



## **Recommendation of the Public Defender of Rights concerning equal access to compulsory school education**

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## **A. Introduction**

The Defender issues this Recommendation concerning discrimination pursuant to Section 21b (c) of the Public Defender of Rights Act. The Recommendation includes guidelines for deciding on applications for admission of children to compulsory school education.

The first version of the recommendation was issued in January 2016 in reaction to the growing number of complaints and queries received by the Defender from parents, non-profit organisations and local governments. I collected the material necessary to prepare my recommendations during my own activities (inquiries into individual complaints) and through co-operation with the Czech Schools Inspectorate, which in 2015 carried out inspections<sup>1</sup> at my instigation in eleven primary schools and three school counselling centres. The Czech Schools Inspectorate focused primarily on the enrolment of first graders.

In the autumn of 2016, the legal regulations regarding education underwent a major revision,<sup>2</sup> which made it necessary for me to update the original recommendation. My current Recommendation is based on the legal situation as of 20 February 2017.

The Recommendation evaluates the most common criteria used by headteachers to make decisions on admission of children to primary schools. This Recommendation also provides a closer look at the procedure applied by headteachers in the actual process of deciding which children will be accepted for primary education.

The objective of my Recommendation is to assess the admission criteria in terms of compliance with the Schools Act and the Anti-Discrimination Act and their application to various groups of children, especially “catchment” and “non-catchment” children<sup>3</sup>. The Recommendation also contains instructions for assessing the individual criteria and for administrative proceedings on (non)admission to primary education.

The Recommendation is intended primarily for headteachers of primary schools administered by municipalities or associations of municipalities<sup>4</sup>, regional authorities (which hear appeals against decisions not to accept a child), the Czech Schools Inspectorate and the general public (especially parents of future first graders). I also sent my recommendations to the Ministry of Education, Youth and Sports (hereinafter the “Ministry”), which used them to adjust the organisation and course of enrolment in primary schools as stipulated by the

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1 The employees of the Office of the Public Defender of Rights were involved in the inspections as “invited persons” under Section 174 (8) of the Schools Act.

2 Especially Act No. 82/2015 Coll. and Act No. 178/2016 Coll., amending the Schools Act.

3 A glossary of terms is included in Part C of this Recommendation.

4 Some of the application aspects (especially the criteria relating to catchment areas) are not relevant to schools administered by the regions (*kraje*), the State, churches and private individuals. Nevertheless, all schools, irrespective of the founding authority, have the duty not to discriminate against children in providing them access to primary education.



implementing decree.<sup>5</sup> The Ministry also issued a detailed information on the organisation of enrolments in compulsory school education.<sup>6</sup>

This Recommendation does not aim to identify and evaluate all situations that can possibly occur. Instead, its aim is to address the most commonly occurring issues affecting various involved parties. It builds on the Ministry's Information on the enrolment and addresses in detail the criteria the headteachers are using to accept children to primary education at their schools. I believe that the parties concerned by this Recommendation will take it as a guideline designed to help them avoid discrimination in dealing with situations arising in connection with enrolling children in primary education. Courts shall always have the final say as to whether discrimination occurred in any given case.

## **B. Glossary of terms**

**School district** – municipal area, a part of a municipality, or multiple municipalities that is/are defined by the municipality by means of a generally binding ordinance; often called a “catchment area”.

**Catchment school** – a primary school founded by a municipality or an association of municipalities that is based within the school district where the child/pupil resides, or the school facility for the performance of institutional education, protective education or preventive educational care where the pupil/children is placed.<sup>7</sup>

**Non-catchment school** – a primary school in whose school district (catchment area) the pupil/child does not permanently reside; a child attends such a school based on the choice of his or her legal representatives.

**Catchment child/pupil** – a child/pupil with permanent address within the school district of the school to which he or she is applying or which he or she attends.

**Non-catchment child/pupil** – a child/pupil with permanent address outside the school district of the school to which he or she is applying or which he or she attends.

**School readiness test** – a test used by a school during enrolment to ascertain the readiness of a child to attend the school; it is usually designed by the school in co-operation with the school counselling centre and the law does not regulate its contents.

**Delayed school entry** – this means that the child is not required to commence compulsory school education in the year when the child attains 6 years of age; delayed school entry is granted based on an application filed by the child's legal representative, where this application is decided by the headteacher; delaying school entry must be recommended by the school counselling centre and a specialist physician or clinical psychologist.

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5 Section 3a of the Decree on Primary Education

6 *Information on the organisation of enrolment in compulsory school education* of 16 December 2016, Ref. No.: MSMT-27988/2016, available at: <http://www.msmt.cz/vzdelavani/zakladni-vzdelavani/informace-k-organizaci-zapisu-k-povinne-skolni-dochazce>

7 Unless the child is being educated in a school attached to this school facility.



**Special educational needs** – a child/pupil with special educational needs is a person who requires supportive measures to learn; supportive measures may consist of necessary adjustments corresponding to the medical condition, cultural background or other living conditions of the child/pupil; the child/pupil has a right to be provided such supportive measures free of charge.

**Direct discrimination** – a conduct, including omission, where one person is treated less favourably than another person is, has been or would be treated in a comparable situation; the Anti-Discrimination Act prohibits discrimination on the grounds of race, ethnic origin, nationality (*národnost*), sex, sexual orientation, age, disability, religion, belief or worldview; pursuant to the Schools Act, discrimination on the grounds of language, property, social background or other personal status is also prohibited.

**Indirect discrimination** – conduct or an omission where a person is put in a disadvantageous position *vis-à-vis* other persons on the basis of an apparently neutral provision, criterion or practice; in the sense of the Anti-Discrimination Act, such conduct occurs on the same grounds as direct discrimination; indirect discrimination is not at play if the apparently neutral provision, criterion or practice is objectively justified by pursuing a legitimate objective and the means of achieving it are appropriate and necessary.

### C. Summary

#### Recommendations for headteachers

- Prior to enrolment, ask your founding authority for a list of catchment children, if you have not received it already.
- Proceed in a transparent manner during enrolments. Create a friendly and fair atmosphere.
- Organise the enrolments so that no undignified queues form in front of the school building or inside it.
- Send the parents a prior information on the criteria you will use to decide on admission.
- Make sure that the child is accompanied to the enrolment by an authorised person.
- Do not reject anyone verbally. Help the parents to fill in the applications. This is your statutory responsibility.
- Never accept a non-catchment child at the expense of a catchment child. If you did, you would be in violation of the Schools Act.
- If the number of catchment children applying for enrolment exceeds your school's capacity, you may prioritise based on certain pre-defined criteria. Communicate with the founding authority and other schools to prevent this situation from reoccurring in the future.
- Some criteria favouring certain children (e.g. delayed school entry, an older sibling attending the school, having previously attended a kindergarten attached to the



primary school) are generally in accordance with the law. It depends on the specific situation of the child and the school.

- Do not make school readiness test results a condition for admission. Enrolment in primary education must not involve any entrance examination.
- When making a decision, avoid suspicious criteria (results of the school readiness test, membership in a sports club associated with the school, the order in which the application was filed, distance of the child's home from the school, disciplined siblings, etc.).
- If you cannot choose children based on permitted criteria, organise a lottery for school places. This is a fair solution.
- If you reject a child, issue a decision, provide a proper reasoning and deliver it to the child's legal representatives.

