

# Comprehensive Future

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## Response to the School Admissions Code and Regulations and further consultation

28 November 2006

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Answers to specific questions in the School Admissions Response form are included in the detailed response below, under the chapters to which they refer and in the general points.

### General points

1. We welcome the stated aims of the Draft Code as described in the foreword from the Secretary of State – that of ensuring *a fair system that promotes social equity, with children and families at its centre; the need to be confident that children from all social, cultural or religious backgrounds are equally able to have their preferences met in the school admissions system and the need to have an admissions system which is clear, fair and easy to understand.* We recognize the changes that have been made from the previous withdrawn Code to achieve this. However there are changes which we want to see.
2. Comprehensive Future wants to see a comprehensive secondary school system throughout England, with fair admissions criteria to all publicly funded schools, guaranteeing an equal chance to all children and an end to selection by ability and aptitude. We know that existing selection on ability and the permitted selection on aptitude cannot be ended by changes to the Code as they are allowed in primary legislation. Although more selection on ability cannot be allowed, as more schools become admission authorities inevitably more children will face tests for 'aptitude' ie selection will increase. Selection on aptitude and ability should be ended as quickly as possible.
3. Removing any facility to select on ability and aptitude would give parents more choice and reduce the burden of testing on children. The Code would be much simpler, fairer and shorter if selection by ability and aptitude were abolished. There is much evidence to support the need to end selection which we would be pleased to submit if required, for example the publicly funded research which led to the decision to end the 11 plus in Northern Ireland. We wish to see included in the Code a strong encouragement to governing bodies of selective and partially selective schools to make the change to end selection following consultation as allowed under regulations.
4. The Government recognizes that the well being of children is important. The Every Child Matters policy is evidence of this. Therefore as much as possible admissions legislation must operate in the interests of all children, not in the interests of institutions keeping their place in what has become a pecking order of schools. The freedom to set their own admission criteria rather than those agreed across the local authority could be a major reason for community schools wishing to become foundation or trust schools. It is difficult to see that schools would do this in order to take a higher proportion of 'challenging' pupils. Therefore the Code must safeguard a fair and equitable system. This would put 'children and families at the centre'.

5. The intake into one school is, of course, affected by the admissions policies of other schools in the locality. We welcome the possibility that the report of the Schools Commissioner based on Admission Forums reports will provide information on the broader picture of admissions including the effect on social cohesion. We believe many children face tests for entry into secondary education both by ability and 'so called' aptitude. Official figures are not collected. We want to see more information on this collected and made public.
6. We recognize that the Code goes much further than previous Codes and the recent Draft in trying to end covert selection. However too much depends on the willingness of admission authorities, admission forums and local authorities to bring this about. There are several parts of the Code which we would like to see strengthened, changing comments from 'should' to 'must'.
7. There is a need in places for greater clarity. Most importantly in all sections it should be clear what is meant by 'schools' or 'admission authorities'. At times in the Code there is reference to 'all schools'. This is unclear, unless all schools includes maintained schools, CTCs and Academies. The Code must make clear how good practice over admissions to academies and CTCs can be ensured, including the means by which complaints can be made. A specific section is needed on academies and CTCs. It is feasible in the future that a local authority might not be an admission authority. The Code should make absolutely clear the powers of the Local authority as a local authority and the powers it derives as being an admission authority. The Code should make clear which of the 'must' provisions are mandatory because they are in the Code and which are based on primary legislation.
8. Academies and CTCs as legally independent schools are not tied in to the Code in the same way as maintained schools. Although required by their funding agreements to meet the Code the levers to ensure that happens seem to rest entirely with the Secretary of State. We wish to see all provisions apply equally to maintained schools, Academies and CTCs. For example the duty of the Local Authority to promote fair access and to ensure that school admission arrangements comply with the Code should extend to all schools within the Local Authority. Provisions related to looked after children, children with SEN and hard to place children should apply to CTCs and Academies in the same way as to maintained schools.
9. There is clearly a need for an independent system to monitor and intervene on admissions. Therefore the role of the Adjudicator should be extended to promote fairness by monitoring and intervention. In the Code there is a reliance on what is a passive system to ensure fairness ie relying on complaining to adjudicator, although the Code leans more heavily on the duty to object. Unfair practices do not become fair if no one complains. It remains to be seen whether Admission Forums will be able effectively to police what happens locally. In specific points below we make comments on ways in which their role could be strengthened.
10. The Regulation Education (Co-ordination of Admission Arrangements) Secondary Schools and Primary schools will mean it will be possible for the administration of all admissions ie deciding if an applicant meets the admission criteria, can be carried out by the local authority. This should be set out clearly and encouraged within the body of the Code. If admission criteria set by the school are objective, fair and clear why should a school object? At least one LA (Cambridgeshire) does this already.
11. Contrary to Adjudications, High court decisions and the current Code, the draft Code says schools who select by ability or aptitude should ensure parents know the outcome of the test before they have to express a preference. Entering a child for a grammar school entry test is an expression of preference, why should parents who do this have two opportunities to express a preference? Other parents who might want

