



Clerks Associates UK

School and Academy Appeal Against Admission Decision Procedure Notes for Parents



Clerks Associates UK

Revive Centre, 47 London Road, Enfield, London EN2 6DS

Tel: 020 8920 3662 Fax: 020 8886 9947 Email: info@clerksassociates.co.uk Web: www.clerksassociates.co.uk

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If your child has been refused a place at the school you wanted, or if you are unhappy with the alternative school you have been allocated, you have the right of appeal to an Independent Appeal Panel. This applies to all schools including Academies and free schools, but not independent (fee-paying) schools.

The school must have due regard to its obligations under the Equality Act 2010. All policies and practices, including admissions arrangements and decisions, must meet the requirements of the Act, and failure to do so may be relevant to the matters an appeal panel has to decide.

The school is subject to the Public Sector Equality Duty, and therefore it must have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations in relation to disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

This note is intended as a guide. The School Admission Code and School Admission Appeals Code are available to download from the Department of Education Website www.education.gov.uk/school

How do I appeal?

For voluntary aided schools, academies or free schools you should contact the school for details. The appeal should be on an appeal form which is available from the school or from Pupil Admissions which is based at your local council.

What happens next?

Admission Appeals are usually heard within 30 school days from the date your appeal was lodged. Appeals for Secondary Transfer or Reception in the normal admission round, the hearing are arranged within 40 school days.

The Clerk to the Appeal Panel will then write to let you know when and where the appeal will be heard. No later than 10 school days before the hearing, the admission authority must provide appellants with written notification of the date of and arrangements for the hearing. The notification must include a deadline for the submission of any further evidence that was not sent with the initial appeal. You have the right to attend the hearing and you may bring a friend or representative with you. However, if you are unable to attend the Panel will consider your case based on your written submissions.

Who will hear my appeal?

Independent Appeal Panels usually consist of 3 or 5 people who are independent of both the school and the Local Authority. None of the Appeal Panel members will have been involved in the decision to refuse your child a place. There will be at least one lay member on the Panel. A lay member is someone without any personal experience in the management of a school or the provision of education in a school (other than as a governor or in another voluntary capacity). The rest of the Panel will be made up of people who have experience in education, who are familiar with the educational conditions in the local area or who are parents of school pupils.

All Appeal Panels have the services of a Clerk, whose job is to advise the panel on correct procedure and to take notes of the hearing. It is only the members of the Appeal Panel who decide the outcome of your appeal. The Local Authority nor the school representative is not present when the decision is made.

What happens at the appeal hearing?

The following procedure will be similar for all schools. A Presenting Officer will always attend the hearing. For voluntary aided schools, free schools and academies, the Presenting Officer will be appointed by the school. For all other schools, the Presenting Officer will be a representative of the education authority.

The conduct of the appeal hearing is a matter for the Appeal Panel, but the proceedings will be conducted as informally as possible. The hearings take place at a suitable venue which maybe at the school itself.

- ❖ The procedure is that the Presenting Officer will explain the reasons why your child could not be offered a place at the school and why to admit an additional child will prejudice efficient education and the efficient use of resources.
- ❖ You and the Appeal Panel will have the opportunity to ask questions or to challenge anything that is said.
- ❖ You will then have the opportunity to state the grounds for your appeal, which are the reasons why you would like your child to go to your chosen school(s). The Panel and the Presenting Officer may also ask you questions or challenge something you have said.
- ❖ The Presenting Officer will have an opportunity to sum up.
- ❖ You will then be given the final word in summary.
- ❖ Both you and the Presenting Officer will be asked to leave the room. Appeals do not last a set time, but the average appeal is about 30 minutes.

The Appeal Panel will then decide the outcome of your appeal. The Clerk remains in the room to provide advice on correct procedures and to record the Panel's decision. The Clerk will write and let you know the decision of the Appeal Panel which is usually sent within five school days of the last hearing to be heard for your chosen school.

How does the Appeal Panel reach its decision?

In reaching a decision the Appeal Panel will take into account the following:

- ❖ Your choice of school and your reasons for choosing the school;
- ❖ The school's published admission arrangements.

- ❖ Whether admitting your child to the school would prejudice (cause problems) to the provision of efficient education or the efficient use of resources.
- ❖ Whether admitting your child would conflict with the school's duty to limit the size of infant classes.
- ❖ For most appeals, the Appeal Panel will go through a **two stage process**. The first stage is a factual stage.

First Stage – Examining the decision to refuse admission.

- ❖ The Panel must decide whether the school's admission arrangements were lawful and that your application was not subjected to any maladministration which denied your child a place AND by admitting your child it would not prejudice the provision of efficient education or the efficient use of resources at the school. It is up to the Presenting Officer to demonstrate that there would be prejudice. If there is no prejudice, the Panel may uphold your appeal and your child will be admitted to the school.