#### **Recommendations for parents of future first graders**

- Ask the school about the criteria which will be used by the headteacher in enrolments. If you do not understand some of the criteria, immediately contact the school or the relevant municipality (the founding authority).
- The presence of a parent and the child during enrolment is your right, not your duty.
- You do not have to let your child be tested.
- Only give the school information necessary for issuing a decision. This does not include information on your highest attained education or profession.
- In case the number of catchment children applying to the school exceeds its capacity, the school may choose other children over yours, but only if it uses reasonable criteria and you have the option to apply for admission in another school that also guarantees your child the right to preferential admission.
- If the child's registered address lies within the relevant school district, the child cannot be refused a place in favour of a child with permanent residence outside the school district.
- Do not make purpose-driven changes concerning the child's registered address prior to the enrolment. You would only hinder the schools, which would then have trouble adjusting their capacities.
- The order in which the application was filed at the school is irrelevant. The application that came first has equal standing as the last.
- A lottery for school places may seem harsh, but if the school's capacity is insufficient, it is the fairest solution. Do not reject it, but insist on it being transparent.
- Do not let yourself be dismissed verbally at the enrolment. The school has a duty to assist you in filing an application and is also required to issue a written decision including reasoning if it rejects your child.
- If you do not agree with the decision to reject your child, lodge an appeal with the competent regional authority.



- If you are dissatisfied with the schools policy in the municipality where you live (e.g. uneven quality of education in schools, boundaries of school districts, queues during enrolments) , contact the municipal assembly.

## **D. Defender's recommendations**

### **D.1 Right and equal access to education**

The right to education is guaranteed by a number of national and international regulations<sup>8</sup> and belongs to rights which may only be exercised within the boundaries of the implementing laws. These legal regulations include in particular the Anti-Discrimination Act and the Schools Act.

#### **D.1.1 Anti-Discrimination Act**

The Anti-Discrimination Act applies both to the access to education and its provision.<sup>9</sup> The Act prohibits discrimination<sup>10</sup> on the grounds of race, ethnic origin, “nationality” (*národnost*), sex, sexual orientation, age, disability, religion or belief. The Act’s list of so-called protected grounds of discrimination is closed (exhaustive).

If discrimination occurs in access to education (e.g. on the grounds of “nationality” [*in Czech: národnost, i.e. identification with a “nation” as a major ethnic group*], or disability), the affected person may defend himself or herself in court, claim that the school desist from discriminatory conduct and remedy the discriminatory act, and request reasonable satisfaction (e.g. an apology). The affected person may also seek a pecuniary compensation for intangible damage.<sup>11</sup>

#### **D.1.2 Schools Act**

For the purposes of this Recommendation, it is necessary to call attention especially to the principle of equal access to education stipulated in Section 2 of the Schools Act. The Act contains a list of grounds which may not be used to discriminate between individuals seeking education, i.e. children, pupils and students. These grounds also include some that are not listed in the Anti-Discrimination Act, e.g. language, descent, social background and property.

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<sup>8</sup> E.g. Article 33 of the Charter of Fundamental Rights and Freedoms, Article 2 of the European Convention on Human Rights, Article 14 of the Charter of Fundamental Rights of the European Union.

<sup>9</sup> pursuant to Section 1 (1)(i) of the Anti-Discrimination Act

<sup>10</sup> Harassment, sexual harassment, victimisation, instruction to discriminate and incitement to discrimination are considered acts of discrimination (Section 4 of the Anti-Discrimination Act).

<sup>11</sup> pursuant to Section 10 of the Anti-Discrimination Act



The list is “open” (non-exhaustive), since the last of the stipulated prohibited grounds of discrimination is “*the citizen’s other personal status*”. According to literature, “*any kind of unequal access to education is prohibited, unless there is a reasonable justification*”.<sup>12</sup>

In practice, especially the headteachers must be very cautious when they are using various criteria to discriminate between individual children during enrolment in primary education. Their decision to reject a child may be cancelled by a regional authority or an administrative court on the grounds of violating the prohibition of discrimination. Literature also notes cases where a child treated unequally in access to primary education based on grounds listed exclusively in the Schools Act (e.g. property or social background) may seek satisfaction in court by means of an action for protection of personal rights.<sup>13</sup>

## D.2 Choice of a primary school

A pupil may perform his or her compulsory school education either in a catchment or non-catchment school.<sup>14,15</sup> The choice of a primary school is an important matter<sup>16</sup> in the life of the child and is determined by the decision of the child’s legal representatives. The child’s legal representatives have a duty to file an application for enrolment in compulsory school education on behalf of the child in the period from 1 April to 30 April of the calendar year in which the child is to commence compulsory school education.<sup>17</sup> In doing so, they must respect the procedure determined by the headteachers, who are authorised to set a specific date and place of the enrolment (usually two days in the aforementioned period).<sup>18</sup>

### D.2.1 Disagreements between the legal representatives

If the parents are unable to agree on their choice of a school, the court must decide in their stead.<sup>19</sup> It is not the place of administrative authorities to deal with disagreements between parents as to where their minor children are to go to school.<sup>20</sup>

If the application for enrolment is filed by just one of the parents, but nothing indicates a disagreement between the legal representatives of the child, the headteacher may accept

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12 RIGEL, Filip, Lenka BAHÝLOVÁ, Veronika KUDROVÁ, Ondřej MORAVEC and Monika PUŠKINOVÁ. *Školský zákon: komentář (Schools Act: Commentary)*. In Prague: C. H. Beck, 2014. Beck edition of laws with commentary. ISBN 9788074005503, p. 29.

13 KVASNICOVÁ, Jana and Jiří ŠAMÁNEK. *Antidiskriminační zákon: komentář (Anti-Discrimination Act: commentary)*. Prague: Wolters Kluwer, 2015. Commentaries (Wolters Kluwer ČR). ISBN 9788074788796., p. 53.

14 pursuant to Section 36 (5) and (6) of the Schools Act

15 For the purposes of this Recommendation, I am not taking into account compulsory school education performed pursuant to Sections 38 to 42 of the Schools Act, i.e. education at a school abroad, in a foreign country, at a secondary school, home schooling or using special provisions for pupils with severe mental disabilities.

16 pursuant to Section 877 of the Civil Code

17 pursuant to Section 36 (4) of the Schools Act

18 pursuant to Section 46 (1) of the Schools Act

19 pursuant to Section 877 (1) of the Civil Code

20 judgement of the Regional Court in Hradec Králové – branch in Pardubice of 21 September 2015, Ref. No. 52 A 81/2015-50, [www.nssoud.cz](http://www.nssoud.cz)





such application and issue a decision. It holds for such steps within administrative proceedings that *“if one of the parents is acting alone in a matter concerning the child with respect to a third party acting bona fide, the person is deemed to be acting with the consent of the other parent”*.<sup>21</sup>

#### D.2.2 Children placed in institutions

Placing a child in an institution does not restrict parental responsibility, unless the court decides otherwise. Here, too, it holds that the choice of the school primarily lies with the child’s legal representatives. However, there are situations where this may not apply.

