

FAIR ACCESS PROTOCOL FOR CHILDREN WITH CHALLENGING BEHAVIOUR

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INTRODUCTION

FAIR ACCESS PROTOCOL FOR CHILDREN WITH CHALLENGING BEHAVIOUR

- The fair access protocol for the school admission of children with challenging behaviour has recently been revised in the light of the revised Admission Code, which came into effect on 1st February 2012 and non-statutory guidance from the DfE 'Fair Access Protocols: Case Studies' – November 2012' and 'Fair Access Protocols: Principles and Process' –November 2012'

Key Principles

- To ensure decisions about school placements are made in the best interest of the child while also considering the potential impact on the needs of the other children in the admitting school.
- To ensure admission decisions are made in good time and children are placed in an appropriate placement as quickly as possible;
- To ensure that the six Behaviour and Attendance Panels have sufficient information to make informed decisions about the placement and provision for vulnerable learners covered by these protocols. This will require school representation at panels where the school place for pupils from that school are being considered.
- To ensure that schools and alternative providers are kept fully informed and transition arrangements are in place to ensure successful placements;
- To ensure the procedures to be followed are clear and fully understood by all involved.

Key Considerations

1. Only children **without** a school place will be regarded as Fair Access. That is: They are not on a school roll and meet the Fair Access criteria;
2. Children **with** an accessible school place [currently attending an accessible school] who trigger the Fair Access Criteria will not be considered under the Fair Access Protocol. These will be dealt with as a managed move under the managed move protocol;
3. Children currently home educated who are now seeking a school place will be referred to the Children Missing Education Service [CMES]. The CMES will determine if a referral to the Panel is appropriate, referring to the last school the pupil attended, especially if this was recent attendance. If the CMES conclude a referral to the panel is not appropriate the pupil will be treated as a casual admission and the school may need to seek any support from the Panel post admission.
4. Children in Care, or who have recently left Care for adoption, who trigger the Fair Access Criteria, will be referred to the Head of the Virtual School.

5. Children coming from abroad who have had significant disruption to their education [but no other Behavioural, Emotional or Social needs equivalent to school action plus on the SEN register] will be dealt with through the normal admissions process. Children for whom English is an additional language will not be considered as 'challenging' under the BANES Fair Access Protocol and will be dealt with as a casual admission. Support if required can be accessed through the Local Authority and the panel.

1. The legal context

- 1.1 The Admissions Code which came into effect on 1-2-12 restated the legal duty on each Local Authority to develop a common Fair Access Protocol. Fair Access Protocols exist to ensure that access to education is secured quickly for children who have no school place and to ensure that all schools in an area admit their fair share of children with challenging behaviour, including children excluded from other schools. Local authorities **must not** require undersubscribed schools to admit a greater proportion of children with a recent history of challenging behaviour than other schools.
- 1.2 Each local authority **must** have a Fair Access Protocol. All schools and Academies **must** participate in their local authority area's protocol in order to ensure that unplaced children, who live in the home local authority, especially the most vulnerable, are offered a place at a suitable school in the home local authority as quickly as possible. Academies are required to participate as part of their funding agreement. This includes admitting children above the published admission number to schools that are already full.
- 1.3 Whilst each protocol covers only the schools in its local authority area, the home local authority **should** contact a neighbouring (maintaining) authority to help secure a school place in that area under its protocol where appropriate, and with the maintaining authority's agreement.

2. Key Principles

- 2.1 Each Local Authority must have a Fair Access Protocol, agreed with the majority of schools in its area to ensure that – outside the normal admissions round – unplaced children, particularly the most vulnerable, are offered a place at a suitable school as quickly as possible.
- 2.2 Once the agreement of a majority of schools has been secured, the Protocol is binding on all admissions authorities, including Academies and Free Schools.
- 2.3 The LA's duty to safeguard the child is paramount. Children and young people who are out of school for a length of time may be at risk and all schools, working in partnership with the Local Authority and each other should do their utmost to ensure that children and young people – particularly the most vulnerable – are not left without a school place for extended periods.

