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| <b>FAIR ACCESS PROTOCOL<br/>SCHOOL ADMISSION ARRANGEMENTS FOR<br/>VULNERABLE CHILDREN WITHOUT A SCHOOL PLACE</b> |                      |
| Written by Sam Roberts – Senior Manager (Access to Education)  | Date: September 2021 |

## 1. PURPOSE

This protocol is devised, as required by the School Admission Code 2021 to ensure that access to education is secured quickly for children who have no school place, and to ensure that all schools and academies in an area admit their fair share of vulnerable children. This protocol applies equally to all schools and academies. This protocol also reflects the Fair Access Protocol guidance issued by the Department for Education (DfE) in November 2012, reviewed in 2014 and 2021.

The protocol applies to the placement of vulnerable children **outside** the normal admissions round and will only take effect when parents/carers have exhausted the normal methods of admission and been unable to find a school place for their child (i.e. the in-year application process) unless the referral is made through an Alternative Provision School as the child has been permanently excluded. Parents may still use their legal right of appeal if they wish for their child to attend one of their preferred schools. This protocol cannot be used for a child with an Education Health Care Plan or for a Child in Care (Looked after child).

Where the parents wish to change the child's school (for whatever reason), it is expected that the family work with the child's current school to address any issues and if this is unsuccessful, that they follow the usual in-year admissions process to secure an alternative school place. Parents must not remove their child from school without alternative education already in place. This protocol will not apply to children on roll of a school, despite any attendance issues they may have – unless a change to the family circumstances means that continued attendance at the current school it is not viable (i.e. a house move to another part of the county).

The School Admission Code 2021 states that:

*“Each local authority **must** have a Fair Access Protocol, to ensure that unplaced and vulnerable children and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible.”* (Section 3.14)

*“Once the Protocol has been agreed by the majority of schools in its area, all admission authorities **must** participate in it.”* (Section 3.15)

## 2. SCOPE

Meeting the needs of children and young people is at the core of this policy and a holistic perspective will be taken in all circumstances. Under every child's right to education, long-term mainstream school places will be sought in favour of time limited placements at Alternative Provision schools to help every child reach their full potential. However, where necessary, pupils will be offered a short-term placement

at an Alternative Provision school to ensure they continue to receive education whilst a school place is being sought through this protocol.

The School Admission Code 2021 states that:

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

Gloucestershire’s response to this requirement has been to introduce a Fair Access Placement Panel system where various agencies consider the needs of children and secure their education.

To ensure that no school is allocated a disproportionate number of children who have been excluded or have challenging behaviour, in pursuing a school place under the fair access protocol, parents cannot be guaranteed a place at a specific school – although parental preference will be considered alongside a range of other factors. Therefore, cases where parents are only seeking admission to a named school should be referred through the usual admissions appeals process.

Parents remain legally responsible for ensuring that their child receives education. Therefore, should they choose to refuse the school place offered under this protocol, they will need to secure a school place through the usual admissions and appeal process in recognition that the local authority has already made an offer of a school place. Non-attendance at school may result in prosecution.

**This protocol applies to the compulsory categories of vulnerable pupils as required by the School Admission Code 2021:**

- 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 Protocol;
- children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol;
- children from the criminal justice system;
- 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;
- children with special educational needs (but without an Education, Health and Care plan), disabilities or medical conditions;
- children who are carers;
- children who are homeless;
- children in formal kinship care arrangements;
- children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers;
- 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;
- children for whom a place has not been sought due to exceptional circumstances;
- 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; and
- previously looked after children for whom the local authority has been unable to promptly secure a school place.

### Excepted Groups:

The Fair Access Protocol does not apply to the following groups due to enhanced provisions elsewhere in legislation to enable them to secure an appropriate school place more efficiently:

- i) Where a child has a statement of Special Educational Needs or an Education Health & Care Plan - where the National SEND Code of Practice 2014 must be followed;
- ii) Where a child is a Looked After Child (Child in Care) – where Section 3.12 of the School Admission Code 2021 makes it clear that these pupils must be admitted to the school requested. The Local Authority may need to pursue a direction in such cases if a place is refused

### Challenging Behaviour:

Where a governing body does not wish to admit a child with challenging behaviour outside the normal admissions round, even though places are available, it must refer the case to the Local Authority for referral under the Fair Access Protocol – through the completion of a FAP referral form which must be completed by the school and forwarded to the In-year Admission Team. However, admission authorities may only do this if:

- 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 resources.