If the legal representatives of the child are not performing their duties or do not show genuine interest in the child, the child may be represented in important matters (i.e. also the choice of the primary school) by the head of the facility where the child is placed.<sup>22</sup> The reasons justifying representation of the child by the head of the facility must be documented to the headteacher of the school which the child is to attend.<sup>23,24</sup>

This procedure does not apply to children placed in a facility for children requiring immediate assistance, in a health facility or a home for people with disabilities.

#### D.2.3 Other forms of care for children

There are frequent cases where a foster parent is applying for enrolment of a child in a primary school. However, by entrusting a child to **foster care**, the child’s legal representatives do not surrender their parental responsibilities, unless the court decides otherwise.<sup>25</sup> Therefore, the legal representatives are still authorised and obliged to decide in the important matters concerning the child. For this reason, headteachers should require a proof of consent of at least one of the legal representatives of the child with the child’s application for enrolment. Similar procedure should be applied in case of **children entrusted in the care of another person**.<sup>26</sup>

Conversely, the procedure is different in case of child in respect of whom a **tutor** (*poručník*) was appointed. A tutor is appointed by the court in case none of the parents has full parental responsibility for the child. Essentially, the tutor has the same rights and obligations as a parent (except for the duty to support and maintain the child), unless the court decides otherwise. The tutor can thus represent the child to the full extent also in choosing the primary school.

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21 pursuant to Section 876 (3) of the Civil Code

22 pursuant to Section 23 (1)(l) of the Institutional Education and Protective Education Act

23 I.e. the court decision to order institutional or protective education or to place the child in an educational care centre, or a resolution to impose a preliminary injunction placing the child in an institution. The operative part of the decision constitutes a sufficient proof. The headteacher must not take into consideration the reasons (indicated in the reasoning of the decision) why the child was placed in such an institution/facility.

24 e.g. a statement given by the head of the institution.

25 pursuant to Section 960 (1) of the Civil Code

26 pursuant to Section 955 of the Civil Code





### D.3 Definition of a school district – advantages and challenges

The definition of school districts – as well as the duty to create suitable conditions for the performance of compulsory school education to all children living in the school district – are competences assigned by the Schools Act primarily to municipalities or, in case of their inactivity, to their superior regional authorities.<sup>27</sup> The municipality defines the districts of the catchment schools (i.e. school districts) by means of a generally binding ordinance. The municipality puts the generally binding ordinance on the official notice board and generally also publishes it on its website.

Therefore, a procedure where a municipality establishes multiple schools without defining their school districts through a generally binding municipal ordinance is unlawful. If that is the case, I recommend that the municipality's citizens inform the regional authority, which is authorised to make decisions on the school districts.<sup>28</sup> If the citizens disagree with the already implemented definition of school districts, I recommend to contact their representatives in the assembly directly.

Issues concerning school districts do not affect schools which are implementing an educational programme of a special primary school, or schools founded by private entities or churches.

Catchment children's greatest advantage is their **preferential right to admission in their catchment school**.<sup>29</sup> In this way, the State guarantees each child a place in their catchment school, i.e. unhindered access to primary education. This right may be breached only if the number of pupils exceed the highest number of pupils indicated in the schools register.<sup>30</sup> A school's capacity defined in this manner must not be confused with an insufficient *actual* capacity (i.e. a situation where a school officially has some free capacity according to the schools register, but in reality the school lacks room for opening new classes in the given grade). Headteachers should always co-operate with their founding authority to resolve such situations. If a municipality is the founding authority, it should have the best information available on the number of children under its jurisdiction. Similarly, the municipal authority provides schools with a list of their catchment children.<sup>31</sup>

Especially the "sought-after" schools often encounter situations where parents register their children's permanent address in the school's district just a few weeks prior to the enrolments, in order to secure the preferential admission right for their children. I am convinced this tactic constitutes an abuse of rights on the part of the parents. The schools whose capacities would otherwise be sufficient to meet the needs of their school districts are thus overwhelmed by applications filed on behalf of children that were already made space for in other districts. Consequently, this has a potential to completely paralyse some

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27 pursuant to Section 178 (2) of the Schools Act

28 pursuant to Section 178 (3) of the Schools Act

29 pursuant to the first sentence of Section 36 (7) of the Schools Act

30 The electronic version of the Schools Register is available at: <http://rejskol.msmt.cz/>.

31 pursuant to Section 36 (8) of the Schools Act



schools. Moreover, headteachers lack legal means of checking whether the change of the permanent address was purpose-driven. If a headteacher wished to reject a child whose registration for permanent residence in the given school district was purpose-driven, he or she would have to provide evidence and proper reasoning for their decision of refusal. Otherwise the decision would be unlawful and could be cancelled by the regional authority or the court.

I recommend that the headteachers communicate with the municipalities (as the founding authorities) sufficiently in advance to ensure the children's right to preferential admission to their catchment schools. The objective is for the schools to be well-prepared for the demographic developments in the given area, e.g. by means of adjustments to school district boundaries. I also appeal to the parents not to abuse their right to choose their children's permanent address.

#### D.4 Collection of information on children and their legal representatives

When preparing this Recommendation, I came across various styles of forms (documents) the legal representatives were asked to fill in during enrolment.<sup>32</sup> Since the scope of collected information often exceeds the scope of information that is necessary to initiate and conduct administrative proceedings, and may even come in conflict with the Personal Data Protection Act, I recommend to the headteachers to use the template form prepared by the Ministry.<sup>33</sup>

The Code of Administrative Procedure stipulates the following necessary requisites for initiating and conducting administrative proceedings: name and surname of the child, the child's date of birth, permanent address or other mailing address, and the specification of the administrative authority to which the application is addressed (e.g. to the attention of the headteacher). It is also necessary to establish the name, surname, permanent address or other mailing address of the child's legal representative or other person authorised to represent the child. However, asking about the highest education attained by the legal representative, his or her employment status and profession is not in accordance with the law (even if the legal representative agrees to provide such information voluntarily<sup>34</sup>).

If the child is represented by a person different from his or her legal representative, it is also important for this person to document his or her authorisation to represent the child (see Part E.2 of this Recommendation). To ensure flexibility of administrative proceedings, I also consider it acceptable to ask for the applicant's telephone number or e-mail.

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32 E.g. information on the following: whether one of the parents is on parental leave or whether the mother is on maternity leave, how many children there are in the family, how many of these children go to kindergarten, primary school and secondary school (respectively), whether the family lives near the school, whether older siblings of the child attend the school, the parents' profession, whether the child has a disability or is otherwise handicapped, whether the child is socially disadvantaged, whether the parents live in a common household, whether there is a court decision to entrust the child to the care of only one of the parents, another person or an institution.

