

# When can schools refuse admission due to challenging behaviour?

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Joanna Goddard

In this article we consider [Para. 3.10 of the School Admissions Code 2021 \(Admissions Code\)](#) and consider when this ground can be relied on to refuse an in-year application.

Para. 3.10 of the Admissions Code says:

*“Where an admission authority receives an in-year application for a year group that is not the normal point of entry and it does not wish to admit the child because it has good reason to believe that the child may display challenging behaviour<sup>76</sup>, it may refuse admission<sup>77</sup> and refer the child to the Fair Access Protocol<sup>78</sup>”.*

## When should schools consider using Para 3.10 to refuse admission?

You only need to use Para. 3.10 where you have first determined that there is a place available in the year group sought. This is because, where this isn't a place available, the application can be refused on that basis anyway.

When there is a place available, the school can then consider two possible options for refusing a place, namely the 'twice excluded' rule (which is not considered here – see Para. 3.8 of the Code) and the Para. 3.10 'challenging behaviour' ground.

## Restrictions and exceptions

There are some restrictions and exceptions that apply which are set out in Paras. 3.9 to 3.13 of the Code, and Pages 9 and 10 of the DfE's [Fair access protocols: advice for local authorities and school admission authorities](#) (FAP Guidance).

We've summarised these below:

- It only applies to year groups other than 'relevant age groups' (i.e. the normal entry year groups for the school). It wouldn't therefore apply to an application for Reception Year in a primary school, for example.
- You can't use it for looked after and previously looked after children (or children who have EHCPs).
- You can't use it for a child “thought to be potentially disruptive, or likely to exhibit challenging behaviour, on the grounds that the child is first to be assessed for special educational needs”.
- You can only use it where you can demonstrate that:
  - your school has a “particularly high proportion of either children with challenging behaviour or previously permanently excluded pupils on roll **compared to other local schools**” [emphasis added]; and
  - your school “considers that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources”.

The last bullet point is difficult to apply in practice, as it needs you to have knowledge of children admitted to other local schools in order to compare this to your own school.

# What is the definition of ‘challenging behaviour’ under the School Admissions Code?

If these conditions are met, you must then consider whether the child meets the legal definition for ‘challenging behaviour’ set out in Footnote 76 of the Code:

*“For the purposes of this Code, behaviour can be described as challenging where it would be unlikely to be responsive to the usual range of interventions to help prevent and address pupil misbehaviour or it is of such severity, frequency, or duration that it is beyond the normal range that schools can tolerate. We would expect this behaviour to significantly interfere with the pupil’s/other pupils’ education or jeopardise the right of staff and pupils to a safe and orderly environment.”*

This sets a high threshold which would not be met by the type of challenging behaviour routinely encountered and supported in schools.

## Challenging behaviour and the Equality Act

Crucial to the decision-making process will be whether the child has any form of disability which causes, influences or otherwise impacts on the aspects of their behaviour which are challenging, as refusing under Para. 3.10 in these circumstances is likely to be discriminatory. Footnote 77 states:

*“A child with challenging behaviour may also be disabled as defined in the Equality Act 2010. When considering refusing admission on these grounds, admission authorities must consider their duties under that Act.”*

The FAP Guidance expands this, stating:

*“The following reasons on their own should not be grounds for considering that a child may display challenging behaviour:*

- *poor attendance elsewhere;*
- *a defined number of suspensions, without consideration of the grounds on which they were made [emphasis added];*
- *special educational needs; or*
- *having a disability”.*

*and*

*“All schools have a duty to make reasonable adjustments for students with disabilities. Schools should be aware that a child who displays challenging behaviour may do so as a result of their disability or any unmet needs. Schools must therefore consider whether any reasonable adjustments can be put in place to support the needs of a particular child when considering whether admission should be refused on these grounds.*

*The impact and effectiveness of these adjustments must also be taken into account in managing presenting behaviours. For example, where a school would have to provide teaching assistant support and put in place an agreed behaviour plan for a pupil with autism, the impact of these arrangements must be factored into a decision over whether the child’s behaviour would meet the criteria to be considered challenging”.*

The Equality Act 2025 says that schools must not discriminate against a child by refusing to admit them. Schools must therefore take a holistic approach to considering whether the behaviour is sufficiently challenging for the Para. 3.10 ground to be met, having made all adjustments it is reasonable to make to support the pupil’s disability and manage their behaviour in school.