- 2.4 The agreed Protocol must ensure that the best interests of the child are properly considered, when making decisions about a school placement including the potential impact on the needs of the other children in the school of admitting the pupil.
- 2.5 No school or Academy, including those with available places, should be asked to take a disproportionate number of children who have been excluded from other schools or who have challenging behaviour.
- 2.6 A school or Academy will not be required automatically to take another child with challenging behaviour in the place of a child excluded from the school or Academy.
- 2.7 The agreed Protocol must promote the fair, equitable and open allocation of school places for vulnerable children currently without a school place.
- 2.8 The agreed Protocol must be fair, transparent and have the trust and confidence of all schools and Academies involved in its operation.

3. Responsibilities

3.1 The responsibilities of the Local Authority

- a. The Local Authority must ensure that a local Fair Access Protocol is in place and that it has been agreed by a majority of schools in the locality.
- b. The Local Authority must ensure that all the categories of pupils covered by Fair Access are clearly identified in the Protocol.
- c. The Local Authority must, when approached by a school who have refused an in year admission of a pupil with challenging behaviour, decide whether that pupil should be considered under the Fair Access Protocol arrangements.
- d. The Local Authority must monitor the effectiveness of the operation of the Protocol and consider how well the existing and proposed admission arrangements serve the interests of children and parents within the Local Authority area.
- e. The Local Authority is required to report to the Schools Adjudicator on how well the Protocol has worked and how many children have been admitted to each school under the Protocol.
- f. The Local Authority is required to intervene where a panel is unable to make a decision upon the placement for a child who meets Fair Access criteria, in order to minimise the time that that child is out of school.
- g. The protocol **must** include how the local authority will use provision to ensure that the needs of pupils who are not ready for mainstream schooling are met.

In order to meet the needs of pupils who are not ready for mainstream education, the Local Authority has secured the following arrangements: -

- (i) devolved funding (£660,000 and £100,000 Primary Pupil Retention Grant) to Behaviour and Attendance Panels
- (ii) commissioned a range of provisions through The Link Special School
- (iii) quality Assured a range of alternative providers.

Working with Schools the range of opportunities will be further developed over time.

3.2 The responsibilities of the Behaviour and Attendance Partnerships

- a.** The partnerships should work collaboratively with the Local Authority in order to ensure that children who meet the criteria in this Protocol are placed quickly in suitable provision, whether this is mainstream provision or alternative provision [under arrangements described in 3.1[f]. The suitability of the placement will be determined by reference to paragraph 6.6 of the Fair Access Protocol.
- b.** The partnerships should use their devolved resources to make appropriate provision for vulnerable learners who need extra support as appropriate.
- c.** The partnerships should operate in a climate of mutual trust to ensure that children referred to panel meetings under the Protocol are placed fairly and equitably, in accordance with a consideration of the best educational interests of the child including the potential impact on the needs of the other children in the school of admitting the pupil.

There is no legal duty for the Panels to comply with parental preference in allocating a place, but careful consideration should always be given to this, when making decisions.

- d.** Where a School may wish to challenge a place for a young person normally this will be on the basis of achieving equitable distribution of young people with challenges. The panel constitution must specify that arrangements are in place which allow a school to challenge any proposal that the school admit a child/young person under the Fair Access Protocol, including situations where the school may feel that the allocation is inequitable. In coming to any decision the panel must act in accordance with the Fair Access Protocol and the principles set out in paragraph 3.9 of the 2012 School Admissions Code.

3.3 The responsibilities of individual schools

- a. Schools must ensure that they send a representative to panel meetings where a fair access place is being considered for a pupil to attend that school. The representative must have the authority to recommend to the admission authority that a place be offered. (The precise pattern and frequency of attendance required will be determined by the Constitution adopted by each Partnership.) Primary schools may have to rely on collaborative arrangements to send a delegate.
- b. Schools must not cite oversubscription as a sole reason for not admitting a child under the Protocol. The only exception to this is when admission would breach Infant Class Size Regulations and the child to be admitted could not be treated as an excepted pupil. [See paragraph 2.15 of the School Admissions Code].
- c. Any school which is subject to a panel recommendation to admit a pupil must consider this promptly and provide a response within 5 working days.
- d. 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.
- e. Schools have a duty to work collaboratively, regardless of the type of school.