single sex education, co education or comprehensive education are not able to know their chances of success before expressing a preference. We strongly object to this change.

12. The Code discourages giving priority to applicants who put the school first (first preference first). The Code goes further to prohibit it if there is *an element of selection by ability or aptitude* in the *area*. Many all ability schools in selective areas have given priority to parents who put them first to maintain an intake supportive of comprehensive education. In any case this provision is unworkable as a decision to allow all schools to use first preference first would be undermined by a school which is an admission authority then introducing selection on aptitude.
13. The Code will need to be revised in light of the new duty on governing bodies to promote community cohesion.

### **Specific points**

#### **Introduction**

7a This reference to admission authorities should make clear the status of CTCs.

9 - 11. These paragraphs are an example of references being made to 'schools'. It should be made clear that, unless there are changes, the Adjudicator has no role where Academies are concerned.

#### **Comments on Draft School Admissions Code**

#### **Chapter 1**

##### **Equity and Fair Access**

1.3 A system where 'all parents feel they have the same opportunities to apply for the school they want' cannot be brought about while selection on ability and aptitude remains.

1.5 and 1.8 There needs to be more explanation about how local authorities should carry out their duties to promote fair access.

1.10 The duty to publish by academies and CTCs should be clearly explained here.

1.12 The power under Section 497 to intervene over unreasonable exercise of functions does not extend to academies as they are not maintained schools. This should be made clear.

1.14 The prohibition on interviews should extend to oral aptitude test, otherwise this will allow schools to select wider than so-called aptitude.

1.18 and 1.19 References to 'schools' without making clear what this means is misleading. There must be total clarity about the legal position and parents rights in maintained schools, academies and CTCs in relation to children with special needs or looked after children.

1.20e The Code refers to the composite prospectus including 'All schools'. It must be clear that this includes academies and CTCs.

1.22 Here there are references to 'admission authorities', 'governing bodies', and 'schools'. This must be more specific.

1.26 This does not go far enough. It must be clear that admission authorities must not use supplementary forms. As written it could be taken to mean that if admission authorities could find something else to ask on a form than those questions listed it would be acceptable to use supplementary forms.

1.37 The Code should be more specific about how adherence to a faith is to be assessed.

1.51 This indicates that it is 'good practice' for admission authorities to analyse information on their intakes but 1.52 says that they 'must' act on the information if they are failing to attract all sections of the local community. Admission authorities must be required to collect and analyse the information and required to act on it.

1.53 There should be far stronger guidance on the report admission forums are to produce. Admissions forums should be required to produce the reports and to include the items listed, rather than 'may' as appears in the regulation or 'should' as appears here. These reports are to form the basis of the report of the Schools Commissioner. It is important therefore that these reports are extensive in reach and able to be compared across local authorities.

The vital role these reports should play was explained by Lord Adonis during the passage of the Education and Inspections Bill in the House of Lords. Baroness Sharp tabled an amendment which would have had the effect of setting up a review of admission arrangements with a remit to investigate the extent to which arrangements promote social integration and community cohesion.

In reply (20 July 2006 : Column 1432) Lord Adonis said '*On Amendment No. 162 of the noble Baroness, Lady Sharp, raising the important issue of how we keep the national effects of admissions arrangements and their social consequences under review, we agree with her point. As part of his role, the new schools commissioner will use admission forums' reports as part of a two-yearly review of fair access; that is in his job description. He will report to the Secretary of State, and that will of course be made available to both Houses to consider. I am sure that this important document will give rise to a good deal of debate when it appears. I think the noble Baroness will welcome this role for the schools commissioner, which meets the point she is making. An additional statutory review is not needed.*'

The Code should also make clear how information can be readily obtained by the admission forums. Government should make a commitment to provide any information needed. Information on the number of preferences expressed for each school should be in the report, as well as the number of each first, second and third etc preferences met.

