

# Wiltshire Council

## Primary In Year Fair Access Protocol

### Introduction

This document sets out the In Year Fair Access Protocol (IYFAP) which will be operated by Wiltshire Council in partnership with all primary schools within Wiltshire. In agreeing this protocol, the Council **must** ensure that no school, including those with available places, is asked to take a disproportionate number of children who have been excluded from other schools or who have challenging behaviour.

It has been formulated in line with DfE School Admissions Code 2021.

This Protocol and all documents relating to it are available for download from the Admissions pages of Right Choice.

## 1. Role and representation of the panel

- 1.1. The purpose of the Protocol is to ensure that unplaced children, especially the most vulnerable, are offered a place at a suitable school swiftly.

The most suitable school for some children could be a school that is close to the child's home. Advantages of a placement close to the child's home address are as follows:

- There are likely to be fewer transport issues ie the school is likely to be within the statutory safe walking distance (2 miles for children under the age of 8 and 3 miles for children over the age of 8).
- If the school is nearby this is likely to remove a barrier to attending which could exist for a place at a school further afield.
- There is likely to be better parental support and participation.
- The child will be better placed to participate in extracurricular activities.
- The child is more likely to develop friendship groups from his/her local community.
- It is less likely that appeals for other schools will be upheld.

- 1.2. In year Fair Access Panels (FAP) are timetabled on a monthly basis to ensure that all cases are dealt with within the statutory timescales.

1.1.1. All schools must provide data about the make-up of each year group to aid the panel's decision making. These data should be sent to [InYearFairAccess@wiltshire.gov.uk](mailto:InYearFairAccess@wiltshire.gov.uk) using the Wiltshire Council IYFAP School Information Matrix, on request prior to each panel meeting. This will enable Wiltshire Council to collate the information about schools to be presented at each panel meeting to aid decision making.

1.1.2. A panel Chair should be appointed by panel members and will be in post for that academic year. The panel will consist of 9 headteachers from schools across the county.

1.1.3. A total of 6 schools will be considered for placement for each case that is referred.

1.1.4. The Council should issue paperwork to panel members 5 working days in advance of the meeting.

**1.1.5. An allocation of a school place must be made during the panel meeting for every case that is referred. This must be within 20 school days of the referral being accepted by the Council.**

**1.1.6.** If a school is not represented at the panel and a place may still be allocated at the school.

**1.1.7.** There will be no right of appeal directly to the FAP. Any school appeals submitted will follow the normal statutory procedure as outlined in the School Admissions Appeals Code 2012.

## **2. Categories of children**

**2.1.** This Protocol comprises the categories that are mandatory under the School Admissions Code.

**2.2.** A child to be placed under this Protocol will be one who has been referred within five days of the school receiving the application:

- who lives in Wiltshire; and/or
- who seeks a place in Year 1 to 6 at a Wiltshire school

**and**

**2.3.** who is not on the roll of a mainstream school and who falls under one of the categories a) to m) below:

Any child who:

- a)** children either subject to a Child in Need Plan or a Child Protection Plan<sup>1</sup> or having had a Child in Need Plan or a Child Protection Plan within 12 months at the point of being referred to under the Protocol.
- b)** children living in a refuge or in other Relevant Accommodation at the point of being referred to under 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 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 Protocol in accordance with paragraph 3.10 of the Admissions Code.
- k)** children for whom a place has not been sought due to exceptional circumstances<sup>2</sup>
- 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

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<sup>1</sup> Child in Need Plans and Child Protection Plans are plans of help and protection to address safeguarding and welfare needs, where a child has been assessed by the Council as being a child in need under Section 17 of the Children Act 1989 and/or as suffering or likely to suffer significant hardship under Section 47 of the Children Act 1989. See also statutory guidance Working Together to Safeguard Children (2018) (pages 35 and 48-49)

<sup>2</sup> It is for the Council to decide whether a child qualifies to be placed via the Protocol on this basis, based on the circumstances of the case

m) previously looked after children for whom the Council has been unable to promptly secure a school place<sup>3</sup>.

or

2.4. who is on the roll of a mainstream school has applied for a place outside the normal admissions round and the governing body of the school to which an application has been made does not wish to admit the child because of the child's challenging behaviour, even though there are places available

2.4.1. This will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children. A child with challenging behaviour is one that has three aspects of behaviour agreed to be a medium risk by the panel, using the risk assessment section of the Pupil Information form.

2.4.2. This provision will not apply to a looked after child, a previously looked after child or a child with an EHCP that names the school in question, as these children must be admitted.

2.4.3. If a child is referred under this category, the Pupil Information Form will be requested from the home school and the Council will determine whether the child meets the criteria for referral.

2.5. Admission authorities must not refuse to admit:

2.5.1. a child thought to be potentially disruptive or likely to exhibit challenging behaviour, on the grounds that the child is first to be assessed for special educational needs.

2.5.2. a child in the normal admissions round because of their poor behaviour elsewhere

### 3. Process of Identification of children who meet the criteria for the Protocol.

3.1. Where an application form is received directly by the Council, it will be passed to the preferred schools who will process the application.