33 Annex 2 to the *Information on the organisation of enrolment in compulsory school education* of 16 December 2016, Ref. No.: MSMT-27988/2016, available at: <http://www.msmt.cz/vzdelavani/zakladni-vzdelavani/informace-k-organizaci-zapisu-k-povinne-skolni-dochazce>

34 pursuant to Section 5 (1)(d) of the Personal Data Protection Act



In order to ensure suitable supportive measures for the future pupil, the school may also ask whether the child has any special educational needs. **However, I emphasise that this information must in no way affect the headteacher's decision-making as to whether the child will be accepted. If the headteacher rejected a child with special educational needs or awarded them fewer points because of this status, he or she would be discriminating against the child on the grounds of the child's disability, ethnic origin or "nationality" (národnost), or be treating the child unequally on the grounds of the child's social background, skin colour or language.**<sup>35</sup>

Information on the awarded supportive measures is crucial in terms of organisation of the classes. If a pupil with awarded supportive measures is present in a class, the overall number of pupils in the class is reduced by up to five (from the original number of 30 pupils).<sup>36</sup> This may affect the proceedings on acceptance of non-catchment children. Non-catchment children may not be accepted in a class in excess of the reduced number of pupils. Catchment children are not affected by this limit.<sup>37</sup>

An information on the child's prior education (e.g. in a kindergarten or a preparatory class) may be given, if the school reasonably takes it into account and the information can be of an advantage for the child under certain circumstances (see Part E.6.7 of this Recommendation).

In my opinion, it is good practice if an authorised employee of the school helps the applicants fill in the form, e.g. an electronic form; the same applies if the forms are available to the parents in advance in the school or on the school's website. If such forms are used, the applicant (person making the application on behalf of the child) may fill in the form in advance at home and the data are only checked during enrolment.

#### D.5 Proceedings on (non)admission of a child to primary education

(Non)admission of children to primary education, i.e. also the right of the child to education, is subject exclusively to the decision of the headteacher as the **person performing public administration**.<sup>38</sup> This means headteachers can only do what the law allows and obliges them to do. They proceed pursuant to the Schools Act and the Code of Administrative

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<sup>35</sup> cf. Section 1 (1)(i), Section 2 (3) and Section 3 of the Anti-Discrimination Act and Section 2 (1)(a) of the Schools Act.

<sup>36</sup> pursuant to Section 4 (7) of the Decree on Primary Education: "The maximum number of pupils in a class is 30. The maximum number under the first sentence is reduced by 2 for each pupil with awarded supportive measures in the fourth or fifth degree who is attending the class; this also applies to pupils with awarded supportive measures in the third degree on the grounds of mental disability. The maximum number under the first sentence is further reduced by 1 for each pupil with awarded supportive measures in the third degree, unless covered by the second sentence. The procedure under the second and the third sentence may result in the maximum reduction of the number of pupils in the class by 5. The reduction of the maximum number of pupils in the class under the second and the third sentence shall not apply to schools which are unable to implement it on account of the duty to preferentially accept a pupil under Section 36 (7) of the Schools Act, or if a change occurs during the school year in the degree of the supportive measure awarded to a pupil attending the class.

<sup>37</sup> Catchment children are guaranteed preferential enrolment in a catchment school, up to the maximum number of pupils indicated in the schools register.

<sup>38</sup> Cf. Section 165 (2)(e) of the Schools Act and the judgement of the Supreme Administrative Court of 27 July 2011, Ref. No. 1 As 53/2011-109.



Procedure; for this reason, they are **not authorised to verbally reject legal representatives during enrolment.**<sup>39</sup> The headteacher of a school must issue a decision on each application for enrolment. If the application lacks the prescribed requisites or has other defects, the headteacher (or the school's employees) must help the legal representative correct the application's defects on the spot or invite the legal representative to correct the defects and give him or her a reasonable deadline for this purpose.<sup>40</sup>

Only the child who, represented by his or her legal representatives, is filing application for enrolment in a primary school is a party to the administrative proceedings concerning the admission of the child to primary education.<sup>41</sup>

#### D.5.1 Decision on admission

If the headteacher grants the application for enrolment, he or she announces the decision by publishing a list of applicants with the assigned registration numbers.<sup>42</sup> The list must be available in a publicly accessible place within the school and must also be remotely accessible for at least 15 days. The decisions are considered announced by publishing the list.<sup>43</sup>

If the headteacher is accepting a child to a **school or class for pupils with disabilities,**<sup>44</sup> the administrative decision must be preceded by:

- (A) approval of the regional authority for opening such a class;<sup>45</sup>
- (B) issuance of a recommendation by the school counselling centre which clearly favours educating the child in such a school or class;
- (C) written application for placement in such a school or class filed by the legal representative of the child;<sup>46</sup>
- (D) providing information to the legal representative with the organisation of the education, the curriculum, effects of being placed in such a class on the development

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39 E.g. because the parent came to a non-catchment school or did not file the application using the form published by the school on its website.

40 pursuant to Section 37 (3) of the Code of Administrative Procedure

41 judgement of the Regional Court in Hradec Králové – branch in Pardubice of 21 September 2015, Ref. No. 52 A 81/2015-50, [www.nssoud.cz](http://www.nssoud.cz), judgement of the Regional Court in Ústí nad Labem – branch in Liberec of 27 November 2015, Ref. No. 59 A 12/2015-29, [www.nssoud.cz](http://www.nssoud.cz), and judgement of the Supreme Administrative Court of 31 March 2016, Ref. No. 4 As 280/2015-36, [www.nssoud.cz](http://www.nssoud.cz)

42 The sample decision on admission is available in Annex 3 to the *Information on the organisation of enrolment in compulsory school education* of 16 December 2016, Ref. No.: MSMT-27988/2016, available at: <http://www.msmt.cz/vzdelavani/zakladni-vzdelavani/informace-k-organizaci-zapisu-k-povinne-skolni-dochazce>.

43 pursuant to Section 183 (2) of the Schools Act

44 Such classes can only be opened for pupils with mental, physical, visual or auditory disabilities, serious speech disorders, serious developmental learning disorders, serious developmental learning and behavioural disorders, concurrent disorders or autism (Section 16 (9) of the Schools Act).

45 pursuant to Section 16 (10) of the Schools Act

46 pursuant to Section 16 (9) of the Schools Act



possibilities of the pupil's educational potential, the pupil's further education and professional life;

- (E) signing of a written copy of the advice indicated in paragraph C by the legal representative, confirming he or she understands the information;<sup>47</sup>
- (F) determination of whether placing the child in such a school or class would be in the child's interest.<sup>48</sup>

If the headteacher is accepting a child for a **special school education programme**, the administrative decision must be preceded by:

- (A) issuance of a recommendation by the school counselling centre which clearly favours educating the child according to such education programme;<sup>49</sup>
- (B) informing the legal representative of the differences in the education programmes, the expected results of education and the effects on further education options of the pupil and his or her professional life;
- (C) signing of a written copy of the advice indicated in paragraph B by the legal representative, confirming he or she understands the information;<sup>50</sup>

In the reasoning, the headteacher must also state the education programme according to which the child will be educated in the school. In this case, it is also necessary to indicate that the decision is issued based on the application filed by the child's legal representative and the recommendation issued by a school counselling centre, including the date of issuance of the recommendation.

