

Fair Access Protocol

Updated September 2018

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1. Background

- 1.1 The statutory School Admissions Code (December 2014), requires each local authority to have a Fair Access Protocol. The Code states that, “Each local authority must have a Fair Access Protocol, agreed with the majority of the 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 have challenging behaviour.”
- 1.2 The protocol is designed to ensure that no school, including those with available places is asked to take an unreasonable number of children who might be considered ‘hard to place’. It provides a mechanism for fairer distribution of such pupils, whilst recognising that they should not necessarily be denied access to their catchment, nearest or most suitable school if it is full.
- 1.3 All admission authorities (Academies, Community, Voluntary Aided, and Voluntary Controlled schools) must participate in the Fair Access Protocol in order that unplaced children are allocated a school place quickly. This includes admitting children above the published admission number where the year group is already full.
- 1.4 The School Admissions Code states that Fair Access Protocols should be triggered when a parent of an eligible child has not secured a school place under in-year admission procedures. However, the Fair Access Protocol in Stockport aims to be proactive in identifying potentially ‘hard to place’ or vulnerable pupils at an early stage, in order to reduce the potential length of time such pupils are without an education placement.
- 1.5 The Protocol does not apply to looked after children, previously looked after children or children with Education Health & Care Plans. Applications for children with Education, Health & Care Plans are considered through a separate procedure.

2. Main Principles

- 2.1 Where a governing board does not wish to admit a child with challenging behaviour or other complexities 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. In all other cases, schools and academies will continue to admit pupils who apply for an available place, under normal admission arrangements.

- 2.2 Schools 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.
- 2.3 Schools cannot cite over-subscription as a reason for not admitting a pupil under the protocol.
- 2.4 Pupils seeking a school place under the Protocol will be given priority over pupils on waiting lists or awaiting an appeal.
- 2.5 When considering transfers between schools within Stockport, stability of placement will be given priority by all schools. Schools will be expected to evidence how they have attempted to resolve the issues that have led to the request for an in-year transfer.
- 2.6 Schools must respond immediately to requests for admission so that the admission of the pupil is not unduly delayed. Headteachers and governing boards of schools which are their own admission authorities are asked to agree a procedure whereby the Headteacher, in consultation with the Chair of Governors, is empowered to make immediate decisions about the placement of a pupil so that there is not a further period of absence from school.
- 2.7 For all admissions under the protocol it is essential that the receiving school is provided with relevant information from the previous school so that appropriate provision can be made.
- 2.8 Where there is evidence that mainstream education may not be suitable for a child, the local authority will consult parents and other agencies and seek to provide appropriate alternative provision where appropriate/available.

3. Identification of Fair Access Pupils

- 3.1 A pupil placed under the Fair Access Protocol is not necessarily a challenging pupil. Any child in this category is however potentially a vulnerable child as long as an appropriate educational placement has not been secured.
- 3.2 The local authority and secondary schools have agreed the following list of categories to identify a child as potentially 'hard to place' or 'vulnerable'. These are not meant to be exhaustive, but provide an example of pupils who may be considered under the protocol:
- Permanently excluded pupils.
 - Children requiring reintegration into mainstream education from Pupil Referral Units (other than those permanently excluded).
 - Children with a history of behaviour difficulties.
 - Children returning to the area from a specialised outside placement or secure accommodation who are not on a school roll.
 - Children who have been out of education for longer than one term, *defined as a child who is not on a school roll, has not been offered a place at a school or suitable education provision, and is not known to be electively home educated.*
 - Children without a school place and with a history of serious attendance problems.

- Children moving into the area or transferring schools with less than 60% attendance over the previous two terms at their last school.
- Key Stage 4 pupils from the January of Year 10.
- Children for whom it has been identified would benefit from a managed transfer.
- Children who have applied to return to mainstream schooling following a period of elective home education. *Applicants will be automatically placed at their previous school.*
- 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 known to be young carers.
- Children with special educational needs, disabilities or medical conditions. *Identified as children recorded as SEN Support at their current or previous school; or in the case of medical conditions, children with an individual health care plan at their current or previous school.*

3.3 **Looked after children and children with Education, Health and Care Plans**

Schools cannot refuse admission of looked after children or previously looked after children, however the number of these admissions to each school are taken into account when considering and agreeing future Fair Access Protocol applications.

4. **Process**

- 4.1 The Education Access Service will consider whether an in-year application falls within one of the categories listed in 3.2. The application will then be processed under Level 1 or Level 2, depending on the category identified:

Level 1 Applications	Level 2 Applications
<ul style="list-style-type: none"> ▪ Key Stage 4 pupils from the January of Year 10, ▪ Children who have applied to return to mainstream schooling following a period of elective home education. <i>Applicants will be automatically placed at their previous school,</i> ▪ 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 known to be young carers, ▪ Children with special educational needs, disabilities or medical conditions. 	<ul style="list-style-type: none"> ▪ Permanently excluded pupils, ▪ Children requiring reintegration into mainstream education from Pupil Referral Units (other than those permanently excluded), ▪ Children with a history of behaviour difficulties, ▪ Children returning to the area from a specialised outside placement or secure accommodation who are not on a school roll, ▪ Children who have been out of education for longer than one term, ▪ Children moving into the area or transferring schools with less than 60% attendance over the previous two terms at their last school, ▪ Children without a school place and with a history of serious attendance problems, ▪ Children for whom it has been identified would benefit from a managed transfer.

