

# **Fair Access Protocol**

**For the admission of children and young people to  
schools and academies within Lincolnshire**

**January 2018**

**This protocol should be read in conjunction with the**

**The School Admission Code 2014**

## 1. Introduction

- 1.1 Every child has a legal right to an education until they are no longer statutory school age. There is an expectation that schools admit a child through the normal school admissions process. The School Admissions Code exists to ensure that all school places are allocated in an open and fair way and the processes used to do this will meet the needs of all but a small minority of children seeking a school place.
- 1.2 To support the exceptional circumstances where a school place cannot be secured through the normal admissions procedure, The Education and Inspections Act 2006 introduced a requirement of all local authorities to have a Fair Access Protocol. This requirement is outlined in the School Admissions Code 2014

## 2. Aims of the Protocol

- 2.1 That the Fair Access Protocol is applied to secure a school place for our most vulnerable children. Securing a school place can be more challenging for some children than others. Whatever the personal circumstances of the child, it is considered to be in their best interest to find a suitable school place as quickly as possible. Legislation states that a suitable education is determined by the child's age, ability and aptitude.
- 2.2 The protocol exists to place children in school where, in exceptional situations, the circumstances of the child, or those of the preferred school or both, mean that the **normal admissions process cannot ensure that the child will be admitted.**
- 2.3 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. (School Admissions Code December 2014). Taking into consideration the geographical distribution of Lincolnshire schools, the Local Authority will endeavour to place children under Fair Access as equitably as possible.
- 2.4 Each local authority must have a Fair Access Protocol, agreed with the majority of schools.

### **3. Definition of Challenging Behaviour**

3.1 A child with Challenging Behaviour in Lincolnshire will be identified as such only in the following circumstances:

- ✚ The child has been previously permanently excluded from school
- ✚ The child is currently attending a pupil referral unit in another authority or was last educated in alternative provision before moving to this county
- ✚ The child is undergoing a managed move

### **4. Main principles**

- 4.1 All admission authorities must participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly. There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol, although consideration will be given.
- 4.2 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 consideration under the Fair Access Protocol.
- 4.3 The Fair Access Protocol does not apply to looked after children, a previously looked after child or a child with a statement of Special Educational Needs/Education Health Care Plan naming the school in question, as these children must be admitted
- 4.4 FAP does not apply to children who are being admitted on a School Attendance Order as this is subject to a legal direction and these children must be admitted.
- 4.5 Admission 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. (School Admission Code 3.13)
- 4.6 A Fair Access Protocol must not require a school automatically to take another child with challenging behaviour in the place of a child excluded from the school. (School Admission Code 3.14)

## 5. The Scope of the Fair Access Protocol

- 5.1 The School Admission Code December 2014 states that the following children must be considered under the Fair Access Protocol when having difficulty securing a school place:
- ✚ children from the criminal justice system or Pupil Referral Unit (PRU) who need to be reintegrated into mainstream education ;
  - ✚ children who have been out of education for more than 2 months (excluding school holidays)
  - ✚ children of Gypsies, Roma, Travellers, refugees and asylum seekers;
  - ✚ children who are homeless;
  - ✚ children with unsupportive family backgrounds for whom a place has not been sought
  - ✚ children who are carers; and
  - ✚ children with special educational needs, disabilities or medical conditions (but without a statement).
  - ✚ children with challenging behaviour as defined in 3 above
  - ✚ children without an offer of a school place within a reasonable distance of home as defined in 5.3 below.
- 5.2 Only children placed by the local authority will be identified as Fair Access however, a record of all children who are managed moved between schools will be made.
- 5.3 Where a child has moved house or is returning from EHE and is without an offer of a school place within a reasonable distance of home, the Fair Access Protocol will be used to ensure a child finds a school place within a reasonable distance of home as soon as possible. Reasonable distance is 5 miles for primary age children and 15 miles for secondary age children measured by straight line driving distance. These distances are strictly applied when operating the Fair Access Protocol. These admissions are exceptions to the Infant Class Size limit where relevant, as set out in section 2.15 (e) of the School Admissions Code. For this exception to be valid the Local Authority must confirm to the school that this is the case as explained in 5.4 below.
- 5.4 It is possible that in all the circumstances of the case, including historic patterns of parental preference, the school and the local authority will agree that the exception to the Infant Class Size limit set out in section 2.15 (e) of the School Admissions Code applies. This discussion between the school and the local authority is necessary to comply with The School Admissions

(Infant Class Sizes) (England) Regulations 2012. Such admissions are voluntary over-offers by schools and do not come under the Fair Access Protocol.