#### D.5.2 Decision on non-admission

If the headteacher of a school rejects an application for enrolment, he or she must issue an administrative decision of refusal. The operative part of such decision of refusal must contain a proper reasoning and an advice on how to appeal against it.<sup>51</sup>

##### ▪ Operative part

When preparing a decision on (non)admission, the headteacher should pay sufficient attention to the identification of the parties to the administrative proceedings, especially

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47 pursuant to Section 21 (1) and (2) of the Decree on education of students with special educational needs

48 pursuant to Section 16 (9) of the Schools Act

49 pursuant to Section 49 (2) of the Schools Act

50 pursuant to Section 22 (3) and (4) of the Decree on education of students with special educational needs

51 The sample decision on non-admission is available in Annex 4 to the *Information on the organisation of enrolment in compulsory school education* of 16 December 2016, Ref. No.: MSMT-27988/2016, available at: <http://www.msmt.cz/vzdelavani/zakladni-vzdelavani/informace-k-organizaci-zapisu-k-povinne-skolni-dochazce>.



use the correct name of the child and his or her date of birth. It is also important to indicate the specific parts of the legal regulations that governed the headteacher's procedure.<sup>52</sup>

- Reasoning

Each administrative decision must include proper reasoning. This means that it must clearly indicate all the facts that led the headteacher not to accept the child, why they chose other children instead, and whether the school's capacity registered in the schools register was full. **A mere statement of the headteacher that the child did not get enough points, referring to the published criteria, or that the child was not enrolled due to capacity reasons, does not constitute a decision with proper reasoning. Such a decision becomes unreviewable due to the shortcomings in reasoning and the regional authority should cancel it in potential review proceedings.**

- Advice

The advice must clearly indicate that the child (acting through its legal representative) may appeal against the decision within 15 days of its delivery. It should also be clear how to file the appeal and who will decide on it.

The superior administrative authority in this case is the regional authority of the region where the school is situated.<sup>53</sup> Appeal is lodged with the regional authority through the headteacher of the school who issued the decision on the application for enrolment.

A decision of the headteacher may be cancelled if it was issued based on unlawful (discriminatory) criteria or lacks sufficient reasoning.

### D.5.3 Predictability

The school has a duty to publish information about the organisation and course of the enrolments, including the criteria for accepting children and the number of children that will be accepted, prior to the start of the enrolments.<sup>54</sup> The Ministry emphasises that this information should be made publicly available sufficiently in advance.<sup>55</sup> This information should be released in a usual manner together with the information on the place and time of the enrolments.<sup>56</sup>

I recommend to use multiple ways for this purpose, e.g. publish the information on the websites of the school and the municipality, in the local newspaper, at a public notice board in the school or on the school door.

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52 Non-admission to primary education is governed by Sections 36, 46 and 165 (2)(e) of the Schools Act and the relevant provisions of the Code of Administrative Procedure.

53 pursuant to Section 183 (4) of the Schools Act

54 Section 3a of the Decree on Primary Education

55 *Information on the organisation of enrolment in compulsory school education* of 16 December 2016, Ref. No.: MSMT-27988/2016, available at: <http://www.msmt.cz/vzdelavani/zakladni-vzdelavani/informace-k-organizaci-zapisu-k-povinne-skolni-dochazce>

56 pursuant to Section 46 (1) of the Schools Act





In my experience, **providing sufficient information and following transparent procedure does help headteachers to avoid ambiguities and potential complaints from the parents** against unfair enrolments.

#### D.6 Criteria used in proceedings on (non)admission to primary education

Due to insufficient capacity, headteachers are often forced to choose by classifying children into groups.

Most often, they make distinctions:

- between groups of catchment children; and
- between groups of non-catchment children.

The Ministry's Information on the enrolments prohibits the application of any criteria for choosing between catchment children and stresses that it is up to the municipality to ensure sufficient capacities in schools for children living within their limits.<sup>57</sup> However, in practice, headteachers often use criteria even for choosing from among catchment children. The existence of pre-determined, fairly applied, logical and non-discriminatory criteria has also been acknowledged by the Supreme Administrative Court.<sup>58</sup>

I address the most commonly used criteria in the following part of the Recommendation. I must note that a vast majority of criteria that are currently used **lack express basis in the Schools Act**. For this reason, I must evaluate the headteachers' procedure in terms of the general principle of equal and non-discriminatory access to education.

Headteachers should avoid setting **directly discriminatory** criteria for admission. These are criteria that discriminate between children based on protected characteristics listed by the Anti-Discrimination Act<sup>59</sup> or the Schools Act.<sup>60</sup> Discrimination based on race, ethnic origin and "nationality" (*národnost*) are absolutely forbidden. Other protected characteristics may be used as criteria for admission only if their use serves a legitimate objective and the means of achieving the objective are appropriate and necessary.<sup>61</sup> If these conditions (legitimate objective, appropriateness, necessity) are met, the use of the criterion does not constitute unlawful discrimination.

Even seemingly neutral criteria may, however, adversely affect children identified by a protected characteristic (pursuant to the Anti-Discrimination Act, this may include e.g. ethnic origin, "nationality" (*národnost*) or medical condition; pursuant to the Schools Act,

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57 Information on the organisation of enrolment in compulsory school education of 16 December 2016, Ref. No.: MSMT-27988/2016, available at: <http://www.msmt.cz/vzdelavani/zakladni-vzdelavani/informace-k-organizaci-zapisu-k-povinne-skolni-dochazce>

58 Judgement of the Supreme Administrative Court of 4 April 2013, Ref. No. 7 Ans 21/2012-22, [www.nssoud.cz](http://www.nssoud.cz).

59 pursuant to Section 2 (3) of the Anti-Discrimination Act – race, ethnicity, "nationality" (*národnost*), sex, sexual orientation, age, disability, religion, belief or worldview

60 pursuant to Section 2 (1)(a) of the Schools Act: race, skin colour, sex, language, belief or religion, "nationality" (*národnost*), ethnic or social background, property, descent, medical condition or the citizen's other personal status

61 pursuant Section 7 (1) of the Anti-Discrimination Act





this also includes language, social background or other personal status). Such a criterion may constitute **indirect discrimination**. Headteachers should carefully consider whether the criterion they apply follows a legitimate objective and the means of achieving it are proportional and necessary.<sup>62</sup> If these conditions (legitimate objective, appropriateness, necessity) are met, the use of the criterion does not constitute unlawful discrimination.

Since these issues can prove to be quite complex for the schools as well as the parents, I prepared a **diagram** of the criteria mentioned below, showing their (non)admissibility. The diagram forms an annex to this Recommendation and is available on the website of the Public Defender of Rights.<sup>63</sup>

#### D.6.1 Permanent residence in the school district

The Schools Act guarantees preferential enrolment in primary school to a catchment child in the school district where the child has a permanent address or where the child is placed in an institution, up to the maximum allowed capacity registered in the schools register. Therefore, it is generally true and it always applies that **a non-catchment child must never be enrolled in a primary school at the expense of a catchment child**. It is not permissible for the criterion of permanent address to be superseded by any other advantage. **If the headteacher chose a non-catchment child over a catchment child, their procedure would be unlawful.**

**The use of the permanent address within the school's district as a criterion favouring admission is not against the law.**

#### D.6.2 School readiness test

Often, headteachers use the results of a point-based test or an examination of school readiness (e.g. by the Kern-Jirásek test or its variants) as a criterion to decide on admissions. The test can take many forms and is not standardised.

