

Wiltshire Council

Secondary Fair Access Protocol

1. Introduction

- 1.1.** This document sets out the Fair Access Protocol which will be operated by Wiltshire Council in partnership with all secondary schools within Wiltshire. Its aim is 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.

This protocol should be read alongside:

- The School Admissions Code 2021 and
- The Equality Act 2012.

- 1.2.** Admission authorities and local authorities must comply with the relevant law, and act in accordance with the provisions of The Admissions Code (hereafter referred to as The Code).

Where the words '**must**' or '**must not**' are used in The Code, they represent a mandatory requirement. Such requirements are referenced in this document with relevant paragraph number in The Code shown in brackets. The Code requires each Local Authority to have a Fair Access Protocol (3.14) (hereafter referred to as The Protocol).

2. Key Points

- 2.1.** Fair Access Panels play a key role in helping to keep children safe by ensuring the most vulnerable children can access education as quickly as possible.
- 2.2.** Every Local Authority must have a Fair Access Protocol in place.
- 2.3.** Once it has been agreed by the majority of schools in its area, all admission authorities must participate in it.
- 2.4.** All admission authorities will commit to taking an equitable share of children.
- 2.5.** All panel members must contribute to decision-making, about each individual referral and any individual school under consideration, impartially, fairly and without discrimination or bias.
- 2.6.** Children should be placed in school through the usual in-year admissions process in the first instance, where possible.
- 2.7.** Referral to the Fair Access Panel should be seen as the last resort to secure a school place for a child.

- 2.8.** Schools that have not signed up to the Service Level Agreement (SLA) must still participate in the Fair Access process as a Fair Access Protocol is a mandatory requirement of The Code.

3. Meeting times

- 3.1.** The panels normally meet on a calendar monthly basis, within 20 school days of the previous meeting (dates set annually).
- 3.2.** North, South and West panels operate for administrative purposes. If an application needs to be considered by schools in more than one area eg North and West, the relevant schools will be invited to attend/send representation to whichever area panel is scheduled to meet first. Agendas will be set so that cases involving visiting representatives are scheduled first.
- 3.3.** Panel co-ordinators will set panel dates for each area at different times so that all Local Authority representatives are able to attend each meeting.

4. Participation

- 4.1.** Admission authorities must participate in Fair Access Panel meetings.
- 4.2.** Each school will;
- make available a representative (preferably the head teacher) who is authorised to
 - participate in discussions and
 - make decisions on placing children via The Protocol during the meeting about each individual referral and any individual school under consideration, impartially, fairly and without discrimination or bias.
 - admit a child when asked to do so in accordance with The Protocol, even when the school is full (3.15).
- 4.3.** If a school is not represented at the panel, a place may still be allocated at that school.
- 4.4.** Representative/s from the Local Authority will be present at each panel meeting to provide advice and information but are not part of the decision making process.
- 4.5.** Parent(s) are not permitted to attend In Year Fair Access meetings.

5. Eligibility

- 5.1.** A parent can apply for a place for their child at any school at any time. All applications must be processed by the relevant admission authority in accordance with The Code. Where it can be demonstrated that a parent has applied (years 8-11) through the usual in-year admissions process, and this has not been successful, or where a school place

has not been sought due to exceptional circumstances, a child may be eligible for referral to the Fair Access Protocol.

5.2. Admission authorities:

5.2.1. must process all in-year applications in accordance with their usual in-year admission procedures (as set out in paragraphs 2.23 - 2.31 of The Code). When formulating their admission arrangements, they must have regard to paragraph 1.9 of The Code.

5.2.2. must not refuse to admit children on the basis that they **may be** eligible to be placed via the Fair Access Protocol (3.18)

5.3. Where an admission authority refuses an in-year application, it should consider whether the child would be eligible to be placed via the FAP, ie whether they fall or the school has good reason to believe they fall into one of the categories set out in paragraph 3.17 of The Code.

In such circumstances the admission authority should notify the Local Authority of this. The Local Authority will then decide whether the child would be eligible to be placed via The Protocol.

5.4. Fair Access Protocols do not apply to any

- child looked after,
- previously looked after child or any
- child with an EHCP that names the school in question,

as these children **must** be admitted.

