

Cambridgeshire County Council

FAIR ACCESS PROTOCOL

Introduction

The Department for Education (DfE) published a revised School Admissions Code 2021 (“the Code”) in May 2021, following a consultation exercise which ended in October 2020.

The 2021 Code aimed to improve the operation of the admission process **to ensure that vulnerable children are out of school for as short a time as possible**. It is the responsibility of admission authorities to act in accordance with the Code and to ensure compliance with the Code’s new requirements.

This Protocol applies only to children who are resident in Cambridgeshire and to Cambridgeshire schools, although it may be applied to children resident in Cambridgeshire seeking a place outside Cambridgeshire, if the admitting authority is prepared to accept this.

The Protocol does not apply to special schools.

The purpose of the Protocol is to describe how vulnerable children who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible, minimising the time the child is out of school.

The Protocol provides a fair and transparent system to ensure that all schools share the collective responsibility of helping the most vulnerable children, by admitting their fair share of children being placed via the Fair Access Protocol.

Reminder of the key changes in the FAP Code (2021)

Details of the existing requirements of the FAP can be found in paragraphs 3.8 – 3.22 of the Code (2021):

There is now a standard definition of ‘**challenging behaviour**’ and it will be for admission authorities to ensure that, prior to refusing a child under normal in-year admissions and referring a child for consideration under the FAP, they have evidence to support the definition of challenging behaviour as described (Footnote 76 to paragraph 3.10).

Admission authorities must consider their duties under the Equality Act 2010 when refusing on the grounds of challenging behaviour if the consequence of their disability is challenging behaviour (Footnote 77 to paragraph 3.10).

Admission authorities can take account of reports from previous schools about children’s past behaviour as stated in paragraph 1.9(g) solely for the

purpose of making a decision on whether it would be appropriate to refuse admission based on challenging behaviour (not unplaced) as described in paragraph 3.10. (Footnote 78 paragraph 3.10).

Once the FAP has been agreed, all admission authorities in the area must participate in it. Participation includes the requirement for admission authorities to provide a representative with delegated responsibility who is authorised to participate in discussions, make allocation 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.

Local authorities must share information with admission authorities, giving reasonable notice of Fair Access (FA) meetings and information about how and when discussions around the placement of children via the Protocol will take place (Paragraph 3.15).

The list of children to be included in FAP was extended. The groups of vulnerable or hard to place children to be included was standardised and contains the only categories who will be supported through FAP – therefore there will be no local variation; all LAs must include the same groups of unplaced children in their FAPs and these children should only be considered under the FAP ***once it is demonstrated that reasonable measures have been taken to secure a place through the usual in-year admission process (Paragraph 3.17).***

Allocation decisions must be made within **20 school days** from the date when the child was referred to the FAP and arrangements should be made by admission authorities for the child to start as soon as possible (paragraph 3.21.)

Eligibility for the Fair Access Protocol does not limit a parent's right to make an in-year application to any school for their child. Admission authorities **must** process these applications in accordance with their usual in-year admission procedures (as set out in paragraphs 2.23-2.31. Admission authorities must **not** refuse to admit such children on the basis that they may be eligible to be placed via the Fair Access Protocol. The parent will continue to have the right of appeal for any place they have been refused, even if the child has been offered a school place via the Fair Access Protocol (Paragraph 3.18).

There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol, but parents' views should be taken into account (Paragraph 3.19).

Fair Access Protocols should seek to place a child in a school that is appropriate to any particular needs they may have.

The Fair Access Protocol must not require a school automatically to admit a child via the Fair Access Protocol, in place of a child permanently excluded from the school (Paragraph 3.20).

Principles

Regular Fair Access Panel meetings will be held to discuss the cases with representatives from schools in the area, who are authorised to make decisions regarding appropriate school placements.

The operation of the Protocol is in accordance with the requirements of the School Admissions Code (2021) and related guidance.

The successful operation of Fair Access Protocol is incumbent on the willingness of all schools to work together with a genuine ethos of collaboration and co-operation to:

- accept collective responsibility for the vulnerable children living in their local community and their right to education,

- act with a sense of urgency to minimise a pupil's time out of education – allocating appropriate school places to vulnerable children within 20 school days of them being identified.

