

SAFE WELL PROSPEROUS CONNECTED

North Lincolnshire Schools and Academies'
Fair Access Protocol
February 2024

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1. Introduction

North Lincolnshire's Fair Access Protocol meets the requirements of the School Admission Code 2021, to ensure that access to education is secured quickly for all children who have no school place (are unregistered), and to help ensure that all schools and academies in their area admit their fair share of vulnerable children or children with challenging behaviour.

North Lincolnshire has in place a Fair Access and Inclusion Panel. The Inclusion Panel is a mechanism that enables schools and academies to work collaboratively regarding inclusion issues. This forum will be used to discuss and resolve any fair access cases, brought to the panel by schools or the local authority.

The fair access protocol applies to both primary and secondary schools. It describes the circumstances in which it will be applied and sets out how decisions about admissions of vulnerable and hard-to-place pupils will be agreed.

The protocol will be used when a pupil has not secured a school place under the locally agreed in-year admission procedures. The aim is to secure a place at a suitable school as quickly as possible and within the 20 school days specified in the code.

Once it has been agreed that a child or a young person should attend a named school, that school must be accountable for that person. Every pupil will be made an offer for an educational place.

Undersubscribed schools must not be required to admit a greater proportion of those children referred to a Fair Access Panel, particularly those schools with a recent history of challenging behaviour greater than that of other schools.

There must be a balance between finding a place quickly, when the place might be in an undersubscribed school or one facing challenging circumstances, and finding a school place that is appropriate for the child.

The fair access protocol allows a pupil's individual needs to be considered alongside schools' particular circumstances. This includes consideration of factors such as: is the pupil ready for mainstream schooling and, if so, which mainstream school will be best able to meet their needs.

2. DfE Requirements of the Fair Access Protocol

The School Admissions Code (September 2021) states that each local authority must have a Fair Access Protocol, agreed with the majority of schools in its area, 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.

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 permanently excluded from other schools, who display challenging behaviour, or who are placed via the Protocol.

The protocol must set out how the needs of children who have been permanently excluded, and children for whom mainstream education is not yet possible, will be met.

All admission authorities must participate in the Fair Access Protocol. Participation includes making available a representative who is authorised to participate in discussions, make 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. 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.

Admission authorities must not refuse to admit a child on behavioural grounds in the normal admissions round or at any point in the normal year of entry. Where a child has been permanently excluded from two or more schools there is no need for an admission authority to comply with parental preference for a period of two years from the last exclusion.

How the fair access protocol operates and how decisions are reached about where best to place pupil is a matter for local determination.

3. Principles of the Protocol

The operation of the Fair Access Protocol is outside the arrangements of co-ordination and is triggered when a parent of an eligible child has not secured a place under in-year admission procedures. The expectation is that pupils will be allocated a school place in accordance with normal in-year admission procedures, rather than through the Protocol. Schools agree to admit children promptly (as per the legal requirements of the admissions code) to avoid any unnecessary loss of education and to promote safeguarding.

The Admissions Team will be the first point of contact for parents/carers formally seeking a school place for their child.

Where a child is on a school roll and their parent / carer wishes to change their school (for whatever reason other than a move out of the locality / area), 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.

It is recognised that while some children may be vulnerable, it is not always the case that they will be 'hard to place' in a school and will in most cases be offered a school place in accordance with normal in-year admissions arrangement.

In the first instance, the LA will endeavour to find a place using the normal admission process for in-year admissions and, even if a child has one or more of the factors

listed in section 4 it does not follow that this must be referred to Fair Access and Inclusion Panel. Therefore, where the LA is able to find a school place for a child using the normal process, a referral to Fair Access and Inclusion Panel would not be appropriate. However, if ultimately an admission has not been agreed, this must then be referred to the Fair Access and Inclusion Panel for resolution.

All schools and academies must agree and participate in the Fair Access Protocol and all admission authorities will be expected to admit children allocated by the panel above their published admissions number if the school is already full. A school's admission criterion does not apply when admitting children via the panel. The panel will be provided with information with regard to over / under subscription levels.

