

## Hampshire County Council's Fair Access Protocol

### Legislation

The School Admissions Code (Sept 2021) requires each local authority to have a Fair Access 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”.

The protocol must be consulted upon and developed in partnership with all schools within the local authority area. Once a protocol has been agreed by the majority of schools in its area, all admission authorities must participate in it.

### Key principles

The School Admissions Code (Sept 2021) requires that:

- 1. Every local authority must have a Fair Access Protocol, agreed by the majority of schools in its area, in which all schools must participate.<sup>1</sup>*
- 2. 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 permanently excluded from other schools, who display challenging behaviour or who have been placed via the Protocol.*
- 3. The operation of Fair Access Protocols is outside the arrangements of co-ordination and is only triggered when a parent of an eligible child has not secured a school place through normal in-year procedures.*
- 4. Eligibility under the Fair Access Protocol does not limit a parent's right to make an in-year application to any school for their child which must be processed in line with usual in-year admission procedures. Schools must not refuse to admit a child on the basis that they may be eligible for placement under the protocol. Parents continue to have a right of appeal for any place they have been refused, even if the child has been offered a place elsewhere under the protocol.*
- 5. Where an admission authority receives an in-year application and does not wish to admit the child because it has good reason to believe that the child has challenging behaviour<sup>2</sup>, even though places are available, it must refer the case to the local authority for action under the Fair Access Protocol. This will only be appropriate where the school has a particularly high proportion of either children with challenging behaviour or previously permanently excluded children on roll compared to other local schools and it considers that admitting the child with challenging behaviour would prejudice the provision of efficient education or the efficient use*

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<sup>1</sup> 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.

<sup>2</sup> Behaviour is defined 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. We 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.

*of resources. This provision cannot be used to refuse the admission of looked after children, previously looked after children and children with an Education Health and Care (EHC) Plan naming the school in question. Admissions authorities must not refuse to admit a children 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. There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol, but parent's views must be taken into account.*
- 7. Schools will not be required to automatically admit a child via the protocol in place of a child permanently excluded from the school.*
- 8. Children who qualify for placement under the protocol must be allocated a place within 20 school days.*

## **Categories of children**

This protocol may be used to place the following groups of vulnerable and/or hard to place children only, 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<sup>3</sup>:

- 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;
- i) children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers;

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<sup>3</sup> For example, where an application has been made to at least one school and this has been refused, or the local authority has confirmed that there are no places available at any school within a reasonable distance.

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 the School Admissions 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

### **Referral to the Fair Access Protocol (FAP)**

The majority of children requiring a school place will continue to be admitted to school in accordance with the usual in-year admission procedures (School Admissions Code, p2.23 – 2.31), rather than through this Protocol.

Schools must not refuse to admit children on the basis that they may be eligible to be placed via the Fair Access Protocol.

Where the Governing Body of any school wishes (under paragraph 3.10 of the Code) to refuse an application of a child they have reason to believe may display 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 detail the reasons for this decision. This must be received by the Admissions Team within 14 calendar days of receipt of the child's application in order to assist the LA's determination of the 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.

Where an admission authority refuses an in-year application because the year group is full and it considers that the child would be eligible to be placed via the FAP, i.e they fall or may fall into one of the categories set out in this protocol, the admission authority **must** notify the local authority of this. The local authority will then decide whether the child is eligible to be placed in school via the FAP\*.

In both of the above cases, where it has been decided that a child is to be placed via the FAP, parents should be notified of this, and a school place must be allocated to that child within 20 school days.

*\*This applies to Hampshire resident children only. Children living outside of Hampshire who have been refused a place at a Hampshire school under normal in-year procedures and fall or may fall within one of the Fair Access categories will be referred back to the child's home local authority by the Hampshire Admissions Team to identify an alternative placement.*

## Process for agreeing a placement

1. Once the local authority has agreed that a child will be considered under this Protocol, a school place must be allocated within 20 school days.
2. Senior Admissions Officers within the School Admissions team will carefully consider the case, liaising with other professionals as appropriate, for example the Inclusion Support Service, and identify the school(s) to be approached and make a referral outlining the details of the case and the reasons for the request.