- ensure all schools admit their fair share of unplaced vulnerable children.

- work together restoratively in an open and honest way, offering constructive support and challenge to each other.

Schools must work together collaboratively, considering the needs of the child and the needs of the school.

When securing a place for a child through the agreed Protocol, all schools and pupils must be treated in a fair, equitable and consistent manner.

The Fair Access Protocol sits outside of the normal admissions process and therefore:

- Schools cannot cite oversubscription as a reason not to admit a child who meets the criteria for placement under the Protocol. The school is, therefore, able to exceed their Published Admission Number (PAN) in order to offer a place for such pupils.

- Formal admission appeals for hard-to-place children are not required before a pupil may be admitted under the Protocol and further, a pupil who has been denied a place at a school by the Independent Appeal Panel may still be admitted by that school, if it is identified under the terms of the Protocol, as being the most appropriate school for the child.

Children who meet the criteria for placement under the Protocol must be given priority for admission above other pupils who may be on the school's waiting list.

The parent retains the statutory right of appeal against the decision of their preferred school, to refuse their child a school place.

The parent retains the right to submit an in-year application for a place at an alternative school(s).

No school, including those with available places, should be asked to take a disproportionate number of children who have been excluded from other schools, who have challenging behaviour or who are placed via the Protocol.

As agreed locally, a 'disproportionate number of children' is determined through consideration of the following factors:

- Proportionality of allocations a school has taken against a school's size and admission number.
- Pressure on resources; to acknowledge the greater impact of admitting additional pupils via the fair access process.
- Any genuine concerns about the admission, for example a previous serious breakdown in the relationship between the school and the family, or strong known links to existing students or valid potential risks to existing students, where the child to be admitted.

Cambridge City established practice regarding the allocation of FAP cases based on an agreed data set and dashboard will support the FAP protocol.

There is no defined limit on the number of allocations that will be made per school. Schools can expect to be approached for more than 1 child per year group, if felt to be appropriate.

Fair Access Determination

All in-year applications submitted **must** be processed according to the normal in-year procedures. An exception to this is where a child has been permanently excluded from two or more schools as there is no requirement for an admission authority to comply with parental preference for a period of two years from the last exclusion.

The twice excluded rule does not apply to the following:

Children who are below compulsory school age at the time of the permanent exclusion.

Children who have been reinstated following permanent exclusion.

Children whose permanent exclusion has been considered by a review panel, and the review panel made the decision to quash a decision not to reinstate them following the exclusion.

Children with an Education, Health and Care Plan naming the school.

Where an admission authority receives an in-year application and it does not wish to admit the child because it has good reason to believe that the child may display challenging behaviour, it **may** refuse admission and refer the application to the Fair Access Panel.

Challenging Behaviour

The Code defines challenging behaviour as '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 or other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment' (Paragraph 3.10).

Challenging Behaviour is not reasons on their own for considering that a child may display challenging behaviour:

Poor attendance elsewhere.

A defined number of suspensions, without consideration of the grounds on which they were made.

Special educational needs; or having a disability.

However, a child with challenging behaviour may also be disabled as defined in the Equality Act 2010. When considering refusing admission on these grounds, admission authorities must consider their duties under that Act (Footnote 77).

To evidence that a child has challenging behaviour, the Fair Access Panel will request information from the previous school regarding the child's previous history, solely for the purpose of deciding on whether it is appropriate for the admission authority to refuse admission on the grounds of challenging behaviour.

An admission authority should **only** rely on the provision in paragraph 3.10 if it has a particularly high proportion of:

Children with challenging behaviour or previously permanently excluded pupils on roll compared to other local schools.

AND

It considers that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources.

All applications must go through the complete in-year admissions process and, if an admission authority wishes to refuse admission on the grounds of challenging behaviour, the family **must** receive their formal refusal and statutory right of appeal.

The application will then be referred to the Fair Access Panel by the school for discussion around the admission authority's decision to refuse and whether this has been made correctly.

If the decision by the admission authority is to refuse admission, the admission authority would have to provide evidence in writing to the Fair Access Panel.

