

## **In-Year Fair Access Protocol**

### **Why is a Fair Access Protocol Required?**

All admission authorities must have Fair Access Protocols in place and all schools must participate in the protocol in order to ensure that unplaced children are offered a place at a suitable school as quickly as possible. This includes admitting children to schools that are already full.

Admission authorities and Local Admission Forums are asked to ensure that no school, including those with places available, is asked to take an excessive or unreasonable number of children who have been excluded from other schools or have challenging behaviour. They must also ensure that all children who arrive outside the normal admission round who may have difficulty securing a place are covered by a protocol.

Agreement was reached with the Secondary Headteachers Forum during November 2005 that the way forward was to develop the role of the Headteachers' Panels (District Inclusion Partnerships) to take overall charge of the placement of children where a school place could not be found quickly. These partnerships deal successfully with a significant number of difficult issues, particularly with regard to excluded or children who are close to permanent exclusion.

Along with devolved funding and responsibility for alternative provision, an agreed protocol can encourage schools to work together in partnership to improve behaviour and tackle persistent absence.

### **Aims of the Fair Access Protocol**

The Fair Access Protocol is designed to:

- Be fair and transparent.
- Acknowledge the need of young people who are not on the roll of any school to be dealt with quickly and sympathetically.
- Recognise the success of proactive work already being undertaken cooperatively between schools to prevent exclusion, and to support children, e.g. through managed moves.
- Reduce the time that these children spend out of school.
- Ensure that schools admit children with challenging educational needs in a manner which takes account of the proportion of children they have already admitted through the District Inclusion Partnership (DIP) process.

### **Who is covered by the Fair Access Protocol?**

It is a legal requirement that "children in care" be given first priority for admission to all schools within their oversubscription criteria.

Children with Statements of Special Educational Need are not covered by this Protocol as their needs are considered separately and are covered by specific guidance in the SEN Code of Practice.

Although there is some evidence that at times other children not listed above experience difficulties in attaining a school place, there is already an agreed procedure for dealing with their applications that should be adhered to in all cases including an independent admission appeals system. This process is administered by the School Admissions and Transport Service.

The children covered by the Protocol will be the ones who are vulnerable and for whom it is even more important that they be admitted to a school quickly.

The Fair Access Protocol in Staffordshire covers children who fall into one of the following categories:

- they have been permanently excluded from their previous school;
- they are 'children in care';
- they are returning to maintained education from secure units; or
- they are deemed vulnerable due to their circumstances
- e.g. history of poor attendance or fixed term exclusions, new arrivals to the UK
- they are attending PRUs and need to be reintegrated back into mainstream education;
- they have been out of education for longer than one school term;
- they are children whose parents have been unable to find them a place after moving to the area, because of a shortage of places;
- they have been withdrawn from schools by their family, following fixed term exclusions and unable to find another place;
- they are children of refugees and asylum seekers;
- they are homeless children;
- they have unsupportive family backgrounds, where a place has not been sought;
- they are known to the police or other agencies;
- they are without a school place and with a history of serious attendance problems;
- they are traveller children;
- they are carers;
- they have special educational needs (but without a statement);
- they have disabilities or medical conditions;
- they are returning from the criminal justice system; and
- they are children of UK Service personnel and other Crown Servants.

### **Main Principles of the Fair Access Protocol**

- All schools take part in the Fair Access Protocol.
- There is a general expectation that if a child moves into an area, he/she is admitted to the local catchment area school unless there are

very exceptional reasons as to why this should not be the case. Exceptional reasons would not include having EAL. Having reached the admission number is not usually considered to be very exceptional unless other circumstances apply.

- Schools cannot cite oversubscription as a reason for not admitting pupils under the protocol.
- Children considered under this protocol have priority for admission over others on a waiting list or awaiting an appeal.
- Schools cannot refuse to admit a child who has been denied a place at that school at appeal, if the protocol identifies that school as the one to admit the child.
- It is essential that all children are found places quickly. All parts of the Directorate should be prepared to deal with school admission requests as a matter of urgency.