The local authority and schools will do all that they can to minimise in year-transfers within the North Lincolnshire. However, if a school transfer cannot be avoided, the schools associated with the transfer will respond within two school days to information requests.

The protocol is effectively a failsafe mechanism for a minority of children where normal procedures for in-year admissions have failed or are not appropriate and the child is considered to be 'hard-to-place'.

Looked after children, previously looked after children, and those allocated a place at the school in accordance with a Fair Access Protocol, must take precedence over those on a waiting list.

4. Fair Access Protocol: which children?

Fair Access Protocols are intended to act as a safety net for the most vulnerable. As such, they may only be used to place the following categories of children, where a child is 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 in-year admissions process:

- 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 FAP;
- 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 carers;
- g) children who are homeless;

- h) children in formal kinship care arrangements;
- 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 FAP in accordance with paragraph 3.10 of the Code;
- k) children for whom a place has not been sought due to exceptional circumstances;
- l) children who have been out of education for 4 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
- m) previously looked after children for whom the local authority has been unable to promptly secure a school place.

5. Defining and Evidencing Challenging Behaviour

Where an admission authority receives an in-year application for a year group that is not the normal point of entry and it does not wish to admit the child because it has good reason to believe that the child may display challenging behaviour (but they have not met the threshold for the twice excluded rule), it may refuse admission and refer the child to the FAP.

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.

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.

Admission authorities should consider the effect of the decision of the Upper Tribunal in *C & C v The Governing Body of a School, The Secretary of State for Education (First Interested Party) and The National Autistic Society (Second Interested Party)* (SEN) [2018] UKUT 269 (AAC) about the implications of the Equality Act 2010 when a pupil exhibits a tendency to physical abuse of other persons as a consequence of a disability.

All schools have a duty to make reasonable adjustments for students with disabilities. Schools should be aware that a child who displays challenging behaviour may do so as a result of their disability or any unmet needs. Schools must therefore consider whether any reasonable adjustments can be put in place to support the needs of a particular child when considering whether admission should be refused on these grounds.

The impact and effectiveness of these adjustments must also be taken into account in managing presenting behaviours. For example, where a school would have to provide teaching assistant support and put in place an agreed behaviour plan for a pupil with autism, the impact of these arrangements must be factored into a decision over whether the child's behaviour would meet the criteria to be considered challenging.

It is accepted that defining and / or quantifying challenging behaviour is difficult. Therefore, there may be exceptional cases that do not strictly meet the above criteria. In these circumstances, admissions may still be refused, but the relevant professionals will then be obliged to demonstrate (and substantiate) to the Fair Access and Inclusion Panel, why the pupil should be considered as challenging. Following peer review, the panel may accept that the pupil should be considered as a 'challenging pupil.'

Within the context of the above paragraphs, it is the responsibility of the school / governing body that is refusing the admission to provide suitable and sufficient written evidence to the panel to substantiate that the child fulfils meet the challenging behaviour criteria.

Pupils who should not be considered as Challenging

Whilst it recognised that admission requests for year 10 and year 11 pupils, may be more problematic because of curriculum and examination incompatibilities, these factors are not, in themselves, reasons for refusing admission.

Defining Schools with a particularly high proportion of children with challenging behaviour or previously excluded children

Statutory guidance states that refusing admissions is normally only appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children. In this context, the panel will need to understand how a defined cohort of children with challenging behaviour justifies the refusal of an additional child who may also have challenging behaviour. For example if a school has a cohort of challenging pupils in year 11, this may not be as relevant to a request to admit a year 7 pupils with challenging behaviour.

Challenging behaviour is defined in paragraph 5.1. Schools that identify specific year groups where they would not be able to take a child with challenging behaviour must provide suitable and sufficient evidence to the panel to substantiate their cases.