3.1.1. Where an application form is received directly by the school as part of the in-year admission application process and the school believes that the child meets the criteria of the Protocol, they will consider whether they are still able to admit the child:

3.1.2. If a child is offered a place at a school and following the admission, it is determined that the application should have been considered through the protocol, then it can be considered at the next panel meeting and logged retrospectively

3.1.3. If the school is unable to offer a place, the school will refer it to the Council to be considered under the Protocol.

3.2. There is no requirement for an admission authority to comply with parental preference for an application for any child who had been permanently excluded from two or more schools within a period of two years from the last exclusion. The most appropriate provision for the child will be determined by the panel category **d.** paragraph 2.3.

### 4. Referrals

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<sup>3</sup> The DfE advise that IYFA Protocol should be unnecessary for a previously looked after child in most cases. They expect the Council to aim to secure a school place particularly promptly for a previously looked after child and for admission authorities to cooperate with this. The Council may consider swift use of their general powers of direction or asking the Secretary of State to consider a direction to be the most suitable course of action if a school place for a previously looked after child cannot be agreed with an admission authority promptly.

- 4.1. All referrals must be made within 5 school days of the application being received by the school using the IYFAP referral form.

### **Appendix 1 - Referral to In-Year Fair Access Panel**

This will allow the Council enough time to obtain relevant information from the current school and process the application within the legal timescale. Once agreed, the Council will contact the home school for Child Information to be completed.

- 4.1.1. Any requests for referrals received by the Council outside the five school days timescale will not be eligible for consideration under the In Year Fair Access Protocol.
- 4.1.2. Should a referral be refused by the Council, written feedback will be provided to the referring school.
- 4.2. The Council will supply a generic form which must not be adapted. The pupil information form will be provided to the panel:
  - 4.2.1. by the Council in respect of cases referred under categories **2.3 c)** and **2.3 d)** above
  - 4.2.2. by the most recent school in respect of **2.3 j)** above and
  - 4.2.3. by the current school in respect of **2.4** above

### **Appendix 2 - In Year Fair Access Panel (FAP) – Pupil Information Form (3 pages)**

- 4.3. Information will be circulated to the panel no later than 5 days prior to the meeting.
- 4.4. Parent(s) of children whose application is being considered under the In Year Fair Access Protocol will not be invited to attend the meeting.
- 4.5. Parents retain the statutory right of appeal.
- 4.6. If a school refuses to admit a child following the offer of a place at FAP, the Council will seek to direct admission via the Secretary of State or the School's Adjudicator as outlined in the School Admissions Code of Practice.

## **5. Process for admission – categories a) to m) above**

- 5.1. In considering cases, the panel will have regard to:
  - 5.1.1. Parental preference. A parent/carer retains the right of appeal and so it is helpful to demonstrate that this has been considered. In line with the School Admissions Code of Practice, there is no duty to comply with parental preference.
  - 5.1.2. Proportion of children with challenging behaviour or previously excluded children.
  - 5.1.3. Distance, availability of transport and travelling time.
  - 5.1.4. School context information provided in the schools' matrix.
- 5.2. Information provided by schools to the panel will be available on request for any education appeals that may be heard.
- 5.3. If a school can offer a place in advance of the meeting, the application will still be considered under the formal process as above.
- 5.4. Geographical areas cannot be a boundary for refusing admission.
- 5.5. Decisions on all placements will be made at the panel meeting.

**5.5.1.** Parent/carer will be notified by Admissions Team and advised to contact the school to make detailed admission arrangements.

**5.5.2.** A decision letter will be sent to parents and the school.

**5.6.** The school must then place the child on the roll at the offered school within 5<sup>4</sup> school days of the parent's acceptance, regardless of year group.

**5.7.** Panel meetings must review any placements made at previous panel meetings to ensure that the children in the partnership area are in receipt of full-time education.

**5.8.** The admitting school will be required to provide the panel with an update after 12 weeks from panel's decision and again one year on. Specifically, whether the pupil is:

- on roll and offered full time provision at school
- on roll and not offered full time provision at school
- not on roll

## **6. Out of area applications**

Occasionally applications will be received for children who live outside Wiltshire but would otherwise meet the criteria for placement under this protocol.

**6.1.** If the child lives outside Wiltshire and falls within categories a) to m) of paragraph 2.3 of this protocol, and the preferred school is unable to offer a place, the application will be refused, and the parent will be advised to contact the child's home Council to identify an alternative placement.

## **7. Transport**

If the parent is unsuccessful in securing a place at one of their preferred schools and the allocated school is outside of the statutory safe walking distance for the child's age, the panel can submit a request to the Council for transport to be provided.

## **8. Review**

This protocol will be reviewed by the Council on an annual basis, or sooner:

- to reflect any changes in legislation or statutory guidance
- or
- if the majority of schools can no longer support the principles and approach of this Protocol.

To determine this, each panel representative will be asked during the first panel meeting of each seasonal term, to report whether they continue to support the Protocol or whether they want the Protocol to be reviewed earlier than the scheduled annual review.

The Council will lead a review if the majority of panel members request it at one of these meetings.

The existing Protocol will remain binding on all schools until the point at which a new one is adopted.

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<sup>4</sup> The Admissions Code requires schools to arrange for a child who has been allocated a school place via the Fair Access Protocol to start at the school as soon as possible. For Wiltshire schools, 5 days is determined to be a reasonable time scale.