Second Stage – Balancing the arguments

- ❖ If there is prejudice, the Panel must then go to the second stage. This is a balancing stage, where the Panel reaches a decision by weighing the degree of prejudice against your reasons for wanting your child to be admitted to the school. The Panel must take into account your reasons for expressing a preference for the school, including what the school can offer your child that the allocated or other schools cannot. It is up to you to demonstrate that there will be no prejudice to the school if your child was admitted. If the Panel decides that your case outweighs the prejudice to the school, your appeal may be upheld and your child admitted to the school. Otherwise the appeal will be unsuccessful.

Infant Class Size Reviews

For infant classes, that are Reception, Year 1 and Year 2, the admission authority may claim that admitting another child would require relevant measures to be taken to comply with the legal limit on class sizes. This is known as 'class size prejudice'. The class size limit is legally set at 30 children in an infant class taught by a single qualified teacher.

If the presenting officer shows that there would be 'class size prejudice', the Appeal Panel does not go through the two stage process outlined above. The Panel's powers are restricted by law and it may only uphold an appeal if:

- ❖ There are less than 30 children in the class who have already been allocated places or
- ❖ The admissions policy had not been properly applied and your child should have been offered a place or the admission arrangements did not follow the mandatory provisions of the Schools Admission Code, including the co-ordinated arrangements

AND

- ❖ The decision not to give a place to your child was one which no reasonable admission authority would have made in the circumstances of the case.

The restriction on the powers of Appeal Panels means that if there is class size prejudice, it is much less likely that your appeal will be upheld.

Appeal Panel decisions

The decisions of an Appeal Panel are final and binding on the school and the Local Authority. If your appeal is upheld, the school must admit your child.

Infant Class Size Reviews

Government legislation states that there should be no infant classes with more than 30 pupils with a single qualified teacher. This applies to Reception, Year 1 and Year 2 classes.

Infant Class Size – Infant classes (those where the majority of children will reach the age of 5, 6 or 7 during the school year) **must not** contain more than 30 pupils with a single school Additional children may be admitted under limited exceptional circumstances. These children will remain an 'excepted pupil' for the time they are in an infant class or until the class numbers fall back to the current infant class size limit. The excepted children are:

- A) Children admitted outside the normal admissions round with statements of special educational needs specifying a school.
- B) looked after children and previously looked after children admitted outside the normal admissions round;
- C) Children admitted, after initial allocation of places, because of a procedural error made by the admission authority or local authority in the original application process.
- D) Children admitted after an independent appeals panel upholds an appeal.
- E) Children who move into the area outside the normal admissions round for whom there is no other available school within reasonable distance.
- F) Children of UK service personnel admitted outside the normal admissions round.
- G) Children whose twin or sibling from multiple births is admitted otherwise than as an excepted pupil.
- H) Children with special educational needs who are normally taught in a special educational needs unit attached to the school, or registered at a special school who attend some infant classes within the mainstream school.

Infant Class Size Appeals – Class Size Prejudice - Lodging your appeal

Only one appeal per application is allowed unless, in exceptional circumstances, the school accepts a second application from the appellant because of a significant and material change in the circumstances of the parent, child or school but still refused admission.

BEFORE THE APPEAL

You will receive information from the Clerk to the panel, details of the date, time and place of your appeal hearing at least 14 days (10 working days) before the date of the appeal hearing.

It is important that you send the clerk copies of any documents or information you may wish to use in your case. You must submit all your supporting evidence to the Clerk at least 7 days (5 working days) before the date of the appeal hearing. Any information or evidence not submitted by the deadline might not be considered at the appeal. You will be sent the school's evidence at least 7 days (5 working days) before the hearing.

You must state the reasons for your appeal on the form and you must also submit any supporting medical or professional documents. All supporting documents must be received by the Clerk at least 7 days (5 working days) before the appeal in order that all parties may be able to read and give proper consideration to your supporting evidence before the appeal.

You will be invited by the clerk to attend the hearing in person and a friend or representative may accompany you. You must advise the Clerk at least 7 days before the date of the appeal if you intend to call any witnesses or be represented at the hearing.

You may also bring an interpreter if you need one. If you need help interpreting any of the documents you have received, please contact the school.

ATTENDANCE AT THE APPEAL

It is not necessary or appropriate to bring your child to the hearing.

You may bring a member of your family, or friend, your neighbour or a representative along with you, either to help you say what you want or to speak for you or to simply give you support.

If you are unable to attend the appeal please contact the Clerk as soon as possible, you also have the following options:

(1) Send a representative on your behalf (usually a friend or family member)

(2) Have the appeal heard in your absence. If you choose to have the appeal heard in your absence, the Panel will decide the appeal by looking at the written information which has been provided. The Panel will give the same attention to your appeal, whether or not a parent/guardian is present. If you do not come to the hearing, it is important that you provide your full reasons for the appeal clearly in writing.

THE APPEAL HEARING

Where a school is very popular the panel may hear appeals from a number of parents individually who all wish their children to be admitted. To avoid injustice, where multiple appeals are being heard for the same school, decisions will not be made on individual cases until all parents have been involved in stages 1 and 2 of the process.