The following will be taken into account when deciding which school(s) to approach:

- the circumstances and needs of the child including:
  - where they live and which schools are closest.
  - transport arrangements and cost implication costs, which may be the responsibility of the parent.
  - their school history, including previous schools attended, particularly if the child was removed from school to be electively home educated and is now seeking a return.
  - any genuine concerns about the admission by either the parent or other agencies (such as social workers, education psychologists and occupational therapists).
- the circumstances of the school(s) including:
  - whether the school has vacancies.
  - whether a school has a particularly high proportion of children with challenging behaviour or previously excluded children.
  - the number of LAC and EHCP children within the school as well as the number of children already admitted to each year group at the school under this Protocol.
  - whether a school is in special measures, has recently come out of them or is otherwise assessed by the local authority as needing support.
- parental preference

In most cases, the most suitable school is likely to be the catchment school as this is near to where the child lives and will present the fewest barriers to attendance, transport issues or costs. There may be better parental support and participation and the child will be better placed to participate in extracurricular activities.

When deciding on a Fair Access placement, the local authority will seek to ensure that no one school is required to admit a disproportionate number of placements of children who have been permanently excluded from other schools, who display challenging behaviour, or who are placed under this protocol.

3. On receipt of a referral, the school has 7 calendar days to respond and raise any concerns. Schools should note that:
  - The fact that the PAN has been reached or exceeded cannot be given as a reason for not admitting a pupil under this protocol.
  - 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.

- Schools must not refuse a child on the basis that the child is being assessed/awaiting assessment for an Education, Health, and Care (EHC) plan.

If none of the schools approached express a willingness to admit, the Admissions team will decide the placement, considering any concerns raised.

4. Once a placement has been decided, the Admissions Team will write to the school to request admission under the protocol.
5. The receiving school must then contact the parent to arrange a start date which must be no later than five school days from the placement being agreed. The school must place the child on the school roll on the agreed start date.
6. All children placed under this protocol 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 within Hampshire whose placements have been agreed either through the local inclusion panels or by Education Centres in conjunction with local schools.
7. If the receiving school refuses to admit the child, the Admissions Team will seek to direct admission. Statutory powers of direction and the rights of schools to object to Schools Adjudicator are set out below.
8. The LA will report on admissions under the Protocol in its annual report to the Schools Adjudicator. Data on the number of Fair Access admissions to schools will also be published to schools via the Information Hub.

### **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, Inclusion Support Service (ISS) 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.

### **Record keeping**

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

### **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 and Previously Looked After Children**

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. Whilst previously looked after children are included within the protocol (category 'm'), the use of the protocol for such children should be unnecessary in most cases. It is expected that local authorities will continue to secure places for previously looked after children promptly to the school that best meets need and for admission authorities to cooperate with this.

### **Children with Education, Health and Care (EHC) Plans**

Children with Education, Health and Care (EHC) Plans will be placed in accordance with the appropriate legislation by the County's SEN team.

### **Powers of Directions**

The School Admissions Code 2021 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:

**3.23 Local authority powers of direction (general)** - A local authority has the power to direct the governing body of a 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.

**3.24** 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.

**3.25** If the case is referred to the Adjudicator, the Adjudicator may either uphold the direction, determine that another maintained school **must** admit the child, or decide not to issue a direction. 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.

**3.26 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.

3.27 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.

3.28 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.

3.29 **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.

### **Reviewing the protocol**

In the event that the majority of schools in the local authority area can no longer support the principles and approach of this protocol, they may initiate a review with the local authority. To trigger a review, schools must submit a request in writing via the Admissions Team ([admissions.team@hants.gov.uk](mailto:admissions.team@hants.gov.uk)). Any request must contain supporting signatures from over 50% of schools in Hampshire. On receipt of such a request, a review will be undertaken, in conjunction with schools, by Hampshire's Admission Forum. The existing protocol will remain binding on all schools in the local area until the point at which a new one is adopted.