Generally, we caution against relying on Para. 3.10 if the pupil meets (or may meet ) the definition of ‘disabled’, given the threshold for meeting it is low, it includes behavioural disorders and mental health conditions, and there is no requirement for a diagnosis.

At the least, we’d recommend you seek specialist legal advice before doing so, to avoid or reduce the risk of a claim.

## The Fair Access Protocol (FAP) and parents’ right of appeal

The FAP is relevant only because Para. 3.10 provides that a child refused admission on this ground must be referred to the FAP for a place, and one of the FAP categories is designed for these children.

The key point to note is that the child has already been refused a place by the ‘admission authority’ for the school under Para. 3.10 before they were referred for a FAP placement, and it is not within the remit of a FAP Panel to attempt to interfere with that refusal.

The refusal can be overturned by an Admission Appeal Panel (Appeal Panel) appointed under School Admission Appeals Code 2022 (Appeals Code) after an appeal is lodged by the parents, following receipt of the refusal letter which sets out the reasons for the refusal and information about the right of appeal.

As part of its decision-making process, the Appeal Panel must decide whether the school's 'admission arrangements' complied with admission law and were correctly and impartially applied to the appellant's application. This will include deciding whether the requirements and criteria in Paras. 3.19 to 3.13 (including the footnotes) were met. This is supported at Page 9 of the FAP Guidance.

Please see our separate [article on FAPs for more detail](#).

Obtaining information about the child's behaviour

Para. 1.9g says schools can't:

*“take account of reports from previous schools about children's past behaviour, attendance, attitude, or achievement, or that of any other children in the family”. However, Footnote 78 confirms that this does not apply where the school “takes account of past behaviour as evidence for concerns about challenging behaviour, solely for the purpose of making a decision on whether it would be appropriate to refuse admission on the basis described in paragraph 3.10”.*

While this will allow you to take into account (and therefore obtain) this type of information in order to rely on it where Para. 3.10 applies, you need to be very careful not to obtain information of this type at all where the restrictions and exceptions apply (as set out above).

Even where they do not apply, you should be very careful that you only obtain information that would meet the definition of 'challenging behaviour' where it would not amount to disability discrimination, for the reasons set out above.

## **Consider everything at the outset before relying on Para. 3.10**

This means you need to consider all of the requirements, restrictions and criteria at the outset to establish whether relying on Para. 3.10 is potentially possible, before making enquiries and obtaining information. Then, any enquiries you make should use careful 'closed' wording (rather than 'open' wording) so that you only elicit information that you are allowed to take into account, by referring to and citing the actual definitions and paragraph/footnote numbers in your request, and making it clear that you do not want them to provide any other information that does not meet that criteria.

Sources of information will include the parent, the home local authority and/or the current or previous school. They will need to satisfy themselves that they have a lawful basis (or bases, in the case of special category personal data) for sharing the information with you, which should not present an issue given the purpose of the request is to apply provisions contained in the Code as long as you carefully word your request. Whether another school would want to share information with you is another matter – they are not legally obliged to, and they may be worried you will not admit the child if they do.

## **In conclusion**

As you will see from the above, relying on Para. 3.10 is difficult, and this will be further complicated where the school's local authority's FAP contains other requirements that interfere with the process.

Given the risk of complaints and claims against your school if things goes wrong, we recommend you seek specialist legal advice before refusing a place on this basis unless you are completely satisfied that the requirements, exclusions and criteria are all met and issues are unlikely to arise.

If you have any queries about [school admissions](#), please get in touch.

## **Contact**

Joanna Goddard

# Legal Director

joanna.goddard@brownejacobson.com

+44 (0)330 045 1183

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