

School Admission Appeals Guide

East Sussex School Appeals Service

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This document is only intended to be a guide. If you have any questions about school appeals which are not dealt with here, please contact the school appeals service on:

email: schoolappeals@eastsussex.gov.uk

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Section A: Completing the appeal form and useful information

A1 My child has not been given a place at the school I applied for, what can I do?

You have the right to appeal against the decision. To appeal, you must put in writing your reasons for appealing. You will also be given the opportunity to explain in person the reasons why you wish to appeal.

A2 Who can make an appeal?

In order to make an appeal you must have parental responsibility for the child/children you are appealing for. Please see below for a description of who has parental responsibility:

1. **A child's mother.**
2. **A child's father if** a child's parents are married when the child is born. If the parents are not married when the child is born, the father can acquire PR if he:
 - a. Marries the mother.
 - b. Has a PR agreement with the mother which is filed at the Principal Registry of the Family Division of the High Court.
 - c. Has a court order giving him PR.
 - d. Is registered as the child's father on a register of births in the UK (This requires the mother's consent and applies only if the child was born on or after 1 December 2003).
 - e. Becomes the child's guardian.
 - f. Adopts the child.
3. **A step- parent who:**
 - a. is married to, or is the civil partner of, a parent of the child who has PR, and has a PR agreement with the parent (if only that parent has PR) or both parents (if both parents have PR), which is filed with the Principal Registry of the Family Division.
 - b. Has a court order giving him PR.
4. **An individual other than a parent who:**
 - a. Adopts a child.
 - b. Becomes the child's guardian.
 - c. Has a court order giving him PR.
5. **Second female parent**
 - a. Where a child is born by fertility treatment given on or after 6 April 2009, a second female has PR automatically if she is a second female parent under section 42 of

HFEA 2008 and if she was the mother's same-sex spouse or civil partner at the time of the fertility treatment and consented to the treatment

- b. If the second female parent was not the mother's same-sex spouse or civil partner at the time of the treatment, but at that time the two women consented in writing to her being the child's second parent and the mother was neither married nor in a civil partnership with another individual who is treated as the second parent.

A3 Who will make a decision on my appeal?

Appeals are heard by Independent Appeal Panels and are made up of volunteers (see paragraph titled 'Independent Appeal Panel' in section A12 for more detail). Panels have the power to either uphold (allow) or dismiss (reject) your appeal.

A4 What schools can I appeal for?

You are only entitled to appeal for schools which you formally applied for and have then received confirmation that your application has been refused.

A5 Where do I send my appeal to?

You should return your appeal to the Admission Authority (ie East Sussex County Council or an individual governing body of a school which is responsible for controlling admissions to the school you are appealing for). East Sussex County Council (the Local Authority) is the admission authority for Community and Voluntary Controlled schools in East Sussex. Appeals for these schools should be submitted to the East Sussex appeals service.

For Academies, Voluntary Aided and Trust schools, the governing body is the admission authority. As a result, appeals for these types of school should normally be sent directly to the relevant school. However, please be aware that some of these types of school have asked the East Sussex appeals service to administer the appeals process on their behalf. Where this is the case, you will usually need to send your appeal to the East Sussex appeals service. Please check with the appeals service if you are not sure. Email: schoolappeals@eastsussex.gov.uk

A6 Data Protection

East Sussex County Council (the 'Council') respects your privacy rights and is committed to ensuring that it protects your details, the information about your dealings with the Council and other information available to the Council ('your information'). In accordance with the Data Protection Act 1998, the Council will use your information, for the purpose of processing your school admission appeal(s), to

- (a) Deal with your requests and administer its departmental functions
- (b) Meet its statutory obligations, and
- (c) Prevent and detect fraud

The Council may share your information (but only the minimum amount of information necessary to do the above and only when it is lawful to do so) within the Council (including other admission authorities, central government departments, law enforcement agencies, statutory and judicial bodies and independent appeal panels). The Council may also use and disclose information that does not identify individuals for research and strategic development purposes. The School Appeals Service and the Local Authority reserve the right to verify the information contained in your appeal form.

A7 How do I complete my appeal?