For the purposes of this Fair Access Protocol, behaviour can be described as challenging 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.

The following reasons on their own should not be grounds 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.

Children refused under this criterion and with no school place will be referred through this protocol. The In-year Admissions Team and Education Inclusion Service will support other children who are already on roll of a school to seek an alternative school place if required. When considering the placement of children within this category, the fair access panel will have regard to the proportion of pupils already within each school, and year group in question, who either:

- meet this definition of challenging behaviour;
- have been admitted under previous fair access decisions;
- have been placed by the Local Authority as a looked after child

Any parent whose application for a school place has been refused on the grounds of their child's

challenging behaviour will have a right of appeal to an independent admission appeal panel. The appeal process will take place within the timescales set out in the School Admissions Appeal Code.

### Twice Excluded Pupils

This protocol includes the provision of education for those children who have been excluded from two or more schools/academies, however there are additional factors that can be taken into account.

Where a child has been excluded permanently from two or more schools/academies, a parent can still express a preference for a school place, but the requirement to comply with that preference is removed for a period of two years from the date on which the latest exclusion took place. However, this does not apply to:

- Children who were below compulsory school age when excluded;
- Children who were reinstated following a permanent exclusion; and
- Children who would have been reinstated following a permanent exclusion had it been practicable to do so.

A permanent exclusion is regarded as taking effect from the first school day the Headteacher has told the child not to attend the school or academy.

Further information regarding the duties on schools or academies to consider applications for a child who has been excluded twice can be found in the School Admission Code 2021.

### **3. IMPLEMENTATION AND REVIEW**

Fair Access Panels will be arranged as a panel with a core panel of 3 Headteachers.

All decisions regarding pupil placement at receiving schools or academies will be made by the Headteachers present at the Fair Access Panel. However, the panels will be co-ordinated by the In-year Admissions Team and facilitated by the Access to Education Manager and the Locality Inclusion Lead from the Education Inclusion Service. An Educational Psychologist and Outcome Coordinator may also attend if a permanently excluded child is being considered.

All Headteachers will be asked to confirm their availability to sit on the panel for the subsequent term and the panels will be held at either Shire Hall or virtually. This will ensure that schools/academies retain ownership of the panels.

It is expected that all relevant Headteachers will be present at the panel meeting. There must be at least three Headteachers present for the panel to be quorate. There will be a standing panel of Primary Headteachers representing/elected by GAPH, and a panel of secondary Headteachers representing/selected by GASH. These panels will be reviewed annually.

All schools under consideration for the placement of the pupil will be invited to submit their comments through the FAP School Information Sheet, co-ordinated by the In-year Admissions Team. This will enable the panel to make informed decisions based upon consistent and relevant information – all written information must be given due consideration by the panel, although there can be no guarantee that this will preclude the school from being allocated the pupil.

In order to secure timely education for all children, the panel considering each referral must determine a placement on the basis of the information available at that date. The panel's decision must be the allocation of a school place.

In accordance with the DfE guidance, all schools are expected to respond to requests for placements under the Fair Access Protocol within 20 calendar days. The start date will be agreed between the named school and the Outcome Coordinator. The In-year Admissions Team will be responsible for liaising with the relevant Headteacher associations on an annual basis to determine the effectiveness of this protocol and to consider any amendments which may be required. They will also report on FAP placements on an annual basis for transparency.

Additionally, the Senior Manager (Access to Education) has a duty to report on the effectiveness of the fair access protocol in the annual Office of Schools Adjudicator report on fair access and admissions.