## **How will the Fair Access Protocol Operate?**

The majority of pupils are already admitted through routine admission procedures operated by the School Admissions and Transport Service. If parents approach the Local Authority for a school place and there appear to be issues that could make the school reluctant to admit, then the procedure is set out in the action table included within this document.

Each case will be considered on an individual basis and where appropriate may be referred to the District Inclusion Partnership (DIP), which will make a recommendation. In exceptional circumstances, District Inclusion Partnership's may consider that particular pupils would be better placed in an alternative to a school placement, such as a short-stay school (PRU), a local FE College, or a place provided by a voluntary organisation.

Where Partnership's work well, shared ownership at local level means all services share information and take joint responsibility for placing children in the District. There are now eight District Inclusion Partnerships operating across the county whose function is the prevention of permanent exclusions, managed moves and other strategies to support fair access for young people. These Partnerships also play a strategic role in developing and supporting ways of working in each district regarding Inclusion. It is not necessary for all the areas to have identical practice however, there does need to be common outcomes for the children involved. It is expected that schools will organise a meeting with District Support Staff to discuss the arrangements for the child's admission if necessary.

## **What happens where no panel exists?**

Where there is no DIP then a procedure exists for ensuring admission of children within a reasonably short time scale as follows:

### **Voluntary Aided and Foundation Schools**

Where a foundation or voluntary aided school has been approached by the Local Authority and has refused to admit the child concerned, parents must be advised of their decision and provided with a right of appeal to an independent appeals panel. Details must be provided to the School Admissions and Transport Service. An officer of the School Admissions and Transport Service will then liaise with the Inclusion Manager over the appropriate course of action. This will either be the issuing of a direction letter or an alternative placement found.

### **Community and Voluntary Controlled Schools**

In all cases the decision as to whether or not a child can be admitted to a community or voluntary controlled school will be made by the Local Authority who is the admitting authority. If a school feel unable to admit a child, the school will need to provide full reasons for this refusal to the School Admissions and Transport Service. An officer of the School Admissions and

Transport Service will then liaise with the Inclusion Manager over the appropriate course of action. This will either be the issuing of an instruction to admit letter or a refusal letter to parent advising them of their statutory right of appeal. Where the local authority refuses to admit the child an alternative placement must be found.

### **Monitoring and Review of the Protocol**

The School Admissions and Transport Service will monitor the number of children referred to DIP under this protocol and provide statistics/reports to schools and others.

The Staffordshire Local Admission Forum has a duty to monitor how well this protocol works.

### Fair Access Protocol - Table of Actions

6.	If no DIP exists. <b>Actions</b>	<b>Notes</b>
1	<p>If parents approach a school requesting a place, they should be given an application form to complete.</p> <p>The school must: admit the child, or</p> <ul style="list-style-type: none"> <li>- community and voluntary controlled schools: indicate in writing, detailed reasons why they feel unable to accommodate the child</li> <li>- foundation and aided schools: refuse in writing and provide a right of appeal with copy to School Admissions and Transport Service, or refer the child to the DIP (where available)</li> </ul>	<p>Officers will consider the case, including the reasons for the schools refusal and make a recommendation.</p> <p>An application form for use by parents is available from the School Admissions and Transport Service or via the intranet / internet.</p> <p>A decision will then be taken as to whether or not it is appropriate to direct admission or identify an alternative placement.</p> <p>If a school considers that they have admitted a vulnerable child outside of this protocol they should inform the District Inclusion Partnership (DIP) / Inclusion Officer so that this may be recorded.</p> <p>On arrival of the application form/letter of notification to refuse, the number of days for the admission of the child begins to be counted.</p>
2	<p>An officer of the School Admissions and Transport Service consults the Inclusion Manager to determine if the case should be covered under the protocol.</p>	<p>It may be decided that a referral should be made to the DIP through the Fair Access Protocol or to the Chair of DIP for power to act between meetings.</p> <p>If it is decided that the case is not covered under the protocol then the normal admissions procedure will apply.</p>
3.	<p>The DIP should decide which school is to admit, a meeting should then be arranged between school, parent and others to agree an admission plan. If the child cannot be placed within 10 days, go to step 4.</p>	<p>If case is referred to the DIP a decision should be reached within 10 school days.</p> <p>The DIP may recommend that alternative provision is required (this would usually be in a short-stay school (PRU) but this will usually require entry onto a school roll with a reintegration planned in most cases.</p>
4.	<p>If the school does not admit following the recommendation of the DIP, the school will be asked to make a detailed written case for not admitting if they have not already done so.</p>	<p>Officers will consider the case, including the reasons for the schools refusal and make a recommendation.</p> <p>A decision will then be taken as to whether or not it is appropriate to direct admission or refer back to the District Inclusion Panel for an alternative placement.</p>
5.	<p>If it becomes clear within the operation of the procedure at any stage that a place is not to be offered at a school requested by the parents, parents must be notified and given a right of appeal to an independent admission appeal panel.</p>	<p>Officers will consider the case, including the reasons for the schools refusal and make a recommendation.</p> <p>A decision will then be taken as to whether or not it is appropriate to direct admission.</p>