- separate instructions are provided on our website if you are submitting your appeal online;

- please ensure you use separate forms for each school you want to appeal for. Please also use separate forms if you are submitting an appeal for more than one child;
- if you are appealing on paper and need to continue on a separate sheet(s) or wish to submit other additional papers please make sure these are numbered. Please use A4 paper for additional sheets wherever possible as this makes the process of photocopying easier. Please also complete the form using either black or blue ink;
- if you are including colour items, like maps or photographs or papers with highlighted sections and you want the Panel to see them in this format, please provide us with 8 colour copies of these items as we cannot provide colour copies;
- this is your appeal and you can put forward whatever reasons you feel are relevant to your case. Having said this, it may help the Panel to understand your case if, wherever possible, you use headings or number the points you are making. Depending on the type of appeal you are making, please also remember to read Section B for appeals where the rules on infant class size apply or Section C for all other appeals. These sections provide more detail about how Panels make decisions on appeals.
- please mention *all* the factors you want the Panel to take into account when they consider your appeal (appeal hearings are confidential). This is important as parents do not have a right to a second appeal in respect of the same school for the same academic year.
- we cannot contact any third parties such as doctors or other professionals on your behalf for further information in support of your appeal. As a result, if there is, for example, medical grounds you wish the Panel to take into account, please ensure that wherever possible you provide written letters of support with your appeal submission.

A8 How do I submit my appeal?

This section applies to appeals for schools where the appeals service is administering the appeals process (see section A4 for more detail):

- you can complete and submit your appeal on-line at:

www.eastsussex.gov.uk/schoolappeals

Or you can post a request to us at:

School Appeals Service, East Sussex County Council, West E, County Hall, St Anne's Crescent, Lewes, BN7 1UE.

A9 When should I submit my appeal?

The deadline for submitting your appeal allows at least 20 school days from the date decision letters are sent.

- **Secondary school appeal deadline:** 1 April 2019. This is the appeal deadline for children starting secondary school in September 2019.
- **Primary school appeal deadline:** 22 May 2019. This is the appeal deadline for children starting Reception Year or Year 3 from September 2019 onwards.
- **In-year appeal deadline:** within 25 school days of being told your application was unsuccessful. This deadline applies to all applications that are not part of the

primary, junior or secondary intakes for September onwards. This could be for any year group at any time of year.

Appeals received after the above deadlines will still be heard, but may take place after appeals received by the deadline have been considered by an Independent Appeal Panel.

A10 Can I submit additional evidence after the deadline for submitting my appeal?

You should submit all your evidence supporting your case when you make your appeal. However, where this is not possible you should send additional submissions to us 7 working days before the hearing. It is possible to submit additional papers after this deadline or to bring further items with you on the day of the hearing. However, it will be for the appeal panel to decide whether to accept any additional late evidence. Submitting evidence late could lead to your hearing being adjourned, or even postponed to another day.

A11 What will happen after I submit my appeal?

After you submit your appeal we will:

- send you confirmation that we have received your appeal;
- in due course, write to confirm the arrangements for when and where your appeal will be heard. You must be given at least 10 school days written notice (unless you have agreed to having shorter notice);
- seven working days before the hearing (not including the day of despatch or the day of the hearing) we will send to you and the Panel all the papers relating to your appeal. This will include a copy of the Admission Authority's Statement;
- after the hearing, you will receive a letter confirming the decision of the Panel.

A12 When will my appeal be heard?

The School Admission Appeals Code sets out the following timetable for when appeals will be heard:

- for **Secondary School Applications** (appeals relating to applications for children starting in Year 7 in the following September) and **Primary School Applications** (appeals relating to applications for children starting either Reception Year or Year 3 from the following September onwards) appeals **must** be heard within 40 school days of the deadline for lodging appeals;
- for **late applications**, appeals should be heard within 40 school days from the deadline for lodging appeals where possible, or within 30 school days of the appeal being lodged;
- for applications for **in-year admissions** (the term used to describe all other applications, which could be for any year group and which can be submitted at any time of the year): appeals **must** be heard within 30 school days of the appeal being lodged.

A13 What information will be sent to you and the Appeal Panel?

In addition to your appeal submission, a copy of the Admission Authority's Statement will be sent to you and the Appeal Panel. The Admission Authority should supply to the Clerk at least 10 school days before the hearing information which must include details of how the admission arrangements and the co-ordinated admissions scheme apply to the application, the reasons for the decision to refuse admission and an explanation as to how admission of an additional child would cause prejudice to the provision of efficient education or efficient use of resources.

A14 Who will be at the hearing?

The person appealing: You are entitled to appear in person and make oral representations. You may also be accompanied by a friend or adviser. You are also free to have legal representation at admission appeal hearings, but this ought not to be necessary.

You are entitled to call witnesses to speak at the hearing. Please inform the appeal clerk/administrator ahead of the hearing if you do wish to call a witness.