Generally speaking, a school readiness test should always be conducted more as a means of **motivating the child and have an advisory character for the legal representatives**. I consider it suitable for a school to provide feedback to the parents based on an expertly handled enrolment to inform them of the child's abilities, skills and knowledge (especially knowledge necessary for commencement of compulsory school education), with recommendations as to how to prepare the child for going to school. Specifically, this may include a recommendation to co-operate with a logopaedic clinic or a school counselling centre, special workbooks, procedures for training certain abilities and skills or acquiring specific knowledge. A recommendation to delay entry to school may also be given, even though such recommendation is not binding on the child's legal representatives.<sup>64</sup>

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62 pursuant Section 3 (1) of the Anti-Discrimination Act

63 Available at: [http://www.ochrance.cz/fileadmin/user\\_upload/DISKRIMINACE/Doporuceni/Doporuceni\\_zapisy\\_do\\_ZS.pdf](http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Doporuceni/Doporuceni_zapisy_do_ZS.pdf)

64 The school only has a duty to inform the legal representatives about the possibility of delaying the child's entry to school (Section 37 (2) of the Schools Act).



In administering the school readiness test, the schools must be careful and not ask children to perform tasks that are inappropriate given their special educational needs. If the schools ignored the differences between children from various groups, they could be committing indirect discrimination on the grounds of disability, “nationality” (*národnost*) or ethnic origin. I recommend that the schools co-operate in administering school readiness tests not only with school counselling centres, but also NGOs that focus on assisting children with special educational needs.

The course of the enrolment in compulsory school education is governed by the Decree on Primary Education. The enrolment comprises the formal part, in which the legal representative applies for the enrolment of the child in compulsory school education. If the child and his or her legal representatives are both present and the legal representative agrees, enrolment may also include an interview and other activities with the child.<sup>65</sup> The Ministry’s Information notes that the Schools Act does not stipulate any obligation for the child to be personally present during enrolment.<sup>66</sup>

The use of the school readiness test as a criterion in decision-making, however, not only expects the child to be present, but requires it. **In doing so, the school imposes duties on the child that go above the scope of the law.** If a headteacher refuses to enrol a (catchment or non-catchment) child because the child did not take the school readiness test, their procedure is at variance with the Schools Act.

If a school accepts only those children who scored better in the school readiness test, it violates the Schools Act. This is a practice that is common in secondary schools and universities. Nevertheless, it is **unacceptable** in primary schools, whose position in the education system is different. Here, the child’s right to education is identical to the child’s compulsory school education. Moreover, unlike other types of schools, primary schools have defined school districts which guarantee the right to preferential admission to all catchment children. For these reasons, pupils in primary schools and children applying for admission to primary schools enjoy a greater degree of protection than students of higher schools.

It is similarly **unsuitable to use the school readiness test to determine which classes the children will go to.** In doing so, schools would be committing indirect discrimination on the grounds of disability, ethnicity or “nationality” (*národnost*) (i.e. protected characteristics under the Anti-Discrimination Act) or discrimination on the grounds of social background, language or other personal status (protected characteristics under the Schools Act).

**I recommend that all schools verify the children’s readiness for compulsory school education in a pleasant and playful form. I recommend to the headteachers to disregard the results of the school readiness test in decision-making on (non)admission of (catchment or non-catchment) children. Discriminating on this basis is at variance with**

<sup>65</sup> Section 3a (1) to (4) of the Decree on Primary Education

<sup>66</sup> Information on the organisation of enrolment in compulsory school education of 16 December 2016, Ref. No.: MSMT-27988/2016, available at: <http://www.msmt.cz/vzdelavani/zakladni-vzdelavani/informace-k-organizaci-zapisu-k-povinne-skolni-dochazce>



**Section 2 (1)(a) of the Schools Act and Section 3 (1) of the Anti-Discrimination Act, since the objective is not legitimate. The Czech Schools Inspectorate's inspections should focus on eliminating the use of this criterion.**

#### D.6.3 Membership in a sports club that co-operates with the school

Some schools with extended physical education classes apply the favourable criterion of membership in a sports club that co-operates with the school.

I understand that the school may consider co-operation with a certain sports club to be meaningful, especially since the club ensures afternoon training or participates in teaching PE classes.

However, it should be noted that a body of public administration must not treat membership in an organisation or association as a pre-condition for upholding the right to education. The right to associate freely is a fundamental human right<sup>67</sup> and nobody can be forced to exercise it (not even indirectly). Moreover, membership in such a club usually carries financial expense for the family and assumes the family's activity in developing the child's talent already in the pre-school years. This criterion can thus have indirectly discriminatory effect on children coming from socially disadvantaged backgrounds.

**I recommend to the headteachers to disregard membership of the child in a sports club associated with the school in decision-making on (non)admission of (catchment or non-catchment) children. Discriminating on this basis is at variance with Section 2 (1)(a) of the Schools Act, since the objective is not legitimate.**

#### D.6.4 Order of application

Because of an extraordinary demand for placing children in certain schools or unsuitably defined school districts, the schools often apply the criterion of the order in which the applications for enrolment were received. They collect the applications either in a paper or electronic form. However, this distinction must not be relevant for decision-making.

Because of this criterion, legal representatives of children are either forced to wait in long queues in front of the school building, or their success depends on the speed of the Internet connection or the speed at which they can input the required information in the electronic system. I consider both these situations to be **undignified**. Moreover, I believe them to be **at variance with the meaning of the Schools Act**. The Schools Act stipulate that the child's legal representatives have a duty to apply for enrolment in the period from 1 April to 30 April of the calendar year in which the child is to commence compulsory school education.<sup>68</sup> If the legal representative fails to do so, he or she shall be liable for an infraction.<sup>69</sup>

<sup>67</sup> Article 20 of the Charter of Fundamental Rights and Freedoms

<sup>68</sup> pursuant to Section 36 (4) of the Schools Act

<sup>69</sup> pursuant to Section 182a (1)(a), indent 1 of the Schools Act



The headteacher determines the time when enrolments will be organised in his or her school. By definition, the first application received in the enrolment period set by the headteacher has the same validity as the last. Administrative proceedings are subject to the principle of equality of the parties<sup>70</sup>; all parties to administrative proceedings have the same interest in exercising the right to education and performance of the compulsory school education.

**The criterion of the order of applications for enrolment is at variance with the meaning of the Schools Act and the principle of procedural equality of parties to administrative proceedings. For this reason, I do not recommend to use this criterion to decide about the applications filed either by catchment or non-catchment children. Conversely, it is very helpful (especially in schools with many pupils) if the school gives the legal representatives of children a concrete appointment date and time when they can come for enrolment. This procedure helps to eliminate waiting during enrolments.**

#### D.6.5 Siblings in the same school

While preparing this Recommendation, I encountered a practice common in many schools where children who already have siblings in the school are granted preferential admission. This criterion appears in many variations – simple presence of a sibling in the school, or the existence of a sibling who will attend the school in the next year, a sibling who is in the lower stage of the given school, and even an evaluation of the sibling's "discipline" at school.