The Fair Access Panel will review the information and school data using the dashboard for all schools in the local area, so a comparison could be made to the position of other local schools. The Fair Access Panel will then discuss the admission authority's decision to refuse admission and make a decision whether to accept or reject this.

The provision in paragraph 3.10 cannot be used to refuse admission to looked after children, previously looked after children and children who have Education, Health and Care Plans naming the school in question.

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.

If the Fair Access Panel reject the decision of an admission authority to refuse admission on the grounds of challenging behaviour, the child must be offered a place immediately and placed on roll following the parent accepting the school place.

Fair Access – Qualification

Fair Access Protocols may only be used to place the following groups of vulnerable and/or hard-to-place children, 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.

For example, where an application has been made to at least one school and this has been refused, or the Local Authority has confirmed there are no available places at any school within a reasonable distance.

Paragraph 3.17 of the Code sets out the criteria for Fair Access consideration as:

- 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 FAP
- 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 carer

- g. children who are homeless
- h. children in formal kinship care arrangements as evidenced
- i. children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers
- 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 this Code
- k. children for whom a place has not been sought due to exceptional circumstances as decided by the Local Authority based on the circumstances of the case*
- 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.
- m. previously looked after children for whom the local authority has been unable to promptly secure a school place.

- *Examples of Criterion K from January 2025

- Children permanently excluded
- Children who are currently attending an appropriate alternative provision but are deemed suitable for a school placement to be allocated
- Children returning from Elective Home Education – a school application made within the same academic year as the parent removed the child to Home Educate or within the last term of the previous academic year and where a child is not offered a place via in year admission. Where there are challenging behaviours, these should be presented to the fair access panel to aid decision making.
- Retrospective admissions -In cases following the admission of a pupil through normal In Year processes and information is subsequently received from the previous school or being demonstrated by the pupil within the first 15 weeks, which had this information been available at the time of admission the pupil would have been considered under FAP Challenging Behaviour, the School representative can request a retrospective FA admission to be recorded by making a FAP application

Looked after children

Looked after children are not a listed group of children in the Fair Access Protocol. The Code recognises that Looked After Children are extremely vulnerable and the highest priority must be given to this group in the admission arrangements of all state schools.

Operation of the Fair Access Protocol

The Fair Access Protocol operates alongside the following:

Protocol to determine placement following Permanent Exclusion

In Year Admission Arrangements for all Maintained and Academy Schools

Managed Moved arrangements.

Once it has been determined that an in-year application meets the criteria for Fair Access consideration, the Fair Access Panel will seek as much information as possible about the child, from the previous school/education provision and/or other professionals.

Fair Access panel meetings will be conducted to allow relevant local schools to participate in the discussions and the most appropriate school to be identified.

All schools are required to identify a representative to attend panel meetings who:

Will contribute to the solution focussed discussion to identify the school to be allocated for the child.

Is authorised by the school's admission authority to make decisions on accepting children via the Protocol.

Will arrange the timely admission of pupils when agreed by the panel.

All schools under consideration for the placement of a pupil will be invited to submit their comments. This will enable the panel to make informed decisions based upon consistent and relevant information. All information must be given due consideration by the panel, although there can be no guarantee that this will preclude a school from being allocated the pupil.

To secure timely education for all children, the panel considering each referral must determine a placement on the basis of the information available at the meeting. The panel must decide on the day, where the pupil will be allocated.

The panel's decision will be final – there is no appeal process. The Local Authority may pursue a direction to ensure that pupils are admitted in accordance with the decision.

Schools cannot make representation at a fair access panel for non-admittance of pupils on the basis that they are full in the relevant year group, unless this would create significant health and safety risks. It is essential that schools share responsibility for admitting vulnerable children and that fairness is the abiding principle.

The application will be added to the agenda for the next available Fair Access Panel meeting. The agenda for the meeting will be circulated to the panel members in advance of the meeting.

Fair Access Panel discussions will consider the needs of the child and those of the school, when identifying the most appropriate school placement.

The following considerations will be made when making placement decisions:

Parental preference – there is no duty to comply, but it will be taken into account.