## Rules Governing Directions

### CHILDREN IN CARE

**Power:** In relation to a Child in their care, a Local Authority may direct the child's admission into the school of another Admission Authority, provided the child was not permanently excluded from the school.

**Legal Authority:** Section 97A of the School Standards and Framework Act 1998 (SSAFA 1998).

**NB:** If their circumstances comply with the Education (Infant Class Size) (England) Regulations 1998, a child in care can be admitted to an infant class, above the class size limit.

**Procedure:** Before deciding to give a direction, the Local Authority must:

- consult with Admission Authority of the school that it is proposing to specify; and
- consider representations from the Admission Authority, supplied within seven (7) days of consultation.

If the Local Authority wishes to proceed with the direction, it must:

- give written notice of its intention on the school's:
  - Admission Authority;
  - Local Education Authority, if it is not also the school's Admission Authority;
  - headteacher; and
  - governing body, if it is a community or voluntary controlled school.
- wait seven (7) days from day on which the written notice was served, to enable any of the above to refer the matter to the Schools Adjudicator; and
- only issue the direction to those listed in paragraph (a):
  - at the end of that period; or
  - once the referral to the Schools Adjudicator has been resolved.

**Legal Authority:** Section 97A to 97C of the SSAFA 1998 and Section 25(3A) of the SSAFA 1998.

## OTHER CHILDREN

**Power:** In relation to any child within their area, a Local Authority may direct that the child is admitted into the school of another Admission Authority, where:

- the child has been refused admission to the school;
- the child was not permanently excluded from the school;
- their admission would not cause class size prejudice;
- the school is a reasonable distance from the child's home; and
- the school provides a suitable education.

**Legal Authority:** Sections 96 and 86(3) of the SSAFA 1998.

**Procedure:** Before deciding to give a direction, the Local Authority must consult with:

- the parent of the child; and
- the governing body of the school that it is proposing to specify.

If the Local Authority wishes to proceed with the direction, it must:

- give written notice of its intention on the school's:
  - headteacher; and
  - governing body.

wait fifteen (15) days from the day on which the written notice was served, to enable either of the above to refer the matter to the Schools Adjudicator; and

- only issue the direction to those listed above:
  - at the end of that period; or
  - once the referral to the Schools Adjudicator has been resolved.

**Legal Authority:** Section 97 of the SSAFA 1998.

## COMMUNITY AND VOLUNTARY CONTROLLED SCHOOLS

**Duty:** The governing body of a community or voluntary controlled school must implement any decision relating to the admission of pupils to their school, taken by or on behalf of the school's Admission Authority; this includes a decision to admit in order to comply with parental preference.

**Legal Authority:** Sections 86(2) and 88(1)(A) of the SSAFA 1998.

**Complaints:** If the governing body of a community or voluntary controlled school does not wish to implement the decision of the Admission Authority, a complaint about the matter can be referred to the Secretary of State by either the Admission Authority or the governing body.

**Legal Authority:** Sections 495 and 496 of the Education Act 1996.