There should be stronger guidance here encouraging Admission Forums to object to the Adjudicator about admission arrangements of local schools. Admission Forums should also be able to object to Adjudicators about admission arrangements of Academies and CTCs.

## **Chapter 2**

### **Setting Fair Oversubscription Criteria**

2.1 The requirement to offer places if there is space refers only to maintained schools. We wish to see CTCs and Academies required to offer a place if they have places.

2.5 In the main we agree with and welcome the prohibition of the oversubscription criteria listed but see comments below about certain criteria .

2.5 b. Equal preference, ie where schools cannot use a first preference first as an over subscription criterion is a fairer system. In an ideal world it would be best if all systems adopted this.

However where there is selection it is understandable that schools wishing to support their all ability ethos should give priority to those parents who put them first, rather than a situation where children of parents who fail the 11plus may take a place from a child who lives further away but whose parents support non-selective education and have not entered their child for grammar school. So if the Department wishes to ensure equal preference is used across the country the conclusion to be drawn is that selection should be ended.

2.5 (o) This seems to conflict with 2.18. The Code should make clear that this does not apply to schools designated as having religious character.

2.6 The Code must make clear what is meant by 'area'. If it is the relevant area the Code should make it clear. In any case this provision is unworkable unless selection by aptitude is ended. In an area operating first preference first under a local agreement a school may introduce aptitude selection and therefore make the scheme illegal.

2.7 This completely undermines 2.5(k) and is unfair. There should be no exceptions.

2.12 and 2.13 The provisions of these paragraphs are unfair. Indeed they conflict with 2.5(i) Siblings of pupils not selected by ability or aptitude should not be barred from applying to the school. Instead admission authorities should be required to ensure that siblings of the pupils admitted by selection on ability or aptitude are not given priority. The fact that a sibling has been able to get through an entry test should not mean siblings are given priority. They should be treated as all other applicants.

2.14 and 2.15 These paragraphs seem very confused.

2.18 see 2.5 (o) above. We would like to see more encouragement in the Code for faith schools not to give preference to members of a particular faith but to be open to all local children. An example of a particular school could be used.

2.20 The Ombudsman has criticised faith schools for lack of clarity about how adherence to the faith is to be decided. The previous draft Code said *It is poor practice to admit pupils on the basis that their family is more religious than others*. This paragraph should be even stronger to discourage schools from setting criteria which do this.

2.22 (New paragraph 7/11/2006) Some faith schools are open to all pupils, whether or not of the faith. This should be noted here and encouraged, even if admission authorities have to consult the body appointing the foundation governors. Faith schools should also be encouraged to ensure that selection by faith is not a proxy for selection by ability.

2.23 Faith schools should be required to give priority to looked after children whether or not of the faith ie 'must' should be substituted for 'should'.

2.24 Academies and CTCs should also have to consult on their admission arrangements.

2.25 There should be a warning here that random allocation may not meet the requirement (3.2) *that parents need to be able to understand whether they have a realistic chance of being offered a place at any particular school*.

2.32 Inner and outer catchment areas mean that children near to the school might be denied a place. The Code should recognise that.

2.42 This prohibition should be extended to secondary schools. It should also make clear that selection by aptitude must not be used.

2.50 Selection for sixth form is allowed but should be discouraged by the Code.

2.52 We wish to see a section here encouraging grammar school governing bodies to end selection following consultation as allowed under regulations arising from the School Standards and Framework Act.

2.55 All partial selection should be ended. David Blunkett the then Secretary of State speaking on 22nd December 1997 in the debate on the School Standards and Framework Bill said –

*'I am able to confirm that the Bill and the criteria I will lay down as part of our admissions policy will remove partial selection where it currently exists. That causes havoc in terms of the admission of local children and denies fairness to parents because of the lack of choices and opportunities open to them'.*

This promise has not been fulfilled. Partial selection has not ended and aptitude selection was allowed by primary legislation. Instead the School Standards and Framework Act introduced a procedure requiring parents to put in objections to the Adjudicator. This procedure can result in a reduction of partial selection and we welcome the introduction of the amendment to make sure selection cannot be increased.

