

LEGAL POSITION – SCHOOL STANDARDS AND FRAMEWORK ACT 1998 AS AMENDED BY THE EDUCATION ACT 2002 (“the Act”)

1. **Section 86** provides, inter alia, that:-
 - (1) A Local Authority shall make arrangements for enabling the parent of a child in the area of the authority to express a preference as to the school at which he wishes education to be provided for his child and to give reasons for his preference.
 - (2) Subject to (3) below, a Local Authority and the governing body of a maintained school shall comply with any preference so expressed in the prescribed manner.
 - (3) The duty imposed by (2) above does not apply:-
 - (a) if compliance with the preference would prejudice the provision of efficient education or the efficient use of resources.
 - (4) For the purposes of (3)(a) above, prejudice may arise by reason of measures required to be taken in order to ensure compliance with the duty of the Local Authority and governing body to comply with the limit on infant class sizes imposed by Section 1(6) of the Act.
 - (5) For the purposes of (3)(a) above, no prejudice shall be taken to arise from the admission to a maintained school in a school year of a number of pupils in a relevant age group which does not exceed the number determined under section 89 (procedure for determining admission arrangements) as the number of pupils in that age group that it is intended to admit to the school in that year.
2. **Section 94** places a duty upon the Local Authority to make arrangements for enabling the parent of a child to appeal against any decision made by or on behalf of the authority as to the school at which education is to be provided and, in the case of a community or voluntary controlled school maintained by the authority, any decision made by or on behalf of the governing body refusing the child admission to the school.
3. **Schedule 24 – paragraph 12** (infant class sizes – limitation of circumstances in which appeal panels can uphold appeals) provides that where the decision under appeal was made on the ground that prejudice of the kind referred to in paragraph 1(4) above would arise an appeal panel shall determine that a place is to be offered to the child only if they are satisfied:
 - (a) that the decision was not one which a reasonable admission authority would make in the circumstances of the case; or
 - (b) that the child would have been offered a place if the published admission arrangements has been properly implemented.
4. **The Education (Determination of Admission Arrangements) (Amendment) (England) Regulations 2002** (made under section 89 of the Act) states:

- (2)(a) “admission number” means the number of pupils in any relevant age group intended to be admitted in any school year as determined by an admission authority in accordance with section 89A(1).
- (2)(b) “admission limit” means the number of pupils in any relevant age group referred to as such in, and determined in accordance with the net capacity assessment method set out in the DCS F Guidance, Assessing the Net Capacity of Schools (August 2002).
- (3) Every admission authority for a school, in determining their admission arrangements under section 89 of the Act, shall have regard to the current admission limit when determining an admission number for each relevant age group.

WHAT IS PREJUDICE?

If a school becomes too full, there is an impact on those children already in attendance. For example, they may not get the attention they should from their teacher or there may not be enough room in their classrooms to meet their needs and to deliver the curriculum appropriately. The impact would be prejudicial to the provision of efficient education for children already at the school.

Each year, the LA consults with each schools governing body and agrees the number of places that can be offered for the year of entry to the school. This number is called the Admission Number (AN) and, in most cases, will be the same as the Admission Limit for the school (see below).

The LA sets the AN with regard to the population forecast and the physical capacity of the school. It also considers the past history of parental preference and the impact that an even higher intake might have on both the preferred school and any alternative schools available within the statutory walking distance of 2 or 3 miles. The LA, in its planning role, will also have regard to planning of future housing developments in the area that will have an impact on the area as a whole.

The Admission Limit is the number of places that can be offered in each year group, based on the school's physical capacity and is calculated by dividing the physical capacity (known as the Net Capacity) by the number of year groups. The LA uses the Admission Limit to determine whether a school is full in year groups other than the year of entry.

Having set a limit for each year group, the LA considers that the offer of places over and above this could cause prejudice to the provision of efficient education and/or the efficient use of resources.

WHAT IS EFFICIENT USE OF RESOURCES?

The LA has a duty to make sure it meets as many parental preferences as it can whilst making an efficient use of resources. It does this by:

- making sure it offers the maximum number of places the school can accommodate. This ensures an efficient use of resources at each school.
- planning ahead to try and ensure that there are enough places available but not too many because maintaining surplus would not be an efficient use of resources.
- adopting a general policy of not agreeing places over the AN and/or Admission Limit if there are alternative places available within the statutory walking distance of the parents' home. The statutory walking distance is defined as 2 miles for children under 8. To keep on agreeing places for over-subscribed schools in this situation would not be an efficient use of resources. The exception to this is the need to take account of children who move into a school's catchment area where a place cannot be offered at an alternative school within walking distance of their home. In such cases it would be an inefficient use of resources to pay for a new transport route and therefore the LA has a policy of offering places at the catchment school even if the school has to exceed AN/Admission Limit

WHAT IS STATUTORY WALKING DISTANCE?

Statutory Walking Distance is the national standard used to measure entitlement to transport to school, measured along the shortest available walking route. Statutory Walking Distance for children under the age of 8 is defined as 2 miles. Statutory Walking Distance for children over the age of 8 is defined as 3 miles.

HAS THE SCHOOL ENOUGH ACCOMMODATION?

The physical accommodation of all schools in Somerset is assessed in the same way using a national formula produced by the Department for Children, Schools and Families. This formula is known as the Net Capacity method. The LA tries to link the total number of places available in a school to the physical accommodation wherever possible. If there are more children than the buildings are designed to cater for, then there is likely to be prejudice to efficient education.

HOW HAS THE SCHOOL ORGANISED ITS CLASSES?

The Headteacher and Governors decide how to organise the school, although guidance is provided by the LA. For many, the decision on how to organise will be governed by the school's budget and the physical size of its classrooms as much as the schools preferred practice. Depending on the size of the school the LA considers all these methods of organisation as being equally acceptable. In middle/secondary schools, the organisation of teaching groups is more complex than at primary schools as a number of subjects will be taught in ability groups and not in tutor/form groups. The Headteacher needs to be fully aware of the constraints placed upon the school with the use of specialist accommodation i.e., laboratories, cookery facilities etc.