4.2 **Level 1 applications**

The Education Access Service will consider the application and agree whether it meets one of the Level 1 Fair Access Protocol criteria. Applications agreed under Level 1 will be allocated a school taking account of the number of in-year and Fair Access admissions to each school (including looked after children or children with Education, Health & Care Plans), and parental preference (see 4.10). Consideration will also be given to what the most appropriate school might be in terms of the needs of the pupil.

4.3 The following process will then be applied:

- a) The Education Access Service will notify the allocated school of an application agreed under Level 1 of the Fair Access Protocol by email, followed up by a letter.
- b) The allocated school will be expected to confirm within 5 school days that a place can be offered to the pupil, following which the Admissions Support & Advice Team will send an offer letter to the parents, copied to the school.
- c) If the identified school does not respond to the request for admission under Level 1 within 5 school days, the local authority will assume that the pupil can be offered a place and an offer letter will be sent to the parents, copied to the school.
- d) The school will be expected to arrange admission as soon as possible and confirm the date on roll with the Education Access Service.
- e) In exceptional circumstances, where a school has genuine reasons to decline the admission request under Level 1, the Headteacher can refer it to the local authority's Fair Access Panel for discussion by the Panel under Level 2. This request must be made within 5 school days of the school being notified of the Level 1 allocation.

4.4 Level 1 applications and allocations will be recorded and reported to the Fair Access Panel at the next scheduled meeting.

4.5 **Level 2 applications**

Level 2 applications will be referred to the local authority's Fair Access Panel for consideration and agreement as to whether the application meets the Fair Access Protocol criteria. The Panel will allocate a school place taking account of the number of in-year and Fair Access admissions to each school (including looked after children or children with Education, Health & Care Plans), and parental preference (see 4.10). Consideration will also be given to what the most appropriate school might be in terms of the needs of the pupil.

4.6 The following process will then be applied for Level 2 applications:

- a) The Education Access Service will notify the allocated school of an application agreed under Level 2 of the Fair Access Protocol by email, followed up by a letter.
- b) The allocated school will be expected to confirm within 5 school days that a place can be offered to the pupil, following which the Admissions Support & Advice Team will send an offer letter to the parents, copied to the school.

- c) If the identified school does not respond to the request for admission under Level 2 within 5 school days, the local authority will assume that the pupil can be offered a place and an offer letter will be sent to the parents, copied to the school.
- d) The school will be expected to arrange admission as soon as possible and confirm the date on roll with the Education Access Service.
- e) The Headteacher is given the opportunity to express any views or concerns within the 5-day timescale, but an admission of a pupil meeting one of the Fair Access Protocol criteria would not ordinarily be refused unless the school could demonstrate exceptional reasons as to why the child should not be admitted. In cases where admission cannot be agreed following discussion between the local authority and the Headteacher, the case will be discussed at the next Secondary Panel for Inclusion meeting and consideration given to directing admission if appropriate (see section 6).

- 4.7 Whilst parental preference will be considered, there is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.
- 4.8 Parents have the right to appeal following a decision to refuse their child a place at any school for which they have applied and this also applies to refusals made under the Fair Access Protocol.

5. Allocation of Schools

- 5.1 Fair Access Protocol admissions to secondary schools will be managed on a 'fair share' basis. The Education Access Service and Fair Access Panel will determine which school should be allocated a Fair Access application, taking account of parental preference and the number of pupils each school has already admitted in the relevant year group and in total through the Fair Access Protocol. Consideration will also be given to other in-year admissions and the number of Looked After Children and children with Education, Health & Care Plans at each school.
- 5.2 The size of each school is an important factor and the Education Access Service and Fair Access Panel aims to achieve a similar percentage of pupils admitted via the Fair Access Protocol across each of the maintained secondary schools in the local authority area. This data is updated before and after every Fair Access Panel meeting.
- 5.3 Whilst pupils can be admitted to schools above the published admission number under the Fair Access Protocol, consideration will be given to identifying an alternative school if a school is significantly oversubscribed in the relevant year group.

6. Powers of direction

6.1 Local authority powers of direction

The local authority has the power to direct the admission authority of 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.

- 6.2 Before deciding to give a direction, the local authority must consult the governing board of the school and the parent of the child. If following consultation, the local authority decides to direct, it must inform the governing board and Headteacher of the school.
- 6.3 The governing board can appeal by referring the case to the Schools Adjudicator within 15 days. If it does this, the governing board must inform the local authority. The local authority must not make a direction until 15 days have passed and the case has not been referred.
- 6.4 If referred to the Adjudicator, the Adjudicator can either uphold the direction or determine that another maintained school must admit the child. The Adjudicator's decision is binding.
- 6.5 **Secretary of State's power of direction (Academies)**
Where a local authority considers that an Academy can 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.

7. Monitoring and Review

- 7.1 The Fair Access Panel will monitor the admission of all secondary-aged pupils under the protocol. The data will be maintained by the Education Access Service.
- 7.2 Data on pupils admitted to each school via the protocol will be reported to Secondary Headteachers following each Fair Access Panel meeting. A more detailed report will be provided to Secondary Headteachers and school leaders responsible for admissions on a half-termly basis.
- 7.3 The Fair Access Protocol will be reviewed following every revision of the statutory School Admissions Code and periodically to ensure it adequately meets the needs of children and schools in the area. As the protocol must be agreed by the majority of schools within the area, Headteachers may also request a review at any time.

Notes:

- *The Secondary Panel for Inclusion (SPI) acts as the local authority's Fair Access Panel in the secondary phase.*
- *For further information about the Fair Access Protocol, please contact the Education Access Service on 0161 474 3971 or 3972*