It is the responsibility of the school refusing the admission, to ensure the information provided to the panel is contemporary, sufficient, relevant, clear and robust. A referral form must be completed and, as a minimum, information regarding the

following must be provided regarding the pupils currently on roll who are considered to have challenging behaviour:

Names of pupils considered to have challenging behaviour (see 5.1)

Number of pupils who have received a permanent exclusions

For the last 3 terms, the number of pupils who have received fixed term suspensions, the number of fixed term suspensions sanctioned or equivalent sanctions and the total number of school days lost due to fixed term suspensions

The number of early help strategies employed and / or the behaviour frameworks that have been employed

Number of pupils in each year group (for context)

As all schools are unique and operated in a different context, therefore the information will be peer reviewed by the panel to determine whether it is agreed that the school has a high proportion of children with challenging behaviour or previously excluded children, and whether this is relevant to the admission of another child.

6. Local Context and regular In-Year Admissions

Although the previous Admissions Code removed the duty on Local Authorities to co-ordinate in-year admissions with effect from September 2013, within North Lincolnshire all admission authorities continued to work in partnership. It was agreed that the local authority should continue to co-ordinate in-year admissions and no school would accept 'walk-in' admissions. The fair access protocol confirms that in-year admissions arrangements will continue to be coordinated by the local authority.

Co-ordination is the most effective way of ensuring that children out of school are tracked and monitored and placed as quickly as possible. This safeguarding element has been a particular strength of in-year coordination since its introduction and there is a significant risk that young people may slip through the net if admission authorities revert to a system whereby applicants submit individual school applications.

7. Fair Access Protocol Procedure

Children arriving in North Lincolnshire and unable to secure a school place

For children who move into North Lincolnshire or within North Lincolnshire (ie a significant distance from their previous home) and the local authority confirms that there are no places available at any school within a reasonable distance, such that the child has been or will be out of education for four or more weeks, the fair access protocol will apply.

In this situation, the council's admissions team will discuss the case with the relevant head teacher from the oversubscribed school(s) within a reasonable distance of the home. A school will then be selected by the admissions team based on the preferences identified on the application form, the distances to those and other schools, the level of over-subscription in each school, previous fair access admissions and the comments of the head teacher on the school's ability to cope with further admissions.

If the head teacher (or relevant admissions committee) agrees to the admission, the child will be allocated a place at the school, even though the relevant year group may be full. These admissions will be formally recorded as fair access cases.

If the selected school refuses admission, the reasons for refusal will be provided in writing by the school and the case will be referred to the Fair Access and Inclusion Panel for resolution.

If such circumstances arise, the admissions team will endeavour that approaches to schools are spread evenly so that no school is expected to take more than its fair share of supernumerary applications.

Applications for Schools with Places

Where an application is made for a school that has a vacancy, the admissions team will process the application form in the normal manner. Thereafter, it is for the receiving school to evaluate the application to determine:

Firstly, whether the pupil meets the fair access criteria in respect of challenging behaviour

Secondly, whether the school has a significant number of challenging pupils in the relevant year group

Thirdly, whether they wish to refuse the application and have the matter referred to the Fair Access and Inclusion Panel

If the fair access eligibility is not met, it is expected that the admission will proceed. If the admission is refused the reason(s) need to be stated in writing along with a completed fair access referral form, which will then be referred to the panel for their resolution.

8. Fair Access Panel

Referred fair access cases will be discussed at the Fair Access and Inclusion Panel. The panel is locally agreed arrangement which involves schools and academies in North Lincolnshire and is designed to promote inclusion in relation to children and young people who are the responsibility of participating schools or academies. By agreeing to adopt this protocol, it is established that the Fair Access and Inclusion Panel will consider and resolve all fair access cases.

The Secondary Fair Access and Inclusion Panel comprises of all secondary schools and academies in North Lincolnshire and has an independent chair.

The Primary Fair Access and Inclusion Panel has a small standing panel, drawn from a representative selection of primary schools, with other schools attending on an ad hoc basis to discuss particular cases. It has an independent chair.