4. The application process and decision to refer as Fair Access

- 4.1** A Casual Admissions Application Form including additional information form is used for all in year applications. This and the Fair Access Protocol is available to download on the school admissions page of the Council Website:

<http://www.bathnes.gov.uk/services/schools-colleges-and-learning/admissions-schools/changing-schoolscasual-admissions>

The form asks questions to enable a decision to be made on whether the application should be considered under the Fair Access criteria. The parent has to ask the child's latest/previous school to confirm the relevant section of the form. It is made clear on the form that the request for a school place can only be processed if this has been completed.

- 4.2** If the application is deemed to meet Fair Access criteria, a referral will be made to the Behaviour and Attendance Pupil Support Manager by the Admissions Authority. From September 2013 applications will be made directly to the relevant admission authority. Own admission authority schools will therefore need to identify if the pupil should be fair access using the criteria set out in Section 5 and make the referral to the Behaviour and Attendance Panel Pupil Support Manager. The Local Authority Admission Team will offer advice and support if required.

4.3 (i) Primary Panels

Where required a Children Missing Education Officer will attend to present a Fair Access case.

(ii) Secondary Panels

The Pupil Support Manager will provide a summary of the information collated about the child who has been referred under this protocol.

If required the following will attend and present information: -

- CMES officer for children recently home educated.
OR The school the pupil last attended (in Authority)

4.4 Only pupils without a school place and who meet the Fair Access Criteria will be referred to the Partnership under the Fair Access Protocol.

5 **Criteria to be used in making a decision of Fair Access**

In line with the School Admission Code, fair access arrangements will apply to the following groups who do not have a school place:-

5.1 **National Priorities**

In line with the 2012 School Admissions Code the following children **must** be included as part of the Fair Access Protocol:-

- a. Children from the criminal justice system or Pupil Referral Units who need to be reintegrated into mainstream education;
- b. Children who have been out of education for two months or more. NB children in Elective Home Education are not out of education.
- c. Children of Gypsies, Roma, Travellers, refugees and asylum seekers;
- d. Children who are homeless;
- e. Children with unsupportive family backgrounds for whom a place has not been sought;
- f. Children who are carers;
- g. Children with special educational needs, disabilities or medical conditions without a statement. (Please note children with a Statement of Special Educational Needs, are **not** covered by this Protocol).

5.2 **Locally agreed Priorities:**

- h. Children permanently excluded from school;

- i. If it appears to the Local Authority a child of compulsory school age is not receiving a suitable education the CMES may request the Fair Access Panel to identify a named school for an attendance order as part of the procedure to return a child to education under section 437 of the Education Act 1996.
 - j. Children returning from a period of Home Education where the CMEO has determined that the pupil should be treated as Fair Access (see page 3 Key Considerations point 3)
 - k. Children who are moving into the authority from another local authority area who trigger the Fair Access Criteria will be regarded as being **without** a school place;
 - l. Permanently Excluded Pupils in Specialist Behaviour Service provision ready for reintegration;
 - m. Pupils with less than an average 80% attendance during their last 12 months of full time education. For year 7 pupils their attendance will be calculated from the beginning of the current academic year. (Children who are **sick** are dealt with separately by the LA);
 - n. Where a Governing Body does not wish to admit a pupil with challenging behaviour outside the normal admissions round, even though places are available, it must refer to the Local Authority for action under the Fair Access Protocol.
 - o. Children who are already known to the police or a number of other agencies;
 - p. Children who have to move school because of domestic violence;
 - q. Pupils in Year 11;
 - u. Children of UK service personnel where a change of location ordered by the service necessitates a change of school
- 5.3** Where a pupil is coming from abroad and they have had significant disruption to their education (but no other obvious specific needs) they should not be considered as Fair Access but should be considered under normal admission arrangements to enable school admission at the earliest opportunity. If necessary where needs later become evident their case should be referred back to panel where points may be applied. If there is information the pupil meets the fair access criteria they will be referred to panel as fair access.