Fair Access admissions – the number of children allocated previously to a particular school during the current term or academic year, particularly in the same year group.

Schools previously attended – consideration will be given to any previous school attended and whether there was a serious breakdown in relationship between the school and the family, whether it was a failed managed move, any relevant information that would potentially have a negative impact on the success of the child's placement.

Reasonable distance – consideration will be given to the home to school distance to ensure it is reasonable and within the terms of the Home to School Transport Policy guidelines.

School circumstances – as described within the code where the school has a particularly high proportion of children with challenging behaviour or previously excluded pupils on roll in comparison to other schools; and • it believes admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resource.

Following the Fair Access Panel meeting, a formal letter (together with any documents held that provide further information/history of the child) will be sent to the identified school. It is expected that following receipt of the formal letter, the identified school make contact with the parent, and any professional officer involved where applicable, to arrange a meeting to discuss the admission, without delay and to admit the child on acceptance of the place by the parent.

Fair access placement decisions are made having reviewed all the relevant information and in discussion with all local schools in the area and local authority officers and professionals. It is therefore not expected that a request for admission under the Fair Access Protocol will be rejected by the school being approached.

All allocations made will be recorded centrally and the data will be shared with all schools on a termly basis.

Transport –

The Home to School Travel Assistance Policy applies to placements made under the Protocol. The Local Authority is required to provide free transport for all pupils of compulsory school age (5 to 16) to their *nearest suitable** school, when it is 2 miles or more (for primary age children) or 3 miles or more (for secondary age children).

*This is determined by the Authority as the nearest school with places available, that provides education appropriate to the age, ability and aptitude of the child and considering any SEN the child may have.

Where the parents express a preference for their child to attend a school that is not the school designated by the Local Authority, and a place is offered, the parents will be responsible for making and funding the travel arrangements to and from that school.

In line with the requirements of the Education Act 2006, the Local Authority will provide free transport for all young people of secondary school age living in low income families **if** they are eligible for free school meals or their parents are in receipt of the maximum Working Tax Credit, to one of their three nearest schools, more than 2 miles away but no more than 6 miles; and the nearest suitable school preferred on the grounds of religion or belief, more than 2 miles away but no more than 15 miles.

Where transport assistance is agreed it will be provided at the beginning and the end of the school day, to and from the child's home address only. It will not be made available to enable the child to attend before and after school clubs or revision sessions. Should a child move house after a managed move or fair access placement has been agreed, a review will be undertaken of the previously agreed transport arrangements which may conclude that the parent will resume responsibility for this transport.

The type of transport assistance provided will depend on the services already operating within the area. Travel options include a travel pass on an existing public/Council contract service, the offer of parental mileage, or a personal transport budget (to assist families in making their own arrangements). The Local Authority will determine the most appropriate means of transport on a case-by-case basis.

The Home to School Transport Policy can be viewed at www.cambridgeshire.gov.uk/education/transport

Admission Appeals

The appeals process is entirely independent of the Fair Access process.

Regardless of an application being referred to the Fair Access Panel, the parent retains their right to apply for and appeal for, a place at their preferred school. Should a place be secured through the Fair Access process and a parent subsequently wins an appeal for their preferred school, the place won through appeal **must** be offered.

The appeal decision is binding and **must** be complied with, and the child needs to be placed on school roll immediately.

Powers of Direction

Local Authority Powers of Direction – General

A local authority has the power to direct the governing body of a maintained school for which they are not the admission authority to admit a child in their area 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 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.

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 (Paragraph 3.24). If the case is referred to the Schools Adjudicator, the Schools 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 Schools 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.

Secretary of State's 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 Schools Adjudicator in reaching a decision.

Purpose of the Fair Access Panel

To ensure that Local Authority Fair Access Protocol (FAP) operates effectively outside the arrangements of co-ordination and will be triggered when a parent of an eligible child has not secured a school place under in-year admission procedures.

Membership of the FA Panel

The Panel will be chaired by the County Alternative Education Provision & Inclusion Manager or the Deputy County Alternative Provision and Inclusion Manager

Other Local Authority Officers invited to attend Panel meetings will include a core membership of the Deputy County Alternative Provision and Inclusion Manager.