#### **4. PROCEDURE**

- 4.1. Children will be referred by the APS in conjunction with the Outcome Co-ordinator involved with the family. The panel may also receive referrals through a keyworker under the category's listed in Section 2 of the protocol. The professional should complete the Fair Access Referral Form (appendix 1), highlighting any individual circumstances that the receiving school/academy may need to be aware of, for example any behaviour patterns or social need (please note that this information must not be used by admission authorities to refuse the child's admission). The form should also include any other details requiring consideration by the panel (e.g. highlighting a failed managed move at a school or a history of conflict with a pupil(s) at another school in the area) to assist with the allocation process. The completed form should be forwarded to the In-year Admissions Team. The referring professional will need to engage the family in this process; they must make it clear that a place at any preferred school cannot be guaranteed.
- 4.2. The In-year Admissions Manager will be responsible for investigating the appropriateness of any referral against this protocol.
- 4.3. All referrals to the Fair Access Placement Panel will be made through the In-year Admissions Team who will be responsible for co-ordinating the administration of this protocol. Any school/academy which may be considered for placement of a child will be contacted by the team for a FAP School Information Sheet (Appendix 2) to be completed – this will provide the school level information for the panel to consider when making their decision.
- 4.4. Fair Access Placement Panels will be held at Shire Hall or virtually. Membership will include agreed Headteachers with facilitation from the Access to Education Manager and a Locality Lead from the Education Inclusion Service as the independent officers. If the panel is considering a permanently excluded child an Educational Psychologist and Outcome Coordinator may also attend. The purpose of these panels will be to match children to a suitable school or academy. The panel members will receive paperwork relevant to the case(s) to be considered prior to the panel hearing.

**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.**

In accordance with the School Admission Code 2021, the panel must take the following factors into account when determining the receiving school or academy:

- That no school or academy is asked to admit a disproportionate number of pupils through the protocol, considering the following factors:
  - Proportionality of allocations against a school's or academy's admission number – to distinguish between the varying size of schools;
- Any genuine concerns about the admission, for example a previous serious breakdown in the relationship between the school or academy and the family, or a strong view about the religious ethos of a school – including any submission received from local schools or academies.

The panel should also give consideration to the following:

- The needs of the individual child and each school's or academy's ability to cater for these;
- Parental preference (for twice excluded children please refer to the following section) – although fair access decisions should not be delayed pending the outcome of any appeals process;
- Distances between the child's home and the allocated school or academy (a reasonable travelling distance is considered to be 45 minutes for primary pupils and 75 minutes for secondary pupils) and the ability of the Local Authority to cover the cost of this transport (please refer to the Vulnerable Pupils Home to School Transport Policy)

The panel will be provided with an Information Summary Sheet (Appendix 3) for each child which will contain comparative factual information on some of these factors for all schools under consideration.

The Access to Education Manager and the Locality Inclusion Lead from the Education Inclusion Service **must** ensure that all decisions are clearly recorded and provide detailed rationale for allocating the chosen school above the other schools considered. This will enable the Senior Manager (Fair Access) to take steps to formally direct a school to comply with the panel's decision, or refer the matter to the Secretary of State to consider direction in the case of an academy. Any determination on a direction will include consideration as to whether due process has been followed in applying the provisions of the Fair Access Protocol.

- 4.5. Once a school place has been agreed by the Fair Access Placement Panel the Access to Education Manager will advise the In-year Admission Team of the outcome after the close of the meeting and provide the formal FAP Decision Record (Appendix 4).
- 4.6. The In-year Admission Team will notify the named receiving school or academy of the decision by telephone and in writing (through email) and will ask for the APS/OC to make contact with the school/academy to discuss the placement. An Outcome Coordinator from the Education Inclusion Service will also make contact with the Headteacher to offer support with planning the transition (Warm Welcome).
- 4.7. It will be the responsibility of the referring professional and the school/academy to ensure that the child accesses education.
- 4.8. Where it has been agreed that a child will be considered under the Fair Access Protocol, a school place must be allocated. Once a place has been allocated, arrangements should be made for the child to start at the school as soon as possible; however they must be recorded as on roll within 10 school days. The receiving school/academy will be required to start working with the child, APS

and Inclusion Service within 5 school days of notification of the decision, to discuss the reintegration package if a planned transition is required due to the needs of the child following the key transition activities (Appendix 5).

4.9. The FAP decision can only be extended or withdrawn with the completion of the 'Request to extend/withdraw from FAP Transition process' (Appendix 6) and the referral must be made to FAP panel for consideration. The placement can only be ended at the named school if there is a 'permanent exclusion event' under the school's behaviour policy.

Local Authorities and schools/academies in partnership are responsible for providing suitable full-time education for all children and the County Council will use its power of direction to support a Fair Access Panel decision if it feels that a school is being unreasonable in refusing to admit a child under this policy, or will refer the matter to the Secretary of State in the case of an academy.

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 – this is particularly true where schools have willingly admitted other children over their usual capacity. It is essential that schools share responsibility for admitting vulnerable children and that fairness is the abiding principle.