In any case, however, relying on complaints to bring about change is too weak. Parents have to know that they are likely to be disadvantaged in order to object. When most parents realise, ie as their children go through the admission process, the time for objections has long passed

The draft says *Partial selection is effectively an oversubscription criterion*. Therefore it is nonsense to suggest at 2.76 that parents should be informed of the result of tests before they express a preference. Parents should not be obliged to put their children into an aptitude test in case a school is oversubscribed.

2.57 It is misleading to encourage partial selection on aptitude as an 'important part of widening access'. This sentence should be removed. Selection of 10% reduces access for an equal number of children who might otherwise have gone to the school. There should be no encouragement to introduce selection by aptitude. The Code should also make clear that schools could face objections based on the test being a test of ability.

Partial selection on aptitude should be ended for the following reasons -

- When challenged the usual Government response is that most schools do not use their right to select, so the retention of this policy is justified by saying it is rarely used, which seems bizarre. If this is so clearly removing it will cause little disruption.
- Like the majority of those who have commented on ability and aptitude Comprehensive Future does not accept that there is a distinction between aptitude and ability. We believe what is being tested is achievement. If for example Grade 5 music is used as a proxy for aptitude that is surely a test of achievement. A recent Adjudicator decision has shown a long standing arrangement to select on aptitude was in fact selection on achievement.
- At age 11 children may demonstrate an 'aptitude' which is not sustained over the following years. All children deserve a well resourced, broad and balanced curriculum taught by well qualified and highly motivated teachers. On this basis all young people are then in a position to choose their interests later in their careers.

- Currently few schools have taken up the 10% selection on aptitude option. However as more schools become foundation or trust schools, encouraged by Government policy, it likely that selection will increase. If more schools were admission authorities it would be easier for 10% selection to spread in a domino effect as neighbouring schools react to one school introducing selection. So there is the potential for a huge increase in numbers of pupils facing selection tests. Children should not be burdened with further tests.
- Even if only 10% of places are reserved for pupils with a particular aptitude, many more children will be put through the test. Parents living locally will be concerned that their children might not get in and might be tempted to put them in for the test 'just in case'.
- Inevitably the introduction of 10% selection on aptitude reduces parental choice for all local parents whose children do not have the 'aptitude' who might otherwise have got a place.
- All children need to be encouraged in sport, performing arts and modern language. If schools are to share expertise in collaborative arrangements then it is not necessary for individual schools to select a group of pupils.
- If parents want their child to have access to particular facilities, sport facilities for example they can express a preference for the school, this is better than schools choosing the children

2. 58 Again the Code says that *priority by aptitude is in effect an oversubscription criterion*. If so parents should not be required to put the children in for the test before expressing their preference.

2.60 This definition of aptitude does not succeed in making a distinction, which is not surprising since among many others *Comprehensive Future* does not accept a distinction can be made. All pupils should be able to 'benefit from teaching in a specific subject' or 'demonstrate a capacity to succeed'. That is the point of children going to school to learn.

2.62 – 2.73. The section on banding needs more clarification about how the banding is to be done. It is to be regretted that primary legislation allows banding in four ways including across the intake into one school or two schools. Banding across the intake into one or two schools should be discouraged. Banding based on the ability range across the whole LA should be encouraged. The Code should strongly discourage schools in the same locality adopting different methods.

2.65. *Comprehensive Future* supports admissions arrangements which allow local parents to send their children to local schools. The disadvantages of banding should also be made clear, ie it can result in children not getting into their nearest school.

2.70 The requirement where a '*number of schools in the area band – they must use a common test*' should make clear what is meant by the 'area'. The Code should encourage all schools to take part if it is decided to band.

2.72 'Area' has to be defined.

2.76 This is a complete reversal of the current Code which refers to delaying expression of preferences until after the test results being '*unfair to other parents who want a place only at non-selective schools*' (p 14) and this is '*to avoid unfairness to other parents who genuinely prefer comprehensive or denominational schools*' (p31) This wording from the current Code should be restored.