- 5.5 **If the child is not in the scope of 5.1, the school will be seen as taking a child who is difficult to place due to capacity within local schools rather than considered within the understanding of 2.3 and therefore will not feature in the fair distribution of children under the protocol.**
- 5.6 An assessment of the effectiveness of the Fair Access Protocol and coordination in the county including how many children have been admitted to each school in the area under the protocol must be included in the Local Authority Annual Report to the Schools Adjudicator. In order to do this it is essential that the admission of unplaced children identified as 'vulnerable' from the lists above are managed by the Local Authority.
- 5.7 The Protocol will be reviewed annually.

## 6. Lincolnshire Procedures

Applications will be processed in accordance with the Mid Year Admission Arrangements for all Maintained and Academy Schools. **There will be an expectation that a child will be admitted through normal admission procedures.** It is reasonable to expect school admissions to request a detailed explanation when schools refuse to admit a child when the cohort is under PAN; DfE has set a clear expectation that schools will provide this information.

Where the **normal admissions process cannot ensure that a child as identified in 5.3 can be offered a place at a suitable school as quickly as possible**, the Admissions team will apply the Fair Access Protocol and record this decision.

- 6.1 Where the **normal admissions process cannot ensure that a vulnerable child as identified in 5.1 can be offered a place at a school as quickly as possible**, the Admissions team will refer the application form to the Reintegration Team.
- 6.2 The Reintegration Team will consider the circumstances of the case and the number of admissions made previously in the academic year under this protocol to the preferred school and will identify the appropriate school based on this information.

- 6.3 The Reintegration team will notify the school and where appropriate, the family, to formalise the admission arrangements.
- 6.4 This process does not affect the parents' statutory rights to appeal for a school place through the normal school admission process.
- 6.5 The governing body of a maintained/Academy school can challenge the decision by notifying the local authority of the reasons for refusal in writing.
- 6.6 The Local Authority is the admission authority for Community and Voluntary Controlled schools and is therefore able to insist that these schools will admit a given child. In the case of Foundation and Voluntary Aided schools the Local Authority has the power of direction. Where agreement cannot be reached with an Academy, the LA can apply for a direction from the Secretary of State via the Education Funding Agency.

## 7. Timescales

- 7.1 For children being placed under the Fair Access Protocol it is expected that a place is secured within **10 school days** of the request being made to the school.

## 8. Retrospective Fair Access Admissions

- 8.1 On occasion, following the admission of a child, information subsequently received following the transfer of the file from the previous school, may identify that, had this information been available at the time of admissions, the application could have been considered as a Fair Access admission by the Local Authority. In such cases, the head teacher of the admitting school may seek a Retrospective Fair Access admission.
- 8.2 The process for such a request is as follows:
  - ✚ The head teacher emails the Reintegration team providing full details of the new information received, evidence of issues which have arisen since the child was admitted to the school (within 4 weeks) and the reason why it is felt that this child should be considered within the context of the protocol.
  - ✚ The request will be considered against the criteria for Fair Access and a decision will be communicated to the school.
  - ✚ The child must remain on the school roll and the placement will be recorded as a Fair Access admission.

## 9. Management Information

- 9.1 A termly report will be provided to Lincolnshire head teachers and shared with a range of support services. This will provide numbers of children admitted to schools through the Fair Access Protocol.

## **10. Specific Details of the Fair Access Protocol**

- 10.1 Schools must not cite oversubscription as a reason for not admitting a child under the Fair Access;
- 10.2 Pupils falling under Fair Access must be given priority for admission over others on a reserve list or awaiting appeal;
- 10.3 Schools must not insist on an appeal being heard before admitting a child under the protocol;
- 10.4 A school will not be directed to take 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 for all children in the school; it will be for the school to provide detailed evidence to demonstrate that this will be the case
- 10.5 Wherever possible, parent's views should be considered but will not override the protocol. If the preferred school is unable to take the child, parents have the right to appeal to their preferred school.
- 10.6 Grammar schools are not expected to admit children who do not meet their qualification as described in their school admissions policy. Parents are not obliged to submit children for testing.
- 10.7 Schools must not refuse to admit on the basis of the pupil's poor behaviour elsewhere unless they have been permanently excluded twice or has previously been permanently excluded from that school;
- 10.8 Schools must not refuse on the grounds that a child requires reasonable adjustments to be made for them
- 10.9 Schools must not refuse on the basis that there is a poor match of examination subjects/boards as the Code prohibits consideration of previous curriculum
- 10.10 School must not refuse on the basis that the child should be placed in Alternative Provision in their view