Where required an interpreter or signer who may speak on your behalf can also attend the hearing. Please inform the appeal clerk/administrator when you submit your appeal if you do require an interpreter or signer to assist you.

Independent Appeal Panel: Appeal Panels are independent of the Admission Authority and members volunteer their time to hear school appeals. They must not have any direct connections with the school that is the subject of the appeal. Decisions of Appeal Panels are binding on Admission Authorities. There are three members on a Panel, one of who will be

appointed to act as the Panel Chair. Members of Panels must be drawn from one of the following two categories.

- a) lay people (someone without personal experience in the management of any school or provision of education in any school (except as a school governor or in another voluntary capacity);
- b) people who have experience in education, who are acquainted with educational conditions in the local authority area, or who are parents of registered pupils at school.

Admission Authority representative: a presenting officer who is responsible for presenting on behalf of the Admission Authority the reasons why your application was refused. The presenting officer should give all relevant information as clearly as possible and without the use of jargon. The presenting officer will need to be prepared to answer detailed questions about the case being heard, the school (including its admission arrangements) and local coordinated admission arrangements, and will need to be present throughout the hearings to be able to do so.

Clerk to the Appeal Panel: The Clerk is not a member of the Panel but has an important part to play in ensuring that all relevant facts are established and that the appeal hearing is conducted in a fair way. The Clerk's main role at the hearing is to:

- explain the basic procedure to appellants and deal with any questions they may have before the hearing (the Chair or Clerk, as appropriate, may deal with questions raised during the hearing);
- be an independent source of advice (or to seek appropriate advice) on procedure, on both the School Admissions and School Admission Appeals Codes, and on the law on admissions, giving any advice in the presence of all parties where practicable;
- ensure that both the appellants and the admission authority have the opportunity to present relevant facts at the hearing. The Clerk's role is to assist the Panel, admission authority, or the appellants with procedure and obtaining advice where directed by the Chair to do so;
- record the proceedings, attendance, voting outcomes, Panel decisions and reasons in a form that the Panel and Clerk agree is appropriate. All notes and records of proceedings taken by the Clerk are the property of the Panel. Whilst these are not normally available to the parties following the hearing, the notes will be prepared and retained on the basis that they may be required to be disclosed to the Local Government Ombudsman or are required as part of a court proceeding.

A15 Should I attend the appeal hearing?

You are welcome to attend your appeal hearing. If you do not attend, the Panel will make a decision on the basis of the written evidence supplied by you and the evidence submitted both in writing and orally at the hearing by the Admission Authority representative. Whilst you do not have to attend the hearing, attending will give you the opportunity to:

- a) clarify any matters which the Panel may have questions about; and
- b) allow you to ask any questions of the Admission Authority's representative if you wish.

A16 When will I know the result of my appeal?

The decision of the Panel will be notified to you in writing usually within 5 working days of the hearing. Although during busy times, it may take longer for decision letters to be despatched.

A17 Who can give me further help and where can I find out more information?

Coram Children's Legal Centre provides free, independent advice on all areas of child, family and education law through their Child Law Advice Service.

Tel: 0300 330 5485 for education law.

Website: <https://childlawadvice.org.uk/>

East Sussex School Appeals Service: You are also welcome to contact us (the School Appeals Service) if you have any queries about the appeal process or related matters - e-mail: schoolappeals@eastsussex.gov.uk

Of course, you are free to seek your own advice from other sources if you prefer.

A18 School Admissions Code and School Admissions Appeals Code

The school admissions process, including the school appeals process, must be administered in accordance with the School Admissions Code and the School Admission Appeals Code. These Codes are issued by the Secretary of State for Education and can be viewed at:

<https://www.gov.uk/government/publications/school-admissions-code--2>

A19 Further appeals and complaints about appeals

Parents do not have a right to a second appeal in respect of the same school for the same academic year unless, in exceptional circumstances, the admission authority accept a second application from the parent because of a significant and material change in the circumstances of the parent, child or school, but still refuse admission.

Complaints about appeals

Parents may complain about maladministration on the part of an appeal panel to the Local Government Ombudsmen in respect of maintained schools. The Local Government Ombudsman can investigate complaints about maladministration on the part of an appeal panel for a maintained school. A complaint to an Ombudsman is not a further appeal. It must relate to the administration of an appeal rather than the appeal decision. Maladministration covers issues such as failure to follow correct procedures or failure to act independently and fairly. It does not cover the merits of decisions that only the panel has the authority to make. Therefore, generally, the

Ombudsman cannot consider whether the appeal panel was correct to uphold or dismiss the appeal.

