

Fair Access Protocol for admission to schools

Legislation

The February 2007 Admissions Code placed a duty on each local authority to develop a Fair Access protocol. The latest revision of the Code, in force from December 2014, restates the principles and scope of the protocol. All admission authorities must participate in the Fair Access Protocol.

Key principles

The School Admissions Code (December 2014) requires that:

- 1. Each local authority must have a Fair Access Protocol, agreed with the majority of schools in its area to ensure that – outside the normal admissions round – unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible. In agreeing a protocol, the local authority must ensure that no school – including those with available places – is asked to take a disproportionate number of children who have been excluded from other schools, or who have challenging behaviour.*
- 2. All admission authorities must participate in the Fair Access Protocol.*
- 3. The operation of Fair Access Protocols is outside the arrangements of co-ordination and is triggered when a parent of an eligible child has not secured a school place under in-year procedures.*
- 4. There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.*
- 5. Where a Governing Body does not wish to admit a child with challenging behaviour outside the normal admissions round, even though places are available, it must refer the case to the local authority for action under the Fair Access Protocol. This will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children. This provision will not apply to a looked after child, a previously looked after child or a child with a statement of special educational needs naming the school in question. Admissions authorities must not refuse to admit a child thought to be potentially disruptive, or likely to exhibit challenging behaviour, on the grounds that the child is first to be assessed for special educational needs.*
- 6. A school will not be required to automatically take another child with challenging behaviour in the place of a child excluded from the school.*

Procedures

1. The majority of children requiring a school place will continue to be admitted to their local school in accordance with the usual admission procedures, rather than through this Protocol.
2. Where the placement of a child cannot be decided, the local authority will determine the placement, taking into account the circumstances of the individual pupil, as well as which school will be best able to meet their needs, bearing in mind concerns from schools about admission and seeking to protect any one school from a disproportionate number of placements of children with challenging behaviour. In deciding a placement every effort will be made to ensure that transport arrangements, which may be the responsibility of parents, are reasonable and cost effective. Schools may act collaboratively to propose placements in their area under this Protocol.
3. To decide whether a child is ready for mainstream school, the child must be placed on roll and admitted to school in the first instance, where their needs can be assessed, before seeking appropriate support

from the relevant agencies. This does not apply to children already attending Education Centres whose placements will be agreed through the local placement panels.

4. The fact that the PAN has been reached or exceeded cannot be given as a reason for not admitting a pupil under this protocol.
5. An admission under the Protocol has priority over other children on a waiting list. Schools must not require that an appeal be heard before a child is admitted under the Protocol and must not refuse a child on the basis that an appeal was previously unsuccessful.
6. The aim is to place a child in school within 20 school days of application. It is expected that all parties will act with a sense of urgency.
7. Statutory powers of direction and the rights of schools to object to Schools Adjudicator are set out below. Where a school has not responded to an application within 14 calendar days the LA will where appropriate use its powers of direction. For community and voluntary controlled schools, the LA as the admission authority will issue a decision letter in these circumstances.
8. Where the Governing Body of any school wishes (under paragraph 3.12 of the Code, Key Principle 5 above) to refuse an application of a child with challenging behaviour when there are places in a year group, the school must put in writing to the LA (only and not the parent) its intention to refuse to admit and the detailed reasons for this decision. This must be received by the Admissions Team within 14 calendar days of receipt of the application in order to assist the LA's determination of the child's application under the Fair Access Protocol. Where the determination is that the school in question should admit the child then the LA will request that the offer letter should be issued. Where the school does not do so, the LA will where appropriate use its powers of direction. For community and voluntary controlled schools, the LA as the admission authority will issue an offer letter.
9. All schools, including academies, are expected to respond to a request by the LA to admit a child under the Fair Access Protocol within 7 calendar days. The governing body of a maintained school can appeal by referring the case to the Schools Adjudicator within 15 calendar days. Similarly it is expected that an academy will agree a starting date for the child or set out its reasons for refusal in writing to the LA within 15 calendar days (providing contact details to cover any approaching bank holiday or holiday periods).
10. The LA will report on admissions under the Protocol in its annual report to the Schools Adjudicator.

Safeguarding

In all cases the LA's duty to safeguard the child is paramount. Children out of school may be at risk; schools, with the Admissions Team, EIS and any other relevant representatives of the LA must do their utmost to ensure that children are not out of school for extended periods of time.

Categories of children to be included in the Protocol

- a) Children from the criminal justice system or Education Centres (Pupil Referral Units) who need to be reintegrated into mainstream education;
- b) Children who have been out of education for two months or more;
- c) Children of Gypsies, Roma and Travellers;
- d) Children of refugees and asylum seekers;
- e) Children who are homeless;
- f) Children with unsupportive family backgrounds for whom a place has not been sought;

- g) Children known to the police or other agencies;
- h) Children who are carers;
- i) Children who have to move school because of domestic violence (whether staying in a refuge or with friends/other relatives);
- j) Year 6 or Year 11 pupils;
- k) Children with special educational needs (but without a statement), disabilities or medical conditions;
- l) Children of UK Service personnel;
- m) Any other children who arrive outside the normal admissions round who may have difficulty securing a place.