Appeals must follow the two stage decision making process when considering infant class size appeals.

1. First stage – examining the decision to refuse admission:

The panel must consider the following matters:

- ▶ Whether the admission of an additional child/additional children would breach the infant class size limit.
- ▶ Whether the admission arrangements (including the area's co-ordinated admission arrangements) complied with the mandatory requirements of the School Admissions Code and Part 3 of the School Standards and Framework Act 1998;
- ▶ Whether the admission arrangements were correctly and impartially applied in the case(s) in question; and
- ▶ Whether the decision to refuse admission was one which a reasonable admission authority would have made in the circumstances of the case.

The Appeal Panel may only uphold an appeal if:

(a) It finds that the admission of an additional child would not breach the ICS limit; or

(b) It finds that the admission arrangements did not comply with admissions law or were not correctly and impartially applied and the child would have been offered a place if the arrangements had complied or had been correctly and impartially applied; or

(c) The decision to refuse admission was not one which a reasonable admission Authority would have made in the circumstances of the case.

2. Second stage – comparing cases

The panel must compare each appellant's case for their child to be admitted and decide which of them, if any, to uphold. Where the school could admit a certain number of children without breaching the infant class size limit (or without needing to take measures to avoid breaching it that would prejudice the provision of efficient or education or efficient use of resources) the panel must uphold the appeals of at least that number of children.

Given the limited nature of the possible grounds on which an appeal may be upheld, Infant Class Size Appeals are rarely successful.

The appeal is private and all papers and discussions are treated as confidential. The proceedings, which will be as informal as possible, will normally be as follows:

- ◆ The representative of the school will put forward its case
- ◆ You will have an opportunity to question the school's representative
- ◆ You present your case
- ◆ The school will have the opportunity to ask you questions
- ◆ The representative of the school will sum up the school's case
- ◆ You will sum up your case

The panel must consider the reasons why you would like your child to attend that particular school and the admission arrangements of the school. Your child is entitled to be sent to the school of your preference unless admission would prejudice the efficient use of resources.

THE APPEAL PANEL AND APPEAL DECISION

The panel will consist of three people. One of these will be a person who has experience or knowledge of education. At least one other member will have none of these qualifications, and is known as a lay member. **The appeal panel will be independent of those who took the original decision.** The decision of the panel will be made on a simple majority and is binding on the school and on the parents.

Complaints about appeals

You may complain about maladministration on the part of an Appeal Panel to the Local Government Ombudsman in respect of maintained schools. You may complain to the secretary of state panel hearing appeals for a maintained school [but not an Academy]. Complaints about Appeal Panels for Academies need to be referred to the Secretary of State. The Secretary of State cannot review or overturn an appeal decision relating to a maintained school. An Appeal Panel's decision can only be overturned by the courts where the appellant or admission authority is successful in applying for a judicial review of that decision.

In writing to:

Admission Appeal Complaints
Academies Central Unit, Education Funding Agency
Earlsdon Park, Butts Road, Coventry CV1 3BH

E-mail to academyquestions@efa.education.gov.uk

The Ombudsman is not able to overturn an Appeal Panel's decision but may make recommendations for a suitable remedy. Where the ombudsman considers a complaint and finds there was maladministration that caused injustice, s/he often proposes that a fresh appeal be conducted before a new Panel, and where possible, a new clerk. Although there is no further right of appeal in law admission authorities have the discretion to arrange a new Panel following an Ombudsman's recommendation and undertake to reconsider the appeal.

There are three Local Government Ombudsmen in England and each deal with complaints from different parts of the country. Information on this is available in a leaflet obtainable from _____ the:

Commission for Local Administration in England:

10th floor Millbank Tower, Millbank,
London SW1P 4QP

or by telephoning the advice line on 0845 6021983.

Further information can also be found at www.lgo.org.uk Email: advice@lgo.org.uk

Complaints to the Secretary for State for Education

Secretary of State cannot review or overturn decisions of appeal panels, but can consider, under sections 496, 497 and 497A of the Education Act 1996 and under an Academy's funding agreement, the Secretary of State may consider whether:

- ❖ The panel was correctly constituted by the admission authority; and
- ❖ The admission authority has acted reasonably in exercising functions in respect of the appeal process or has failed to discharge any legal duty in relation to that process.

Further advice

The **Department for Education** can be contacted at:

Sanctuary Buildings
Great Smith Street
London SW1P 3BT

Coram Children's Legal Centre

University of Essex
Wivenhoe Park
Colchester
Essex CO4 3SQ
DX: 3616 Colchester

Tel: 01206 877910

Fax: 01206 877963

E-mail: clc@essex.ac.uk

Tel: 0870 000 2288 Website: www.education.gov.uk

The Disability Rights Commission (DRC) can be contacted at:

DRC helpline, Freepost MID02164 Tel: 08457 622 633

Stratford-upon-Avon Textphone: 08457 622 644

CV37 9BR Website: www.drc-gb.org

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