6. The Decision making process to place a fair access pupil:

- 6.1** The admission authority will identify if the pupil should be Fair Access and refer to the appropriate partnership. From September 2013 applications will be made directly to the relevant admission authority. Own admission authority schools will therefore need to identify if the pupil should be fair access and make the referral to the Behaviour and Attendance panel, Pupil Support Manager. The Local Authority Admission Team will offer advice and support if required.

- 6.2** The Behaviour and attendance Pupil Support manager will place the pupil on the appropriate B&A panel agenda
- 6.3** Pupil status within the Fair Access Criteria will be recorded on the Partnership agenda.
- 6.4** The Panel will consider each Fair Access case presented and determine the appropriate school placement with the necessary support.
- 6.5** If the Panel are unable to agree on a school, the process (for example a points based system) identified in the Panel's Constitution will be used to determine the placement.
- 6.6** If it becomes necessary for the Local Authority [Divisional Director] to direct a school to admit, the Local Authority will identify the most appropriate school, using the following criteria:
- a.** The educational, social, emotional and behavioural needs of the child;
 - b.** the potential impact on the needs of the other children in the school of admitting the pupil or any specific concerns raised by the named school.
 - c.** The preference of the parent;
 - d.** The views of the child;
 - e.** Geographical accessibility and availability of transport;
 - f.** Whether siblings already attend the school;
 - g.** Advice received and the risk assessments completed by the last school the child attended;
 - h.** Intelligence from a range of services about patterns of social relationships within the school and the wider community, to protect the safety and well-being of all parties;
 - i.** The points system (if used by the Partnership) and patterns of placement of vulnerable learners across the schools in the Partnership.
- 6.7** The Admissions Team will be notified of the decision and will confirm this in writing to the parents or the admission authority within 5 school days of notification. The letter will be copied to the appropriate CMEO and the school.
- 6.8** If the pupil has not been placed on the school roll within 5 school days the appropriate Lead Officer [eg Head of virtual School, Head of Hospital Reintegration Service, Senior Adviser] will contact the family and the Pupil Support Manager so that the issue can be raised at the next meeting.
- 6.9** If the child is still out of education, the appropriate Lead Officer will ask the Link Special School and Specialist Behaviour Service to make suitable full time educational provision until the situation can be resolved. The cost will be borne by the partnerships.

7. Children who meet Fair Access criteria, but who already have an accessible school place

- 7.1 Requests for children who trigger the Fair Access Criteria but have an accessible school place will not be regarded as Fair Access. These cases will be dealt with as follows:-
- 7.2 Parents will initially be informed that they should contact their child's current school so their request can be processed as a managed move. The current school will then follow the Local Authority Managed Move Protocol.
- 7.3 If a managed move cannot be organised within a reasonable timeframe [i.e. three weeks] and the parent still wishes to request a place, the casual admissions process will be used. At the same time as processing the application the Admissions Authority will inform the Behaviour and Attendance Panel Pupil Support Manager that an admissions request has been received. This will enable the case to be placed on the agenda for the next Panel meeting for consideration of additional support.
- 7.4 When the Admissions Authority notify the parent of the result of their application they will also inform the parent a referral has been made to the Behaviour and Attendance Panel and they may receive contact from a Reintegration Officer [through the Link Special School] to help achieve a successful transition into a new school.

8. Children in Care

- 8.1 Moving into care and changing foster carers means that children in care can move schools more frequently than other children. This can add significant disruption to their already disrupted lives and so extra care needs to be taken to ensure that changes of school only take place when absolutely necessary and that transitions are managed carefully. Where a change of school is proposed for a Child in Care, this must be undertaken through consultation with the Head of the Virtual School.
- 8.2 The Schools Admission Code is very clear about the powers of local authorities with regard to the admission of children in care. The salient points are:
- Children in care are among the most vulnerable children in society and it is of paramount importance that a school place is found that is in the best interests of the child as quickly as possible. All admission authorities **must** give highest priority in their oversubscription criteria to these children as required by The School Admissions Code (2012). The practical effect of this is that in a school's published admission arrangements the first and highest oversubscription criterion **must** be in respect of these children. Admission authorities **must not** include statements in their published admission arrangements that imply they have discretion over the admission of children in care or attach any conditions to the admission of such children. [para 1.7]