Categories (a) to (j) are seen as exceptional admissions and will always be handled under the protocol, where appropriate. For categories (k) to (m), admissions under the protocol can take account of other complicating issues for the child or family or the fact that more than one category applies. In making a placement of a child in these three categories, factors to be taken into account will include the number of children on waiting lists at the schools being considered and the likelihood of an admission under the protocol denying a place to another child in one of these categories. All admissions must follow the timescales and processes described above.

School Specific Protocols

Schools may request an additional school-specific protocol which recognises the difficulties of finding alternate school places in a particular geographical location and allows the admission of catchment children where no other suitable place is available.

Record keeping

The Children Services department will keep records of all pupils placed under this Protocol, together with all notified in-year admissions. Schools are required to notify the LA of all admissions and to ensure that the LA has up to date records of numbers on roll in all year groups.

Local Placement Panels

The role of the Local Placement Panels is to consider exceptional cases only, e.g. permanently excluded pupils who are ready to be integrated back into mainstream education. The panels will also monitor the number of managed moves/Fair Access placements within its area.

Managed Moves

In some circumstances it may be appropriate for a pupil to transfer from one school to another for a fixed period whilst remaining on the roll of the first school as an opportunity for a fresh start. Such arrangements require the full knowledge and co-operation of all the parties involved, including parents, pupil, both schools and the LA and should proceed according to the Managed Move Protocol. If the managed move is successful the child is transferred to the roll of the new school at the end of the fixed period. Managed moves should be arranged locally between schools usually *outside* of the placement panels, and the local placement panel informed so that tracking is transparent.

Looked After Children (and previously Looked After Children from September 2013)

Looked after children will be placed in accordance with the appropriate legislation to the school that best meets their needs, as determined by the social worker in conjunction with the Manager for Vulnerable Children.

Children with statements of Special Educational Needs

Children with statements of SEN will be placed in accordance with the appropriate legislation by the County's SEN team.

Powers of Direction

The School Admissions Code 2014 summarises the powers of direction given to LAs under sections 96 and 97 of the 1998 Education Act, and the differing requirements in relation to admissions to Academies:

3.16 **Local authority powers of direction (general)** - A local authority has the power¹ to direct the admission authority for any maintained school in its area to admit a child even when the school is full. The local authority can only make such a direction in respect of a child in the local authority's area who has been refused entry to, or has been permanently excluded from, every suitable school within a reasonable distance. The local authority **must** choose a school that is a reasonable distance from the child's home and from which the child is not permanently excluded. It **must not** choose a sixth-form that selects by ability unless the child meets the selection requirements, or a school that would have to take measures to avoid breaking the rules on infant class sizes if those measures would prejudice the provision of efficient education or the efficient use of resources.

3.17 Before deciding to give a direction, the local authority **must** consult the governing body of the school, the parent of the child and the child if they are over compulsory school age. If, following consultation, the local authority decides to direct, it **must** inform the governing body and head teacher of the school. The governing body can appeal by referring the case to the Schools Adjudicator within 15 days. If it does this, the governing body **must** tell the local authority. The local authority **must not** make a direction until the 15 days have passed and the case has not been referred.

3.18 If the case is referred to the Adjudicator, the Adjudicator may either uphold the direction or determine that another maintained school **must** admit the child. The Adjudicator's decision is binding. The Adjudicator **must not** direct a school to admit a child if this would require the school to take measures to avoid breaking the rules on infant class sizes and those measures would prejudice the provision of efficient education or the efficient use of resources.

3.19 **Local authority powers of direction (looked after children)** - A local authority also has the power to direct the admission authority for any maintained school in England to admit a child who is looked after by the local authority, even when the school is full. The local authority **must not** choose a school from which the child is permanently excluded but may choose a school whose infant classes are already at the maximum size.

3.20 Before deciding to give a direction, the local authority **must** consult the admission authority of the school it proposes to direct. The admission authority **must** tell the local authority within 7 days whether it is willing to admit the child. If, following consultation, the local authority decides to direct, it **must** inform the admission authority, the governing body (if the school is a voluntary controlled or community school), the local authority that maintains the school, and the head teacher. The admission authority can appeal by referring the case to the Schools Adjudicator within 7 days. If the child has been permanently excluded from two other schools and the most recent exclusion was within the previous two years, the governing body (if the school is a voluntary controlled or community school) may also refer the case to the Adjudicator. The admission authority or governing body **must not** refer the case unless it considers that admitting the child would seriously prejudice the provision of efficient education or the efficient use of resources. If the admission authority or governing body does refer the case, it **must** tell the local authority that looks after the child. The local authority **must not** make a direction until the 7 days have passed and the case has not been referred.

3.21 If the case is referred to the Adjudicator, the Adjudicator may either uphold the direction or determine that another maintained school in England **must** admit the child. The Adjudicator's decision is binding. The Adjudicator **must not** direct an alternative school to admit a child unless the local authority that looks after the child agrees, nor if the child is permanently excluded from that school, nor if the admission of the child would seriously prejudice the provision of efficient education or the efficient use of resources.

3.22 **Secretary of State power of direction (Academies)** - Where a local authority considers that an Academy will best meet the needs of any child, it can ask the Academy to admit that child but has no power to direct it to do so. The local authority and the Academy will usually come to an agreement, but if the Academy refuses to admit the child, the local authority can ask the Secretary of State to intervene. The Secretary of State has the power under an Academy's Funding Agreement to direct the Academy to admit a child, and can seek advice from the Adjudicator in reaching a decision.

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