5.5. The Fair Access Protocol may only be used to place the following groups of vulnerable and/or hard-to-place children, where they are having difficulty in securing a school place in-year, and it can be demonstrated that the parent has applied for a school place through the usual in-year admission procedures.

5.6. The Code - paragraph 3.17

Any child whose parent seeks a place in Year 8 to 11 at a Wiltshire school:

- 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 Protocol;
- b) children living in a refuge or in other Relevant Accommodation at the point of being referred to The Protocol;
- c) children from the criminal justice system;

- d) children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education;
- e) children with special educational needs (but without an Education, Health and Care plan), disabilities or medical conditions;
- f) children who are carers;
- g) children who are homeless;
- h) children in formal kinship care arrangements
- i) is, or is the child of, Gypsies, Roma, Travellers, refugees and asylum seekers.
- j) has 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 Code
- k) for whom a place has not been sought due to exceptional circumstances¹
- l) has 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.
- m) previously looked after children for whom the Local Authority has been unable to promptly secure a school place.

5.7. The Code - paragraph 3.10

5.7.1. 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 it may only refuse admission and refer the child to the Fair Access Protocol (3.10) 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.

5.7.2. For the purposes of such referrals under 3.17 (J), The Code defines challenging behaviour as 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. Such behaviour would typically significantly interfere with the pupil's/other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment.

¹ it is for the Local Authority to decide whether a child qualifies to be placed via The Protocol on this basis, based on the circumstances of the case.

5.7.3. If a child is referred under this category, the Fair Access Information Form will be requested from the home school by the Local Authority to determine whether the child meets the criteria for referral.

5.8. Any child permanently excluded

5.8.1. The Local Authority has a statutory duty under section 19 of the Education Act (1996) to provide suitable education for children permanently excluded from school. Wiltshire Council has no pupil referral units in its school estate and provision for children permanently excluded is commissioned from providers listed in the Wiltshire Approved Alternative Provision Directory (WAAP) and/or DfE registered alternative providers.

5.8.2. The Local Authority will

- work with providers to set up and review such alternative provision placements. In the case of any child permanently excluded from a school within the SLA, the Local Authority will also liaise with the school about the provision.
- determine when the child should have a named school place using:
 - evidence of the child's needs provided by the excluding school,
 - progress information provided by the alternative provider/s and
 - report/s from any other relevant professional working with the child.
- liaise with parents to ensure an application is made for a school place.
- submit a referral to Fair Access Panel under 3.17 (d) of The Code.
- provide a report to the Fair Access Panel with recommendations relating to transition out of alternative provision in the best interests of the child.

5.9. Any child twice permanently excluded

5.9.1. While parental preference will be considered in respect of any application made by for a child a who 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. Any referral by a school to IYFAP under such circumstances will be considered under 3.17 (J) of The Protocol.

5.9.2. The twice excluded rule does not apply to the following children:

- children who were below compulsory school age at the time of the permanent exclusion;
- children who have been reinstated following a permanent exclusion (or would have been reinstated had it been practicable to do so);

- children whose permanent exclusion has been quashed by an Independent Review Panel.

5.10. Year 11 children

- In view of the need to admit such children with the minimum delay because of the impact an extended period out of school is likely to have on their examination results, schools that have a place, should offer a place in line with the In Year Co-ordinated Admissions Arrangements.
- Any request for additional funding to support inclusion for these children can be subsequently brought to the IYFAP for consideration.

5.11. The Admissions Code Paragraph 3.14

- Occasionally parents will have difficulty in securing a school place in-year for their children, due to insufficient school places.
- In such cases, the Local Authority will share the admissions application form with the Fair Access Panel and the panel will allocate a place for the child at a local school, so that a school offer can be made as quickly as possible.

6. Managing referrals

6.1. The Code dictates that where it has been agreed that a child will be considered under the Fair Access Protocol, a school place must be allocated for that child within 20 school days (3.21).

6.2. To ensure this statutory timeframe is maintained:

6.2.1. Where an application form is received by a school (directly or via the Wiltshire Council Admissions Team) and the school wishes to make a referral to the In Year Fair Access Panel, it must do so within 5 school days of receipt of the application.

