



## **Fair Access Protocol (Primary)**

This Protocol should be read in conjunction with:

The School Admissions Code (01.09.2021) – in particular paragraphs 3.14 to 3.22 inclusive.  
Fair Access Protocols – DfE Guidance for school leaders, admission authorities and local authorities

### **1. PURPOSE OF THE FAIR ACCESS PROTOCOL (The Protocol)**

To ensure that unplaced and vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible, and to ensure that no school - including those with places available – should be asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are placed via the Protocol.

### **2. ALTERNATIVE PROVISION**

All permanently excluded pupils will be offered full-time education through the Pupil Referral Unit, from the sixth school day following the head teacher's decision to exclude the pupil, until the child is offered a place at a mainstream school, either through the normal admissions process or by referral to the PPP.

### **3. WHICH SCHOOLS ARE INCLUDED IN THE PROTOCOL?**

All schools must participate in the Protocol; Academies, Community schools, voluntary aided school and voluntary controlled schools. The School Admissions Code explains that participation includes making available a representative who is authorised to participate in discussions, make decisions on placing children via the Protocol, and admitting pupils when asked to do so in accordance with the Protocol, even when the school is full. Decisions about admitting children under the Protocol can be made by one individual in an admission authority provided that suitable authority has been delegated to that individual.

Where an admission authority receives an in-year application for a year group that is not the normal point of entry and it does not wish to admit the child because it has good reason to believe that the child may display challenging behaviour<sup>1</sup>, it may refuse admission and refer the child to the Fair Access Protocol. This decision should only be made if the school has a particularly high proportion of either children with challenging behaviour or previously permanently excluded pupils on roll compared to other local schools and it considers that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources. This provision cannot be used to refuse admission to looked after children, previously looked after children; and children who have Education, Health and Care Plans naming the school.

### **4. WHAT ARE PARENTS' RIGHTS ?**

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<sup>1</sup> For the purposes of this protocol, behaviour can be described as challenging where it would be unlikely to be responsive to the usual range of interventions to help prevent and address pupil misbehaviour or it is of such severity, frequency, or duration that it is beyond the normal range that schools can tolerate. The DfE would expect this behaviour to significantly interfere with the pupil's/other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment.

Pupils have a statutory right to be admitted to a school that has places available, except where a pupil has been permanently excluded twice.

Where no place is available, or where a place has been refused on the basis that a child is challenging, the parent has the right to appeal to an independent appeal panel. This statutory appeal hearing must be heard within 30 school days of the appeal being lodged.

Eligibility for the Fair Access Protocol does not limit a parent's right to make an in-year application to any school for their child. Admission authorities must process these applications in accordance with their usual in-year admission procedures. They must not refuse to admit such children on the basis that they may be eligible to be placed via the Fair Access Protocol. The parent will continue to have the right of appeal for any place they have been refused, even if the child has been offered a school place via the Fair Access Protocol. Applicants will be consulted on the referral of the application for consideration under the Protocol and asked to provide further information to determine whether the child has specific needs that need to be considered e.g. previous permanent or fixed term exclusions; attendance issues; EAL; sibling links.

If parents do not wish to accept a place allocated through the Protocol, they can continue to exercise their right, acquired under the normal admission arrangements, to appeal for their preferred school.

Wherever possible, pupils with a religious affiliation will be matched to a suitable school.

## **5. WHO DOES THE PROTOCOL APPLY TO?**

Fair Access Protocols may only be used to place the following groups of vulnerable and/or hard to place children, where they are having difficulty in securing a school place in-year, and it can be demonstrated that reasonable measures have been taken to secure a place through the usual in-year admission procedures :

- a) children either subject to a Child in Need Plan or a Child Protection Plan or having had a Child in Need Plan or a Child Protection Plan within 12 months at the point of being referred to the Protocol;
- b) children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol;
- c) children from the criminal justice system;
- d) children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education;
- e) children with special educational needs (but without an Education, Health and Care plan), disabilities or medical conditions;
- f) children who are carers;
- g) children who are homeless;
- h) children in formal kinship care arrangements (as evidenced by either a child arrangements order not relating to either birth parent or a special guardianship order);
- i) children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers;
- j) children who have been refused a school place on the grounds of their challenging behaviour and referred to the Protocol in accordance with paragraph 3.10 of this Code;
- k) children for whom a place has not been sought due to exceptional circumstances;

- l) children who have been out of education for four or more weeks where it can be demonstrated that there are no places available at any school within a reasonable distance of their home. This does not include circumstances where a suitable place has been offered to a child and this has not been accepted; and
- m) previously looked after children for whom the local authority has been unable to promptly secure a school place.

## **6. HOW DOES THE PROTOCOL WORK ?**

Where a child, who falls under one of the categories, is unable to be allocated a school place, the Local Authority will initiate the protocol.

The application will be considered by a Panel of headteachers and officers of the LA; the Pupil Placement Panel (PPP). Although there is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol, parents' views will be considered. The PPP will also consider information provided by schools, and any evidence or submissions from relevant officers, in order to nominate a suitable school.

The PPP will routinely meet on the 2<sup>nd</sup> Friday of every half term (or as required where special circumstances exist). All schools will be invited to participate with a particular emphasis on schools in the relevant areas.

Where a nominated school is not represented at the PPP, the school will be asked to respond to the request for admission within five school days. Where the nominated school agrees to admit, admission will be arranged within ten school days.

If a school refuses to admit the child, the LA can direct the school (for which they are not the admission authority<sup>2</sup>) to admit the child or, in the case of an academy, ask the Secretary of State to admit the child. However, the school will be given the opportunity to provide evidence that demonstrates that the admission will cause significant prejudice before the decision to direct, or to seek a direction, is made.

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<sup>2</sup> Where the LA is the admission authority, and determines that a child should be admitted, then the school must comply with the admission authority's decision.