It is not clear why this proposed change has been made. It is unfair. It allows parents who want grammar school education to have two choices. As far as possible all parents should be treated equally. This is the aim Why should parents who want grammar school education be treated differently than other parents who might like to know their chances of success for example those who might want single sex schools, comprehensive schools or faith schools? This U turn reverses two Adjudicator decisions in Wirral, upheld by Judicial Review in 2000.

The idea that parents should have to put their children in for aptitude tests before expressing a preference is ridiculous and will mean much more testing. If it is an oversubscription criterion it should not be necessary.

### **Chapter 3**

#### **Applying Admission Arrangements**

3.7 The encouragement for the LA to coordinate consultation of maintained schools should be made stronger and include academies and CTCs.

3.11 If a school is undersubscribed then all applications must be accepted. The Code needs to make clear if this applies to academies and CTCs

3.15 The Code should require academies and CTCs to be in the co-ordinated scheme.

3.18 Again there are references to 'schools'. It should be clear if academies and CTCs with places are included.

3.24 Supplementary forms should not be used, see 1.26 above.

#### 3.26 Consideration of preferences

The arrangements by which under the Regulations admission authorities could arrange for another body( for example and preferably the local authority) to determine the order of priority of applications should be referred to here and explained and encouraged. (The Education (Coordination of Admission Arrangements) (Secondary (and Primary) schools) (England)(Amendment)Regulations

3.29 and 3.30 see comments at 2.5b – re first preference first.

3.30 See comments at 2.5b All ability schools in selective areas use first preference first in an attempt to have a comprehensive intake. In areas where this happens it may encourage social cohesion.

In any case this provision is unworkable unless selection by aptitude is ended. Schools cannot introduce selection by ability but can introduce selection by aptitude so in an area operating first preference first under a local agreement a school may introduce aptitude selection and therefore make the scheme illegal.

3.52 – 3.77 All provisions for children with SEN, those hard to place or vulnerable should apply to academies and CTCs in the same way as maintained schools.

3.52 This paragraph is unclear. See comments on 1.18 and 1.19 above.

3.62 The implication here is that this relates to academies as the term 'admission authorities'is used. This should be made clear.

3.63 – 3.65This local authority power to direct should extend to academies and CTCs.

3.68 Admission Forums should be required to discuss local admission arrangements re protocols, ie 'should' to 'must.' The fact that admission authorities only have to 'have regard' to admission forums means their monitoring role of the Code is weakened. Admission authorities should be required to follow the advice. The power of the Admission Forum to refer to the Adjudicator if this does not happen should be included here.

3.70 (New paragraph 7/11/2006) We agree that there should be a requirement to agree protocols and participate. It should be clear that admission authorities include academies and CTCs.

3.72 Again there is confusion between 'schools' and 'admission authorities'. There has to be clarity over the situation for children with special needs and looked after children, the powers of local authorities to direct and academies and CTCs. We wish to see all schools, maintained, academies and CTCs under the same arrangements.

3.75 If 'all secondary schools' include academies and CTCs it should be clear. Again we wish to see all schools required to be in partnerships.

3.76 Again the LA should have the power to direct to academies and CTCs.

3.77 It should be clear here about the use of Section 496 in relation to Academies and CTCs ie that it does not apply.

## **Chapter 4**

### **Ensuring a fair admissions system**

4.2 We wish to see local authorities and admission forums required to object, ie 'should' changed to 'must'.

4.3 The reference to governing bodies that are admission authorities being 'encouraged' to be represented on the Admission Forum is confused. Regulations say school members shall 'comprise one member from every maintained school'. The Education(Admission Forums)(England)(Amendment) Regulations 2007

The requirement that admission authorities should object to the plans of other admission authorities relies heavily on schools not operating a 'you scratch my back' policy School governing bodies might be tempted not to object to neighbouring schools if they wish to introduce similar admission arrangements. The Code should say that admission authorities must object.

4.4 Local authorities must ensure that admission arrangements for schools in their area that are their own admission authority are clear, objective and fair.

4.6 The Code should say that local authorities must object where admission arrangements are unfair, unclear or subjective or may encourage social segregation.

4.7 The Code should say that local authorities must consider carefully representations from parents.

4.9 onwards (Admission Forums) – (see also comments at 1.53)

4.9 There is a weakness here in that admission authorities only have to 'have regard' to the advice of the forum. It undermines the role of Admission Forums in policing the Code. We wish to see admission authorities being required to act in accordance with the advice of the forum.