The Ombudsman is not able to overturn the appeal panel's decision but, where they find that there has been maladministration, they may make recommendations for a suitable remedy. For example, they may recommend that an appeal is reheard by a different panel and with a different clerk.

Parents considering making a complaint can contact the Local Government Ombudsman's **Advice Line** on **0300 061 0614**, visit the website at <https://www.lgo.org.uk/> or email advice@lgo.org.uk or write to:

The Local Government Ombudsman PO Box 4771 Coventry
CV4 0EH.

Complaints about appeal panels for Academies

Complaints about maladministration on the part of an appeal panel for an Academy, or that an Academy Trust has failed to comply with the Appeals Code in setting up a panel, are investigated by the Education Funding Agency - an agency appointed to investigate complaints about Academies on behalf of the Secretary of State. Please follow the attached link for more detail:

<https://www.gov.uk/government/organisations/education-funding-agency/about/complaints-procedure>

Section B: Infant class size law appeals. This section will help you understand the law if you are appealing for a school place in Reception, Year 1 or Year 2 **AND** the rules limiting infant class sizes to 30 pupils with a single teacher apply. It will help you decide what points and information to include in your appeal.

B1 What is the infant class size limit?

The School Standards and Framework Act 1998 (SSFA 1998) limits the size of an infant class to 30 pupils with a single school teacher. Where an application has been turned down on these grounds, parents still have a right of appeal, but the grounds upon which the appeal can be upheld by a Panel are very limited. Because of these limitations all appeals where the infant class size restrictions applied were unsuccessful last year (for the September 2017 intake).

B2 How does the infant class size limit affect how the Panel will consider my appeal?

Where an application has been turned down because of the infant class size limit, Appeal Panels may only uphold an appeal where:

- a) it finds that the admission of additional children would not breach the infant class size 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) it decides that the decision to refuse admission was not one which a reasonable admission authority would have made in the circumstances of the case.

B3 Further information about how decisions are made on infant class size law appeals

In multiple appeals (this when there are more than one appeal for the same school and year group), where a number of children would have been offered a place under paragraph B2 above, and to admit that number would seriously prejudice the provision of efficient education or efficient use of resources, the panel must proceed to a second stage.

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 education or efficient use of resources) the panel must uphold the appeals of at least that number of children.

Consideration of 'reasonableness'

The threshold for finding that an admission authority's decision to refuse admission was not one that a reasonable authority would have made is high. The panel will need to be satisfied that the decision to refuse to admit the child was 'perverse in the light of the admission arrangements' i.e. it was 'beyond the range of responses open to a reasonable decision maker' or 'a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it'.

Section C: Secondary and Primary Appeals. This section will help you understand the law if you are appealing for a secondary or primary school (other than those primary/infant schools where the rules on infant class size apply). It will help you decide what points and information to include in your appeal.

How will the Panel consider my appeal?

The Panel must follow the two-stage process as set out below for all appeals (other than those against decisions made on the grounds of infant class size prejudice):

First stage – examining the decision to refuse admission

The panel must consider the following matters in relation to each child that is the subject of an appeal:

- a) 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; and
- b) whether the admission arrangements were correctly and impartially applied in the case in question.

The panel must then decide whether the admission of additional children would prejudice the provision of efficient education or the efficient use of resources.

Consideration of prejudice

Whilst the panel must take into account the school's published admission number, the admission authority must be able to demonstrate prejudice over and above the fact that the published admission number has already been reached. The panel must not reassess the capacity of the school, but must consider the impact on the school of admitting additional children. In reaching a decision as to whether or not there would be prejudice the panel may consider the following factors:

- a) what effect an additional admission would have on the school in the current and following academic years as the year group moves through the school;
- b) whether any changes have been made to the school's physical accommodation or organisation since an admission number was originally set for the relevant year group;
- c) the impact of the locally agreed Fair Access Protocol;
- d) the impact on the organisation and size of classes, the availability of teaching staff, and the effect on children already at the school.

Second Stage: balancing the arguments:

At this stage the Panel exercises its discretion, balancing the degree of prejudice to the school against the parent's case for the child being admitted to the preferred school, before arriving at a decision. In considering all the evidence before it, the Panel must take into account the appellant's reasons for expressing a preference for the school, including what that school can offer the child that the allocated or other schools cannot. If the panel considers that the appellant's case outweighs the prejudice to the school it must uphold the appeal.

