IDP it prepares or maintains for a child. Where a maintained school is named, the school must admit the child regardless of its duty in relation to the statutory limit on class sizes for infant classes.

The School Admissions Code states that children with SEN but without statements must be treated as fairly as other applicants and that admission authorities must not refuse to admit a child because they consider themselves unable to cater for the child's SEN. Admission authorities must consider applications from children who have SEN but no statement, on the basis of the school's published admission criteria.

Can admission authorities for faith schools give higher priority to children of the same faith?

Schools with a designated religious character may give preference to members of a particular faith or denomination. But, this must not conflict with other legislation, such as equality legislation or the mandatory provisions of the School Admissions Code. Faith schools must not keep open places if they do not have enough applicants of their own faith and other parents have applied for a place. Where preference is to be given to members of a particular faith, the admission authority's published admission arrangements must make clear how religious affiliation or commitment is to be demonstrated, for example through a family's priest, minister, or other representative of the church.

Can admission authorities for Welsh medium schools give higher priority to children who speak Welsh?

Admission authorities must not adopt oversubscription criteria which select pupils on the basis of ability or aptitude. This includes, in the case of Welsh medium schools, the ability to speak Welsh. The exception to this general prohibition on ability based criteria is schools with partially selective arrangements which already had such arrangements in place at the beginning of the 1997/98 school year and are permitted to continue to use selection by ability. There is also an exception on selection by ability for sixth forms – see further below. Are there any reasons why a school can refuse a pupil admission to a school when they have enough places?

In general, schools that have enough places must comply with parental preference. However, where a child has been permanently excluded from two or more schools the requirement to comply with the preference is removed for a period of two years from the date on which the latest exclusion took place. There are exceptions to this and it does not apply to:

- Children with statements of SEN;
- Children who were below compulsory school age when excluded;
- Children who were reinstated following a permanent exclusion;
- Children who would have been reinstated following a permanent exclusion had it been practicable to do so;
- Looked after children and previously looked after children, where the application for admission is made by or on behalf of the corporate parent.

Local authorities are still responsible for providing suitable full-time education for twice excluded children and may need to use their powers of direction to secure a school place or provide a place in a Pupil Referral Unit or other education provision.

Where can I find admissions information for schools in my area?

Local authorities must publish an annual prospectus that sets out the admission arrangements for all maintained schools in its area. This must also include a timetable for the admissions process. The prospectuses are generally published on local authority websites and are often called 'starting school' or 'parents handbook'. These explain how to apply for a school place.

All admission authorities in any local authority area must have common dates of return for primary applications and secondary applications for the normal year of entry, although different common dates may be agreed for primary and secondary applications.

At what age must a child start school?

Under the provisions of section 8 of the [Education Act 1996](#), children and young people must attend school full-time from the start of the first term that begins after their fifth birthday. This is called compulsory school age. The end-of-term dates are 31 March, 31 August and 31 December.

Can a child start school later than when they are 5?

In general, no. There may be instances where parents would like their child to be admitted to school outside their chronological year group, for example, for children who are more able and talented, or for a child who has experienced problems and missed part of a school year. In these cases, the School Admissions Code states that admission authorities should consider these requests carefully and make decisions on the basis of the circumstances of each case, in consultation with the parents and the school, and specifically in relation to what is most beneficial to the child.

Is this different to 'deferred entry'?

All local authorities in Wales offer places in reception classes for parents before their children reach compulsory school age. Children may also be offered free part-time nursery education the term after their third birthday, if parents wish to take advantage of this. In these circumstances, deferred entry is where a parent can ask for their children to go to school part-time or put off starting school until later in the

school year. The effect is that the place is held for the child and cannot be offered to another child.

A child will have to go to school before the end of the summer term or they will lose their place in the class and parents will have to reapply for a place. If a parent does not take up the place offered in the same school year, the child would not normally join the next reception class but would join the class in which they were originally offered a place. Children will still follow their chronological year group. The parent would not be able to defer entry beyond the beginning of the term after the child's fifth birthday, nor beyond the school year in which the original application was accepted.

Are admissions to nursery school different to those for primary and secondary schools?

Nursery provision can be in a local authority-maintained or non-maintained setting. The local authority is responsible for deciding admissions to nursery classes in other community and voluntary controlled schools. The admission authority should clearly identify separate admission arrangements for the nursery class. Admission authorities must ensure that parents are aware of the formal process for applying for a place. Oversubscription criteria should be established using the same principles as those for statutory school-age provision.

Parents of children who are admitted for nursery education will still need to apply for a place at the school if they want their child to transfer to the reception class. Just because a child attends the nursery class in a school does not in itself make it any more likely they will secure a place in the reception class.

As nursery education is non-statutory provision, parents have no statutory right of appeal if they are not offered a place at their preferred provision.

Are there limits on the number of children who can be admitted to infant classes?

There are statutory limits on class sizes. When a single school teacher is present, infant classes (reception, Year 1 and Year 2) may not contain more than 30 pupils. An admission authority can refuse to admit a child to a school where to do so would cause 'class size prejudice', that is, prejudice to efficient education or efficient use of resources as a result of the relevant measures that would be needed to comply with the duty to limit the size of infant classes, for example, having to employ an additional teacher or create another classroom. However, in relation to the

Reception year such prejudice cannot be said to arise unless the school's admission number would be exceeded. Admission authorities may refuse admission for places in any year other than the normal year of entry (Reception), if offering a place would result in class size prejudice. This means that admission to Year 1 and Year 2 can be refused if offering a place would result in class size prejudice, even if the admission number has not been reached in relation to these year groups.