- The class size legislation makes allowance for the entry of an additional child in very limited circumstances where not to admit the child would be prejudicial to his or her interests ('excepted pupils'). Children in care are an 'excepted group' under the code. [para 2.15]
- Local authorities may direct other admission authorities for any maintained school to admit a child in their care to the school best suited to his or her needs. Such action **must** be taken in the best interests of the child. Before giving a direction the Local Authority **must** consult the admission authority for the school they propose to specify in the direction. The admission authority then has seven days to inform the local authority if it is willing to admit the child without being directed to do so. [para 3.20]
- If, following the consultation, the Local Authority decides to issue the direction it **must** first inform the admission authority, the governing body (if the governing body is not the admission authority), the head teacher and, if the school is in another local authority area, the maintaining local authority. If the admission authority (or the governing body if it is not the admission authority and only in relation to a child in care who has previously been excluded from at least two schools) considers that admission of the child would seriously prejudice the provision of efficient education or efficient use of resources, the admission authority has seven days in which to refer the case to the Schools Adjudicator. The Adjudicator may either uphold the direction, or, if the local authority that looks after the child agrees, determine that another maintained school in England **must** admit the child. The Adjudicator's decision is binding. The Adjudicator may not direct an alternative school to admit a child when the child has already been excluded from that school or when admission would seriously prejudice the provision of efficient education or efficient use of resources. [para 3.20]
- Where a local authority considers that a particular Academy will best meet the needs of the child, they can ask them to admit that child even when the Academy is full. A consensus will be reached locally in the large majority of cases, but if the Academy disagrees with the local authority's reasoning and refuses to admit the child, the case can be referred to the Secretary of State. In such cases, the Secretary of State may direct an Academy to admit a child in care, and can seek advice from the Adjudicator in reaching his decision. In providing such advice, the Schools Adjudicator will consider the case in the same way as for maintained schools. [para 3.22]
- Where a local authority directs an admission authority to admit a child in care, the governing body **must** admit the child to the school at any specified time during the year, even if the school is full, unless the School Adjudicator, or the Secretary of State for Academies, upholds an appeal from the admission authority. [para 3.21]

8.3 If a child in care needs to move schools within B&NES

8.3.1 The Virtual School, the carer and the social worker will work together to approach the most suitable school to discuss a possible admission and a casual application form will then be completed so that the request for transfer can be processed.

8.4 If a child in care needs a school place AND meets the Fair Access criteria

8.4.1 The best way to ensure that a child in care has the best possible chances of success is to:

- Ensure they are admitted to the most appropriate school to meet their needs
- Ensure that their admission to the school is carefully planned and expedited as quickly as possible

8.4.2 Accordingly, the Admission authority will refer children in care who require a school place and who meet the Fair Access criteria to the Head of the Virtual School. The Head of the Virtual School will discuss the case with the carer and the social worker and then decide whether to approach the most suitable school directly to discuss an admission or refer the case to the appropriate Behaviour and Attendance Panel.

8.4.3 If a school admits a child in care who meets the Fair Access criteria either through a panel allocation or through agreement with the Virtual School, the receiving school will be allocated credit according to the process described in the Constitution adopted by the Partnership.

8.5 Factors determining whether the case is referred to the Behaviour and Attendance Panel or not are:

8.5.1 In making his determination, the Head of the Virtual School will consider;

- Whether there are reasons why a child in care should be admitted to one particular school rather than any other school that falls within the remit of the relevant Behaviour and Attendance Panel;
- The expressed preferences of the carer and social worker;
- The length of time a referral to Behaviour and Attendance Panel will take – a long wait can put a care placement at risk

APPENDIX 1

Casual Admission Application Form including additional Information received by the relevant admission authority