In order to discuss and resolve fair access cases the following people (or representatives) should attend the meeting:

Head Teacher / Principal or representative from the school(s) refusing the application

Head Teacher / Principals for neighbouring schools(s) who may be identified as being suitable for admitting the pupil

Representatives from the local authority.

Relevant head teacher (or representatives) should attend to be able to give their reasons. If representatives do not attend the case will be decided by the panel in their absence on the basis of any submitted papers.

The panel will identify the school that should admit the child, or alternative provision if appropriate, and decisions apply to all schools. The panel will make the decision normally on the same day as to which school will be nominated to receive each pupil. In reaching a decision on the placement of the child, the Panel will consider the balance of circumstances of the pupil and the circumstances of the school, taking into account the following factors:

The needs of the child in question;

The distance and ease of travel from home to school;

The fairness of any placement and proportion of hard to place pupils that have been allocated by previous panels

The school that is the parent/carer's preferred choice; i.e. the religious affiliation of the pupil (where possible)

Genuine concerns about the admission, e.g. a previous serious breakdown in relationship between the school and the family, or a strong aversion to, or desire for, the religious ethos of the school.

Parents/Carers and children's views but they will not override the decision of the Panel if the preferred school is unable to take the pupil

Where schools reach a limit in any year group – whether to provide a placement in alternative provision until a place becomes available or to exceed the limit

Whether good quality alternative provision provides a more suitable solution

Whether to assist with transport assistance, normally limited to provision for attending schools beyond walking distance

Where appropriate, what support for transition could be provided

Any doubts about a pupil's suitability for mainstream education and whether a opportunity for further assessment should be considered

There is no longer a duty to comply with parental preference when allocating a school place through the fair access protocol.

A school cannot cite oversubscription as a reason for not admitting a hard-to-place pupils where that school is the nominated by the panel.

Schools must work together and support each other in ensuring a fair distribution of hard-to-place pupils across all schools. All schools must have effective integration processes in place.

All schools will be expected to admit pupils who have been assigned to their school under the process.

All schools, including academies, are expected to respond to request to admit a child under fair access within seven school days.

Once a child has been allocated by the panel, the child should be admitted within one week. The school must notify School Admissions of the admission date in each case.

If a maintained school or academy is identified as the one to admit a pupil and refuses to do so the matter will be referred to, in the first instance, the Assistant Director (Education). If, after consulting with the school and the parent, the LA decides to direct the school to admit the pupil, it must inform the governing body and headteacher of the school. Any further objection will be referred to the Schools Adjudicator or to the Secretary of State, as appropriate.

9. Making a Referral and Information

In order for a young person to be referred for consideration at the Fair Access and Inclusion Panel meeting, the agreed referral form must be completed. This is a comprehensive document and must be completed to enable the panel to make an appropriate decision regarding the student.

Referral forms must be submitted to the Admissions Team by 1pm on the Friday of the week preceding the panel meeting. Papers received after the deadline will not normally be accepted and will be allocated to the next scheduled panel meeting. However, exceptions may be made if it is considered to be in the child's best interests.

Upon receipt, the referral form will be subject to a quality assurance check to ensure that all necessary information/assessments/additional evidence is provided. If additional information is required, this information will be requested for receipt by 1pm Monday or the case will normally be deferred to the next scheduled meeting. Referral forms and supporting information will be circulated to the school/academy's nominated representatives prior to the scheduled meeting for members to consider and prepare for discussion according to the agreed timetable.

The local authority will provide information about:
 Availability of school places and travel implication
 Where available, comparison data on attendance, SEND, fixed term suspensions and permanent exclusions.
 Latest validated number of in-year transfers (joiners and leavers)
 Summary of recent fair access admissions

9.2 The refusing school should:

Complete the Fair Access and Inclusion Referral Form. If it is a North Lincolnshire School, it is agreed that the pupil's current school will help with this process – See section 5 also

Provide any additional information (ie from meeting / telephone calls with the parent or child's previous school)

Notify the admissions team who will explain the fair access process to parents.