The infant class size limit of 30 applies to the organisation of the classes not to the number of children to be admitted. Although classes must be organised to comply with the limit wherever possible, the **School Admissions (Infant Class Size) (Wales) Regulations 2013** set out circumstances in which pupils may be admitted as exceptions to the class size limit. These include where pupils may have special educational needs, or be a looked after child, or where the parents wish for faith-based or Welsh medium education and it is the only school within a reasonable distance of the child's home.

Are arrangements for sixth form different?

A school with a sixth form may have different admission arrangements for those of statutory school age and for the sixth form. If this is the case, the admission authority must consult on, determine and publish those arrangements at the same time and in the same way as all other admission arrangements.

Applications for admission to a sixth form may be made by either the parent or the young person or both and applications must be treated in the same way as any other application for admission to a school.

Admission authorities are permitted to set arrangements for entry to sixth forms which are wholly based on selection by reference to ability, for example, entry depends on learners having achieved a certain number of GCSEs at specific grades. Where such arrangements exist, the duty to comply with parental (or learner) preference does not apply.

Admission authorities which sets wholly selective sixth form admission arrangements must apply those arrangements equally to both young people who are currently attending the same school but seeking entry to the sixth form and those who are applying to be admitted to the school for the first time. In all other instances learners who are already attending the school will not need to apply for entry to the sixth form and cannot be refused entry.

Schools must not interview young people or their families for entry to a sixth form.

2. School admission appeals

Can I appeal if I am not offered my choice of school?

Any parent (except one whose child has been permanently excluded from two schools) whose child is refused a place has the right to appeal to an independent appeal panel. The letter of refusal should explain why a parent has been unsuccessful and information of how to make an appeal. There is **usually a time limit in which to submit an appeal**.

What can I expect from the appeal?

The Welsh Government's **School Admissions Appeals Code** provides some guidance on the appeals process. It sets out the roles and responsibilities of an appeals panel, how an appeal should be conducted and what issues should be taken into account by the panel.

Appeals are usually heard in private, but, if there are many appeals for the school, the first stage of the appeal may be carried out as a group and other parents who have also appealed may also be present. At the appeal, the presenting officer will explain why the admission authority turned down the application and the parent will be able to question the admission authority's reasons for refusal.

If the panel decides that there was no need to refuse a place, the hearing will end and the parent will be informed that the appeal has been successful. If the panel decides that there were reasons for refusal on the grounds that the school would be too full, then a second stage will follow. These will be individual (private) appeals and be carried out as follows:

- The parent will explain why their child should be provided with a place at the school even though it is full.
- The admission authority will have an opportunity to question the parent's reasons.
- The admission authority will then sum up the case.
- The parent will also have an opportunity to sum up their case.

The panel will listen to all sides of the case and may ask questions at any time if they need clarification or more information to reach a decision.

The decision of the appeal panel is final and can only be overturned by the courts

where either the parent or the admission authority are successful in applying for Judicial Review of that decision.

Parents generally do not have a right to a second appeal in respect of the same school and the same school year, but may have a fresh appeal if:

- The admission authority agrees to arrange a second appeal because there were faults in the first appeal and there is a significant possibility that the outcome might have been affected by the faults (this may be on the recommendation of the Public Services Ombudsman (see below) or because the admission authority decides to do so on its own initiative); or
- The admission authority accepted a fresh application because there has been a significant and material change in the circumstances of the parent or young person or school, but considered that the fresh application should also be turned down.

Admission authorities must admit a child whose parents have won an appeal. The Welsh Government has no jurisdiction over the decisions of appeal panels.

Can I be accompanied by someone to the appeal?

Yes. A parent may be accompanied or represented by a friend, adviser, interpreter or signer who may speak on their behalf. Parents are free to have legal representation if they wish.

If I lose the appeal, how can I take the matter further?

Generally, the matter can only be taken further if there have been issues with the process rather than disagreement with the outcome.

The **Welsh Ministers** cannot review or overturn decisions of individual independent appeal panels but can consider whether to exercise their powers of intervention (under the School Standards and Organisation (Wales) Act 2013) if either:

- the panel was not correctly constituted by the admission authority, or
- the admission authority has not acted reasonably in exercising functions in respect of the appeal process or has failed to discharge any legal duty in relation to that process.

An appeal panel's decision can only be overturned by the courts where those appealing or an admission authority are successful in applying for Judicial Review of that decision.

The **Public Services Ombudsman for Wales** has legal powers to look into complaints about public services. They are independent of all government bodies and provide a free and independent service.

The Public Services Ombudsman can investigate written complaints about **maladministration** on the part of an admission appeal panel. Maladministration covers issues such as a failure to act independently and fairly, rather than complaints where a person simply feels that the decision taken is wrong. In relation to school admissions the Ombudsman can:

- Look at complaints about school admissions procedures in Wales and the admissions appeals process;
- Look at complaints from parents who consider a local authority has implemented its school admissions procedure unfairly;
- Look at complaints from parents who consider an Admissions Appeal Panel has acted improperly.

The Ombudsman cannot compel a local authority to offer a child a place at a school. Neither can they overturn the decision of an Admissions Appeal Panel. However, if they believe the Panel hearing was improper or unfair, they may recommend that the appeal should be heard by a new Panel.

The Ombudsman can be contacted on 0300 790 0203 or by email at ask@ombudsman.wales and they can advise whether they can help further.

Judicial review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. Judicial reviews are a challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached. The court will not substitute what it thinks is the 'correct' decision. Judicial Review could be used to review decisions of school admission appeal panels. Judicial review is a remedy of last resort and should be used only after all other efforts to resolve an issue have failed.