6.2.2. Any requests for referrals received by the Local Authority outside the 5 school days timescale will not be eligible for consideration under the In Year Fair Access Protocol.

6.2.3. The paperwork for each referral will be circulated by the panel co-ordinator to the Fair Access Panel members before the meeting - typically no fewer than 3 school days before the meeting.

6.2.4. The Local Authority will then obtain relevant information using the Fair Access Pupil Information Form from the current school (for the purposes of referrals under 3.17 (J) of The Code) to enable the referral to be considered and processed within the legal timescale.

6.2.5. For all other referrals to IYFA under 3.17, (excluding criteria J), the admissions application form will be used to determine if a referral is appropriate.

6.3. Where a referral is refused by the Local Authority;

6.3.1. written confirmation of the decision to refuse the referral will be sent to the referring school.

6.3.2. The Local Authority will send an offer letter to parent with advice about how to accept the offer and the timescales for doing so – 28 working days from the date offer.

7. Panel meetings

7.1. 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 excluded from other schools or who have behaviour that challenges.

7.2. All school representatives who attend the panel meetings on behalf of the headteacher, must have the authority to make decisions during the meeting (3.15).

7.3. In considering cases, the panel will have regard to:

- Parental preference. While there is no duty to comply with parental preference (3.19), parents views will be taken into account.
- Distance, availability of transport and travelling time.

7.4. 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 (3 miles for children over the age of 8).
- A school's proximity to a child's home is likely to reduce a barrier to attending which could exist for a place at a school further afield.
- There is likely be better parental support and participation.
- Proportion of children with challenging behaviour or previously excluded children for referrals under 3.17 (J) of The Code.

7.5. To inform panel decision making about any referral under 3.17 (J) the panel will consider only information provided by schools relating to:

- Their cohorts of children and related use of resources. A school cannot cite a lack of enhanced/on-site provision as ground for refusal.
- In-school measures to manage behaviour that challenges eg number/ percentage of pupils accessing SEMH/pastoral support or enhanced provision.

7.6. The Local Authority will provide information about:

- Each school's reported use of alternative provision and Managed Moves.

- Any additional information about the child held by the Local Authority relevant to the current application

7.7. If a child is offered a place at a school and, following the admission, it is determined that the application could have been considered through The Protocol, then the school can refer for consideration at the next panel meeting and where the panel agrees that it meets criteria, it can be recorded retrospectively. In such cases, the child remains on roll.

8. Following the IYFA meeting

8.1. The School Admissions Team will send a letter to the parent confirming the outcome of their school application and advising the parent to contact the school without delay to confirm they wish to accept the place and arrange a start date.

8.2. If the school has not heard from the parent within 10 school days, the school must alert Wiltshire Council Education Welfare Service that the child is at risk of missing out on education.

8.3. If a school refuses to admit a child following the offer of a place at IYFAP, the Local Authority will seek to direct admission via the Secretary of State or the School's Adjudicator as outlined in the School Admissions Code of Practice.

9. Monitoring

9.1. Panel meetings must review any placements made at previous panel meetings to ensure that the children allocated a place, are in receipt of their entitlement to suitable education.

9.2. 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.

10. Review of IYFA Protocol

10.1. This Protocol will be reviewed by the Local Authority with head teachers representing each panel:

- every two years during June and July or
- in response to changes to School Admissions Code or related statutory guidance.

10.2. Any school unable to support the principles and approach of this Fair Access Protocol, should outline their reasons in writing to

- the Local Authority lead officer for Fair Access within the School Admissions Team
- the chair of the Fair Access Panel

- 10.3.** The chair of the panel will share issues described in this way with panel members to consider the concerns raised. Any suggested amendments or additions to The Protocol or supporting paperwork following this discussion will be considered during the scheduled next review.
- 10.4.** In the event that **the majority** (more than half) of Wiltshire secondary schools can no longer support the principles and approach of this Fair Access Protocol, the Local Authority will schedule a review and request written recommendations for changes to The Protocol from every school for consideration.
- 10.5.** The existing Fair Access Protocol will remain binding on all schools until the point at which a new one is adopted (3.22).