- Strategic Admissions & Attendance Manager.
- Education Inclusion Officers
- Children Missing Education
- Attendance Legal Manager
- Attendance Operational Manager
- Business Support Officer
- Transport

Alongside this, attendance is crucial from:

- Representatives from the current/previous school.
- All identified local schools.

Accountability

Following discussions at the meeting by all parties, a school will be identified at the meeting as the appropriate school to admit the student.

The 2021 School Admissions Code is clear that agreement must be reached, and decisions made at the Fair Access Panel meetings.

Following the Fair Access Panel meeting, the identified school will receive a formal letter, and it is expected that the school will contact the parent to arrange a date for admission within 2 school days with child being placed on roll within 5 school days.

Operation of FA Panel Meetings

Meetings are planned to be held at fortnightly intervals.

Referral Process

Applications for children who are unplaced and having difficulty securing a school place or where there are no places available at any school within a reasonable distance, will be referred to the Fair Access Panel via the Admissions Team or the admission authority using the Fair Access Referral Form

Schools wishing to refuse admission of unplaced children on the grounds of challenging behaviour **must** complete the 'Challenging Behaviour Referral Form,' which provides full details and information about the child and their reasons for refusal.

Discussion and outcome of FA Panel meetings

The Fair Access Panel will discuss each case on the agenda to establish the most appropriate school or provision.

Information gathered by the Fair Access Panel regarding the child's previous history will be presented at the meeting, including details of 'other agency' involvement, the nearest schools to the home address and relevant fair access admission data.

If the child was previously attending a school in the area, the school will be expected to provide to the Panel information about the pupil's previous history, attendance, behaviour, and details of any support which has been in place at the school.

In advance of the Fair Access Panel meeting the identified nearest schools will be approached, to request specific and relevant information about the circumstances of the school. This information will be used by the Panel to inform their decision making and ensure the most appropriate school is allocated.

Following discussion, a school will be identified at the meeting.

Once a school has been identified by the Fair Access Panel, a formal letter will be sent to the school and parent, confirming the allocation, and requesting that the child is admitted. Accompanying the letter will be a suggested support from an Education Inclusion Officer in relation to challenging behaviour cases to support the transition planning arrangements.

Permanent Exclusion

Schools should try and avoid excluding pupils in Year 11, unless an extremely serious offense has been committed.

If the child cannot continue at their existing school, an alternative appropriate provision should be sought, bearing in mind that there can be flexibility within local arrangements for examination entries.

School Admissions – Overseas and Refugee Applications

The School Admissions Code School dictates that admission authorities must not refuse to admit a child based on their nationality or immigration status nor remove them from their roll on this basis.

The School Admissions Code applies to refugee admissions to school, ensuring that all living or moving to the UK have a right to access education, irrespective of their nationality.

Admission authorities must apply their determined admission arrangements to applications in the normal way and should vacancies exist, the places should be offered.

Where there are no vacancies in local schools, the Local Authority will implement the Fair Access Protocol to place children into school, going above a school's published admission number if necessary. Placement under the Protocol is high priority and therefore are exceptions to oversubscription or infant class size limits.

Children are entitled to a full-time education and as a rule, phased or gradual reintegration is not at the discretion of the school. In exceptional circumstances there may be a need for a temporary part-time timetable to meet a child's needs, for example where a medical condition prevents them from attending full-time education and a part-time timetable is considered as part of the reintegration package. A part-time timetable must not be treated as a long-term solution. Any pastoral support or other agreement must have a time limit by which the child is expected to attend full-time or be provided with alternative provision. In agreeing a part-time timetable, the school is agreeing to the child being absent from school for part of the week or day and must therefore record the absence using the appropriate code.

Review of the FA Protocol

The working methods and effectiveness of the Fair Access Protocol will be reviewed 2027 or on the occasion that changes are made to the admissions code.

If a majority of schools can no longer support the principles and approach of this Fair Access Protocol, schools may initiate a review with the local authority, by contacting the Admissions and Attendance Strategic Manager with details of the schools concerned and the specific elements which are unsupported.

The existing Fair Access protocol will remain binding on all schools until the point a new protocol is adopted.