I understand that this criterion is used to support families and that it serves to help the parents to achieve better work-life balance and family cohesion.

At the same time, it should be noted that the use of the criterion means the headteacher is giving a child preferential treatment based on his or her family status, i.e. independently on the child him/herself. Similarly, it poses a disadvantage to children without siblings, children with siblings going to specialised schools (multi-year *gymnasiums*, special needs primary schools, private schools), siblings with larger age gaps, children who recently moved into the school district or entrusted into the care of the second parent. Finally, it is not clear how to apply this criterion to half-siblings or children of the parent's new partner or spouse.

**A legitimate objective** of this kind of discrimination could consist in strengthening bonds between the siblings and the parents' work-life balance. To prevent infringement of the rights of the rejected children pursuant to the Schools Act, however, the conditions of **appropriateness and necessity** must also be fulfilled. The assessment of appropriateness and necessity depends, in my opinion, on whether a catchment or non-catchment child is involved.

If a headteacher has to choose between several catchment children due to insufficient capacity,<sup>71</sup> he or she may give priority to a child whose older sibling already attends the school only if **the rejected children have the option to apply for enrolment in other schools**

<sup>70</sup> Section 7 of the Code of Administrative Procedure.

<sup>71</sup> I.e. accepting all catchment children who applied for enrolment in the school would result in exceeding the maximum number of pupils indicated in the schools register.



**where they have the right to preferential admission pursuant to Section 36 (7) of the Schools Act.** If this is not the case, the condition of appropriateness and is not fulfilled and the discrimination cannot be considered permissible. Consequently, the headteachers should organise a lottery for school places (see Part E.6.10 of the recommendation).

If the school has a capacity to also accept non-catchment children, but must choose between several of them, the headteacher may give preference to those whose older siblings are already attending the school. Such discrimination complies with the condition of appropriateness (non-catchment children always have the option to apply for enrolment in their catchment school) and necessity (given the capacity of the school, there is no other way to attain the same goal).

**I recommend that the headteachers give priority to those catchment children whose older sibling already attends the school only if the rejected children have the option to apply for enrolment in other schools where they have the right to preferential admission pursuant to Section 36 (7) of the Schools Act. The criterion may be used without limitation in case of non-catchment children. I do not recommend to use the criterion of a “disciplined sibling” or a sibling of certain age.**

#### D.6.6 Children with delayed school entry

In practice, the criterion of preferential treatment of children returning after delayed school entry appears in two forms. Headteachers distinguish whether it was themselves or another headteacher who decided on the delayed school entry in the previous school year.

I believe this procedure is incorrect. Decision-making on whether a child is sufficiently physically and mentally developed to commence compulsory school education is based primarily on the application filed by the legal representative supplemented by the recommendation of the school counselling centre or a clinical psychologist.<sup>72</sup> This means that even though the headteacher issues the decision on delayed school entry, the important fact is whether there is a valid reason for the procedure. This, however, must be determined by an expert in the field of medicine or psychology, not the headteacher.

I believe the use of the criterion of previously delayed school entry is only legitimate when applied to catchment children. In that case, such preferential treatment serves a legitimate objective and fulfils the conditions of appropriateness and necessity. I believe that a child returning for enrolment after delayed school entry has a greater need to start going to school. On the other hand, using this criterion in case of non-catchment children is not suitable since non-catchment children have a guaranteed right to preferential admission to their catchment school.

**I recommend to the headteachers to give priority to those catchment children with previously delayed school entry. I do not recommend to use this criterion in case of non-catchment children as it does not fulfil the condition of appropriateness and necessity.**

<sup>72</sup> pursuant to Section 37 (1) of the Schools Act



#### D.6.7 Previous attendance of a kindergarten attached to the same primary school

In issuing decisions on (non)admission, some headteachers give preference to children who have previously gone to the kindergarten attached to the primary school, or a preparatory class at the school.

This procedure puts at a disadvantage those children whose application for pre-school education was previously rejected for capacity reasons, as well as children who have recently moved into the district. While since 2017, the last year of pre-school education has become compulsory, the legal representative may choose a different manner of compulsory pre-school education (e.g. home education). The criterion of previous attendance of a kindergarten attached to the same primary school thus puts these children at a disadvantage.

The **legitimate objective** justifying discrimination between children in this case lies in the interest of the child to continue going to the same primary school which also operates the kindergarten or preparatory class which the child previously attended (continuity of education). To prevent infringement of the rights of the rejected children pursuant to the Schools Act, however, the conditions of **appropriateness and necessity** must also be fulfilled. The assessment of appropriateness and necessity depends, in my opinion, on whether a catchment or non-catchment child is involved.

If a headteacher has to choose between several catchment children due to insufficient capacity,<sup>73</sup> he or she may give priority to a child who has previously attended the kindergarten or preparatory class in the given school only if **the rejected children have the option to apply for enrolment in other schools where they have the right to preferential admission pursuant to Section 36 (7) of the Schools Act**. If this is not the case, the condition of appropriateness and is not fulfilled and the discrimination cannot be considered permissible. Consequently, the headteachers should organise a lottery for school places (see Part E.6.10 of the recommendation).

If the school has a capacity to also accept non-catchment children, but must choose between several of them, the headteacher may give preference to those who have previously attended a kindergarten or a preparatory class at the primary school. Such discrimination complies with the condition of appropriateness (non-catchment children always have the option to apply for enrolment in their catchment school) and necessity (given the capacity of the school, there is no other way to attain the same goal).

**I recommend that the headteachers give priority to those catchment children who have previously attended a kindergarten or a preparatory class at the primary school only if the rejected children have the option to apply for enrolment in other schools where they have the right to preferential admission pursuant to Section 36 (7) of the Schools Act. The criterion may be used without limitation in case of non-catchment children.**

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<sup>73</sup> I.e. accepting all catchment children who applied for enrolment in the school would result in exceeding the maximum number of pupils indicated in the schools register.





#### D.6.8 Distance of home / permanent address of the child or parents from the school

In decision-making on (non)admission, headteachers sometimes use the criterion of the distance of the home or the permanent address of the child or parents from the school, arguing that children from more distant areas have other schools nearby. In some cases, headteachers use terms such as “home” (*bydliště*) and “permanent address” (*místo trvalého pobytu*) interchangeably, despite the fact the terms have different meanings.

“Home” and “permanent address” are terms with statutorily defined meanings. **Permanent address** pursuant to the Population Records Act means the citizen’s residence address in the Czech Republic as indicated in the population register. It is a piece of information used for the purposes of keeping records; people usually register their permanent address in a place where they have a family, parents, apartment or a job. Legal representatives choose the permanent address on behalf of their minor children under 15 years of age.<sup>74</sup>

**Home** is defined by the Civil Code. It means “*a person’s place of abode where the person intends to live permanently, subject to change in circumstances; such intention may be established based on the persons declaration or the circumstances of the case*”.<sup>75</sup>

Legal regulations do not give the headteacher any authorisation to find out whether the child’s actual home differs from the child’s permanent address. Therefore, they have no way of preventing a purpose-driven registration of the child’s permanent address to gain advantage in administrative proceedings; this is called “catchment shopping” in Czech (see paragraph E.3 of the Recommendation).