In multiple appeals (where there is more than one appeal for the same school and year group), the panel must not compare the individual cases when deciding whether an appellant's case outweighs the prejudice to the school. However, where the panel finds there are more cases which outweigh prejudice than the school can admit, it must then compare the cases and uphold those with the strongest case for admission. Where a certain number of children could be admitted without causing prejudice, the panel must uphold the appeals of at least that number of children.

Section D: Procedures for school admission appeal hearings. This section applies to all appeals. It provides information about how your school admission appeal will normally proceed.

D1 Conduct of the hearing and the order of proceedings

Conduct of the hearing: the conduct of proceedings generally will be at the discretion of the Panel - and as informal as possible. The order of proceedings will normally be set out as in the section below entitled 'order of proceedings', provided that:

- the Panel shall have the power to vary the order whenever they consider it expedient so to do;
- there may be instances where all the appeals to be dealt with in a session or part of a session relate to preferences for the same school. If this is so, the Panel may ask the Admission Authority's representative to begin the session by presenting evidence on the Authority's admissions policy in the presence of all the parents present. The evidence will include reference to the allocations made. If it is a secondary or primary appeal (not relating to the infant class size limit), the Admission Authority's representative will explain why:

the allocation of pupils to the preferred school in excess of the number of places determined by the Admission Authority will be prejudicial to the provision of efficient education or to the efficient use of resources.

If it is an infant class size law case, the Admission Authority's representative will explain why:

the allocation of pupils to the preferred school in excess of the number of places determined by the Admission Authority will be prejudicial to the provision of efficient education or to the efficient use of resources by reason of the relevant measures which would need to be taken in order to comply with the duty to limit infant class sizes to 30 pupils.

Each parent present will be given an opportunity to question the Admission Authority's representative's evidence. If the above procedure is adopted, the order of proceedings set out below will apply only to the evidence relating to a particular case.

Order of proceedings

- Admission Authority's representative to put the case for allocation, calling any witnesses that the Panel may permit.
- Questioning of Admission Authority's representative, and any witnesses called, by parents (or representatives) and Panel*.
- Parents (or representatives) to put case, calling any witnesses that the Panel may permit.
- Questioning of parents, and any witnesses called, by the Admission Authority's representative and Panel.
- Summing up by Admission Authority's representative.
- Summing up by parents (or representative).

*If it is a secondary or primary appeal (not an appeal where the rules on infant class size law apply), the hearing can end after this stage if prejudice is not proven and the parents told that the appeal has been upheld.

D2 Other matters relating to the conduct of the hearing

- A Panel may at any time adjourn the hearing or hearings for any reason, including to enable a parent to attend, to receive significant evidence, or because of the illness or absence of a member of the Panel.
- A Panel will defer any decision upon an appeal relating to a parent's preference for a particular school until it has considered all the appeals that it intends to consider, or so many of them as are practical, relating to the expression of a preference for the same school.
- In accordance with the School Admission Appeals Code, hearings shall be in private, provided that where a Panel requests the Admission Authority's representative to present general evidence in accordance with section D1 above all the parents present will attend together for the presentation of the general case.

D3 Decisions of the Panel

- The Panel shall either uphold or reject the appeal and must not uphold an appeal subject to any specific conditions.
- In the event of disagreement between the members of the Panel, the appeal under consideration will be decided by a simple majority of the votes cast, with, in the case of an equality of votes, the Panel Chair having a second or casting vote.
- The decision of the Panel and the grounds on which it is made will be communicated by the Clerk to the Panel to the parents and to the Admission Authority.
- The decision of the Panel on an appeal is binding on the Admission Authority and on the Governors of schools at which the Panel determines that a place should be offered to the child in question.

D4 Clerk to the Panel

- Each Panel will have the services of a Clerk. If the Panel withdraws or invites the parties to do so when it wishes to consider its decisions, the Clerk must remain with the Panel for the purposes of offering advice as to procedure and law or of refreshing the Panel's memory as to any matter of evidence or other issue raised.
- The Clerk shall keep notes of the proceedings and shall record the attendances, voting, and all decisions made, and the grounds on which they are made, in such form as the Panel and Clerk may agree.

D5 Other matters

- Documents to be served or sent out in connection with school admission procedures may be sent by post or delivered to a parent addressed to them at the address given by the parent to the Admission Authority in the course of the admissions procedures.
- The procedures set out in this document may be changed at any time upon notice being given to that effect to all Clerks to Panels.