10. Managed Moves

A managed move is normally an agreement between two schools, a child and his parents, which is brokered by the panel. It allows a child at risk of permanent exclusion to transfer to another school. This and will normally be triggered by a school making a direct referral to the Fair Access and Inclusion Panel. The Panel will consider the merits of the proposed managed. The Panel will also determine which school should accept the pupil being moved. Consideration will be given to the needs of the child and to the circumstances pertaining in the year group of the receiving school. Over time the Panel will track all managed move decisions to ensure some measure of equity between all participating schools receiving pupils via the managed moves process. When a pupil is moved via this process additional support to the pupil in the new school will be provided for the first six weeks in order to ensure a smooth transfer.

11. Transport

The home to school transport policy confirms pupil's entitlement to transport. Where a panel identifies a particular school for a child, (including via the managed moves process) this will be deemed as their nearest available school. If this exceeds the walking distance criteria, they will be eligible for transport. The panel must factor in transport costs when making their decisions. For example, allocating a child a school which means they must be transported by taxi will incur significant costs.

12. Education Provision whilst out of school

If a referral is made to the fair access and inclusion panel, the school which the child is registered at, will be responsible for ongoing education and support.

Education provision for other children will include Day 6 provision and alternative provision. Where a child has been out of school for 20 days, provision will be sought by the LA.

13. School Admission Appeals

The allocation of a place in accordance with a Fair Access Protocol does not override a parent's right to appeal against refusal of a place at any school for which they have applied. If an application has been refused despite there being places available, the governing body must present their case for refusal, demonstrating how admission of the child would prejudice the provision of efficient education or efficient use of resources. When considering such an appeal, in addition to considering the appellant's arguments for their child to be admitted, the panel must take account of the requirements set out in the local authority's Fair Access Protocol. The panel must

carefully consider whether the presenting officer has clearly proven that admission of the child would be prejudicial to the school or other children.

Fair access protocols should not be used as a means to circumvent the normal in-year admissions process. A parent can apply for a place as an in-year admission at any point and is entitled to an appeal when a place is not offered.

Schools should not refuse to admit a child who has been denied a place by an independent appeal panel if the Fair Access Panel subsequently identifies that school as the one to admit the child. This could occur if the parental appeal to the independent appeal panel takes place before the Fair Access Panel meets.

Oversubscribed schools should not refuse to admit a child who has been awarded a place by an independent appeal panel.

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.

14. Monitoring and Review

With the support of schools in providing / validating data, the LA will maintain a summary of the scale of in-year admissions on a school-by-school basis. The Fair Access Protocol is kept simple and regularly reviewed. A review of this document will commence one year from the date of its implementation.

15. Reference Documents

1. DfE: School Admissions Code: Mandatory requirements and statutory guidance for admission authorities, governing bodies, local authorities, schools adjudicators and admission appeals panels September 2021
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001050/School_admissions_code_2021.pdf
2. DfE: Fair Access Protocols: Guidance for school leaders, admission authorities and local authorities August 2021
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1012993/FAP_Guidance.pdf
3. DfE: School Admission Appeals Code: Mandatory requirements and statutory guidance for admission authorities, governing bodies, local authorities and admission appeals panels October 2022
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1108077/School_Admission_Appeals_Code_2022.pdf
4. Voluntary Co-ordinated Admissions Scheme for In-Year Admissions in the area of North Lincolnshire Council from 1 September 2021 onwards:
<https://www.northlincs.gov.uk/wp-content/uploads/2020/11/North-Lincolnshire-co-ordinated-scheme-in-year-2021-22aa.pdf>

5. The Equality Act 2010 and schools: Departmental advice for school leaders, school staff, governing bodies and local authorities May 2014.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/315587/Equality_Act_Advice_Final.pdf.