**I believe that the use of the criterion of the distance of home / permanent address of the child or parents from the school goes against the purpose of the Schools Act. For this reason, I recommend that headteachers avoid using it altogether with respect to both catchment and non-catchment children.**

#### D.6.9 Knowledge of and identification with alternative educational approaches

In some “alternative” schools<sup>76</sup>, I encountered a classification of preferential, mandatory and discretionary criteria. The preferential criterion in alternative schools (also founded by municipalities or associations of municipalities) consists in living within the catchment area. However, the schools also treat as a mandatory criterion the fact whether the legal representatives are acquainted with the applied pedagogical approach as well as their active co-operation and interest in the school. As a discretionary criterion, the schools take into account the interest in the given pedagogical approach, completed education in the given pedagogical approach (on the part of the child [in kindergarten] or on the part of the parent), and potentially also a participation in events and programmes organised by the school (hereinafter “involvement in the alternative pedagogical approach”).

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74 pursuant to Section 10 of the Population Records Act

75 pursuant to Section 80 of the Civil Code

76 especially schools subscribing to Waldorf or Montessori education





Generally speaking, I am glad that alternative pedagogical approaches are available, even in schools founded by municipalities or associations of municipalities, and I am aware that for them to work, a certain degree of involvement of the legal representatives of the children in the given pedagogic approach is necessary. However, municipalities must define these schools' districts as well. For this reason, despite their alternative pedagogical approach, these schools must guarantee the right to preferential admission to catchment children.<sup>77</sup>

The **legitimate objective** of discriminating based on the involvement in the alternative pedagogical approach may consist in a better co-operation with the child's legal representatives over the course of education at that school. To prevent infringement of the rights of the rejected children pursuant to the Schools Act, however, the conditions of **appropriateness and necessity** must also be fulfilled. The assessment of appropriateness and necessity again depends on whether a catchment or non-catchment child is involved.

If a headteacher has to choose between several catchment children due to insufficient capacity,<sup>78</sup> he or she may give priority to a child whose legal representatives are involved in the alternative pedagogical approach only if **the rejected children have the option to apply for enrolment in other schools where they have the right to preferential admission pursuant to Section 36 (7) of the Schools Act**. If this is not the case, the condition of appropriateness and is not fulfilled and the discrimination cannot be considered permissible. Consequently, the headteachers should organise a lottery for school places (see Part E.6.10 of the recommendation).

If the school has a capacity to also accept non-catchment children, but must choose between several of them, the headteacher may give preference to those whose legal representatives are involved in the alternative pedagogical approach. Such discrimination complies with the condition of appropriateness (non-catchment children always have the option to apply for enrolment in their catchment school) and necessity (given the capacity of the school, there is no other way to attain the same goal).

**I recommend that the founding authorities define the school districts so that the children retain their right to preferential admission to another catchment school in case they are not accepted by the school with alternative pedagogical approach.**

**I recommend that the headteachers give priority to those catchment children whose legal representatives are involved in the alternative pedagogical approach only if the rejected children have the option to apply for enrolment in other schools where they have the right to preferential admission pursuant to Section 36 (7) of the Schools Act. The criterion may be used without limitation in case of non-catchment children.**

<sup>77</sup> If there are multiple schools in the municipality with their own school district, a good solution is to divide the municipality's area into ordinary schools' districts. The school with an alternative pedagogical approach will have its own district covering the whole area of the municipality. In that situation, it will be possible for the alternative school to also reject catchment children, because all these children will have the right to preferential admission elsewhere (other catchment ordinary schools); this is discussed in more detail further in the text.

<sup>78</sup> I.e. accepting all catchment children who applied for enrolment in the school would result in exceeding the maximum number of pupils indicated in the schools register.



#### D.6.10 Lottery for school places

In case that even after applying the legitimate criteria which are not at variance with the Schools Act or the Anti-Discrimination Act it is still impossible for the headteacher to issue a decision, he or she may organise a transparent lottery for school places. In a manner of speaking, this is the “least bad” of available options. This solution may be perceived as harsh by the parents as the decision is based on random choice, but this solution seems to be **the most objective and fair** in view of the applicable legal regulations.

It is necessary for the headteacher to set the conditions for the allotment in advance. Specifically, they should inform the legal representatives of children sufficiently in advance when the lottery takes place; it should take place in their presence. It should also be clear sufficiently in advance who will be performing the lottery (e.g. the headteacher or a member of the school board) and in what manner. The headteacher should explain this to all legal representatives present prior to the commencement of the lottery. I also recommend to capture the lottery process on video.

#### E. Conclusion

Subjecting children to testing during enrolment or undignified queues in front of the sought-after schools from early morning – the two problems plaguing enrolments in recent years – are caused by two things.

The short-term problem is the slow response of the State and municipalities to the higher number of children in certain regions. I am aware that since 2014, the Government has been implementing a programme to provide subsidies from the state budget and EU structural funds to increase the capacities of kindergartens and primary schools. However, the State’s intervention, which shifted the burden of managing compulsory school education to local governments, came too late and some schools will thus have to deal with an increased number of applicants on their own.

The second (long-term) problem lies in the fact that the parents are not confident that the school in their district is good enough and are looking for a “better” school for their children. This is completely natural and one cannot blame them for that. For this reason, the State and municipalities should focus more on improving the quality of education as a public service. A gradual increase in the quality of all primary schools will minimise the need to choose between them and implement the principle of equal access to education in everyday practice.

Finally, and perhaps surprisingly, I wish this Recommendation loses its urgency as soon as possible; I hope each child in this country will be sure to be enrolled in the first school he or she applies to through his or her legal representative, and this school will be a good and fair one.

In Brno, on 28 February 2017



Mgr. Anna Šabatová, Ph.D., signed  
Public Defender of Rights  
(the Recommendation bears an electronic signature)



## **F. Abbreviations used**

**Anti-Discrimination Act** – Act No. 198/2009 Coll., on equal treatment and legal remedies for protection against discrimination and on amendment to certain laws (the Anti-Discrimination Act), as amended.

**Charter of Fundamental Rights and Freedoms** – Resolution of the Presidium of the Czech National Council No. 2/1993 Coll., promulgating the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic, as amended.

**Civil Code** – Act No. 89/2012 Coll., the Civil Code.

**Code of Administrative Procedure** – Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended.

**Schools Act** – Act No. 561/2004 Coll., on preschool, primary, secondary, higher vocational and other education (the Schools Act), as amended.

**Decree on education of students with special educational needs** – Decree No. 27/2016 Coll., on education of students with special educational needs or talented students.

**Decree on primary education** – Decree No. 48/2005 Coll., on primary education and some requisites of compulsory school education, as amended.

**Population Records Act** – Act No. 133/2000 Coll., on population records and birth identification numbers and on amendment to certain laws (the Population Records Act), as amended.

**Personal Data Protection Act** – Act No. 101/2000 Coll., on personal data protection and on amendment to certain laws, as amended.

**Public Defender of Rights Act** – Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.

**Institutional Education and Protective Education Act** – Act No. 109/2002 Coll., on the provision of institutional education or protective education in school facilities and on preventative educational care in school facilities and amending other laws, as amended.