There needs to be a much stronger encouragement here to ensure neighbouring admission authorities in nearby authorities work together.

4.10 a – g should be a requirement on Admission Forums ie The Code should read – *Admission Forums must act in accordance with the provisions of this Code and **must** -.*

4.11 The Code should say that admission forums must produce the report annually.

4.12 As the right of parents to object has been extended the Code must ensure that parents are informed about their rights to object by the LA and can easily obtain information about admission arrangements over which they might wish to object.

4.14 We welcome the extension of the right of investigation of the Adjudicator but this does not go far enough. See General point 9 above

4.15 Again there are references to 'schools' and 'the area' These must be defined. Here again the Code should be absolutely clear about the powers of Adjudicators in relation to Academies and CTCs. Adjudicators have power only over maintained schools. It should be made clear how and to whom objections can be made about academies and CTCs. We wish to see the role of the Adjudicator extended to academies and CTCs so that the rights to object are the same as for maintained schools.

We welcome the extension of rights of parents to object but we wish to see them extended further so that they can object to any aspect of the admission arrangements in the same way as admission authorities.

## **Appendix 2 Admission Forums**

This section needs a great deal of clarification.

3 The description of the membership of the forum does not tie in with Regulation regarding membership of admission forums which has provision for all schools to be members.. There should not be a two tier membership. There needs to be clear guidance here on how members are to be appointed to ensure representation for all schools in the area.

5. Again there needs to be a stronger requirement for cross borough collaboration.

13 On a similar point to 3 above it is not good enough to say 'they should think best to ensure the views of the Forum are properly represented'. There should be a strong indication of how this should be done fairly and democratically.

15 This should make clear that the agreement of whole membership should mean all schools.

## **Appendix 3. Statutory requirement of co-ordinated Admission Schemes and model for admission cycle**

8 The Code should impose a duty to participate ie it should say all maintained schools must participate. Academies and CTCs must participate too. The Code should say that full details of the coordinated scheme must be included in the composite prospectus.

16. Again it should be clear that all admission authorities include academies and CTCs.

20 The Code is unclear as to whether applying admission criteria *including selection tests* mean results of selection tests or applying the tests. If the latter, that is what we would want to see happen, ie test after preference.

24. We do not agree that parents who want grammar school education should be treated differently than other parents who might like to know their chances of success for example those who might want single sex schools, comprehensive schools or faith schools.

#### **Appendix 4. Consultation and publication**

7. Published information must include information about all the schools in the area - maintained schools, academies and CTCs. Admission Forums should be required to consider the information made available to parents and advise LAs on what more is needed ie 'should' replaced by 'must'. Publication of admission arrangements must allow for objections and must include information about how to make objections.

9. It is unclear why requirements of published information (b) to (j) are not all 'musts'. They should be.

#### **Appendix 5 – Choice advice**

11 *Choice advisers should also support disadvantaged families in maximising the likelihood of their successfully securing a place in the school that will best meet their children's needs.* The Code should make clear this is not to extend to coaching children for selective schools' tests.

#### **Regulations**

##### **a. The Education (Admission Forums) (England) (Amendment) Regulations 2007**

As stated above the regulation about the membership of forums does not seem to relate to Code. There should not be a two tier membership so it is important that the Code and the Regulations are tied in together.

##### **f. The Education (Determination of Admission Arrangements) (Amendments) Regulations 2007**

##### **g The Education (Objections to Admission Arrangements)(England) (Amendment) Regulations 2007.**

We welcome the extension of the right of parents to object has been extended beyond partial selection. We want to see this right extended to any aspect of the admission arrangements.

##### **g/h The Education (Co-ordination of Admission Arrangements)(Secondary Schools)(England) (Amendment) Regulations 2007 and (Primary Schools)(England)(Amendment)Regulations 2007**

There should be an independent body deciding if applicants meet admission criteria of schools where the school is the admission authority. We wish this to be the democratically elected local authority as part of its coordinating role. The regulation as written could mean that an individual, even the school's headteacher, could carry out this role. This should not be allowed to happen. The role should be given to the local authority.

##### **i) The Education (Aptitude for Particular Subjects) (England) Regulations 2007**

We wish to see all selection on aptitude ended.

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