Pupil admissions numbers and funding for early years in maintained nursery schools and nursery classes

Early Education has received the following advice from the Department for Education:

The Department’s position is that:

1. Chapter 1 of Part 3 of the Schools Standards and Framework Act 1998 (SSFA) does not apply to admissions to nursery classes in maintained nursery schools (MNS) (this is the effect of s98(3) SSFA).

2. The Secretary of State has not exercised her power under s98(4B) SSFA to make provision as to the person who is to be responsible for admitting, or refusing to admit, children to maintained nursery schools. Therefore, in the absence of any specific provision to the contrary, governing bodies are responsible for admissions to MNS.

3. As a result of 1 and 2 above, whilst governing bodies of MNS can in principle set an informal limit on the number of children that they are prepared to accept into a nursery class in any one year/term (in their capacity as the person responsible for admitting or refusing to admit children to the MNS), they are not bound by that limit.

4. The position in (3) above is subject to any limits on numbers set out in the EYFS, which include ratio requirements and minimum space requirements (e.g. for 3YO pupils in an MNS there must be at least 1 teacher in the class and at least one member of staff for 13 children and at least 2.3m² of internal space per child).

5. So in relation to the duty to secure free childcare in maintained nursery schools, a local authority is required (under regulations made under s7 CA 2006 and under s2 CA 2016) to fund an MNS to deliver the childcare entitlements where:
   (a) the parent chooses that MNS
   (b) the MNS is willing to provide that provision (in accordance with any legal requirements set out in the EYFS)
   (c) the MNS is willing to accept the terms of payment offered by the LA.

If the above criteria are met, it does not appear to be open to the local authority to refuse to fund an MNS to deliver childcare entitlements on the basis that other MNS in the area are not full or on the basis that the MNS has or will exceed any limit on pupil numbers that has been set either by the LA or the governing body.

You also asked about primary schools. Our position is that Section 98(4A) SSFA specifies that the person responsible for admitting, or refusing to admit, children (as pupils) to a maintained school for nursery education shall be the person who is the admission authority for the school (by virtue of s88(1) SSFA. This means that in some cases, it will be the local authority rather than the governing body that is the admissions authority for the school.
However, given the interplay between funded entitlement legislation and section 98(4A), we do not believe that S98(4A) creates an unlimited right for a local authority to refuse nursery class admissions, but that the LA’s role as admissions authority is circumscribed by the duty under the CA 2006 and under the s2 regulations to give effect to parental choice insofar as possible. So in those circumstances where a parent chooses a nursery class in a maintained school is also as per (5) above.

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