

East Sussex County Council (Children's Services)

Fair Access Protocol (FAP)

1. Introduction

- 1.1 Every Local Authority (LA) is required to have a FAP, developed through consultation with local schools and agreed by the majority. All schools must participate in the FAP to ensure unplaced children are allocated a place quickly. Processes for allocating FAP children must be transparent and may, if deemed appropriate, be subject to Local Agreement between a set of schools in an area, in consultation with the LA.
- 1.2 In this document, the term 'school' is understood to mean maintained schools, free schools and academies, unless otherwise specified.
- 1.3 The purpose of the FAP is to ensure that vulnerable and unplaced children are found a school place quickly and fairly, so that the amount of time any child is out of school is kept to a minimum.
- 1.4 The FAP aims to ensure that all schools take a shared responsibility for the admission of pupils with challenging educational needs with no school taking a disproportionate number of vulnerable pupils.
- 1.5 It is important that the Local Authority (LA) is transparent and fair in the way placement decisions are made so that schools have confidence in the FAP and work collaboratively with the LA and each other to meet the needs of vulnerable pupils. FAP allocation lists will be supplied for secondary schools at their regular Behaviour and Attendance meetings, and infant, junior and primary schools will receive a list for the schools in their cluster area three times a year (normally at Christmas, Easter and late July).
- 1.6 In East Sussex there are established forums in which schools and the LA monitor the operation of the FAP and ensure that there is, as far as possible, an equitable distribution of challenging children.
- 1.7 Looked after children, previously looked after children and children with statements of special educational needs or Education Health and Care Plans (EHCP) are not included in the scope of the FAP, as the School Admissions Code requires that these children will be admitted to the parents' (or corporate parent's) preferred school. See Appendix 4.
- 1.8 The LA does not underestimate the flexibility and skills schools have continually developed in order to meet the ever-increasing complex needs of vulnerable children in the County. In accordance with the DfE statutory guidance around exclusions, including the SEND Code of Practice, the LA's expectation is that establishments will only use sanctions such as exclusion when all other inclusive strategies have been exhausted, including school to school placements
- 1.9 It is rarely in the interests of a child, particularly one with challenging behaviour or who is vulnerable in other ways, to be forcibly moved between mainstream schools. The LA recognises its own role (alongside academy trust colleagues) to assist establishments in this regard, albeit within the resources available.

2. Rules for the operation of the Fair Access Protocol.

- 2.1 The operation of the FAP is outside the normal admission arrangements. It only applies to "In Year Admissions" when a child does not already have a school place but meets defined criteria related to her/his vulnerability/ circumstance (or when all schools within a reasonable distance are full).
- 2.2 The FAP must 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. If after admitting a child s/he is subsequently found to have challenging behaviour as defined in Appendix 2, the LA will allocate a FAP credit to the school. FAP credit is a mechanism for monitoring equitability of placements across schools.
- 2.3 The majority of children will be placed through the normal admission procedures. However children with statements of Special Educational Need (SEN) or EHCPs are not included in this FAP as their needs and mainstream school placement will be considered separately by the Inclusion Special Educational Needs and Disabilities Assessment and Planning Team (see Appendix 4 below).
- 2.4 No school can be considered 'full' for purposes of the FAP, even where the Planned Admission Number has been reached or exceeded¹. FAP allocations will take priority over any applicants on a waiting list.
- 2.5 The aim of this FAP is to ensure, by working transparently and collaboratively, that children are placed by agreement with the receiving school. However, in exceptional circumstances there are provisions in place to ensure that a placement can be secured. These are outlined in Appendix 3.
- 2.6 Admissions authorities 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.
- 2.7 There is no 'one-out-one-in' policy in relation to permanently excluded children, as this would be illegal under the School Admissions Code. Schools that do not permanently exclude will not be exempt from admitting children who have been permanently excluded from other schools.
- 2.8 Where a placement made under the FAP breaks down within twelve school weeks, or the parent makes a new in-year application within this timescale (other than for an evidenced house move), the case will be considered under the FAP and may result in the child remaining at the current school, even where there are spaces available at the preferred school. If a change of placement is agreed in this situation the FAP credit will transfer to the new school along with the child.
- 2.9 When notifying headteachers of potential allocations, the LA will provide as much information as available, this will vary from case to case but can include the name of the previous school, any previous sanctions (e.g. fixed term exclusions - internal sanctions may not be known), risk assessments (where appropriate) PEPs and pupil passports. Admission authorities (both schools and the LA) are not legally allowed to collect information prior to admission being agreed, and therefore the amount of information supplied may vary and will be limited to information already held within the LA.

¹ occasionally schools choose to admit children over PAN because their teaching organization can accommodate this. Schools that have done this will not be exempt from accepting FAP allocations.

- 2.10 Unless there are exceptional circumstances (such as an evidenced house move) it is expected that where parents have withdrawn their child from a mainstream school to home educate (and where this has subsequently deemed to have failed), the child will return to the original school.
- 2.11 Children with attendance problems, or those for whom English is an additional language, will not, as a result of this, be considered 'challenging', under the FAP. These children should be admitted through the normal in year process. It is, however, accepted that they may present a challenge, and that their cases may be brought to BAP and HR Panels for general discussion and peer support.
- 2.12 To discourage 'school hopping', when a school receives an in year application for a child who doesn't appear to meet the FAP criteria, and who currently attends another local school, the preferred school is expected to inform the current school, so that they can arrange to discuss the reasons for the move with the family, and whether or not there is anything that the current school can do to support the child to remain there. This discussion should take place within five days of the current school being notified, and the preferred school informed of the outcome. If the parent decides to pursue the application, a place should be offered in the normal way, unless the school is full.

3. Factors that will be taken into account when making FAP allocations

- 3.1 The LA has no duty to comply with parental preference when making allocations under the FAP. However, the DfE guidance (November 2012) states that 'it is expected that the wishes of the parents are taken into account', so this will remain a consideration in order to secure parental engagement with the placement and improve the chances of a successful outcome.
- 3.2 The child's address will be considered so that the school identified is within a reasonable distance from the child's home. This is particularly important where a transport commitment would otherwise be incurred, or where the journey would in itself present a potential barrier to attendance.
- 3.3 Schools must not restrict the number of admissions under the FAP because applications do not comply with their 'normal' admissions arrangements (e.g. religious affiliation or allocations between federated schools). However with regard to the religious ethos of the school, allocations will be made in accordance with these where possible.
- 3.4 When allocating eligible children in KS1, the LA will have due regard to the infant class size legislation and the exceptions that apply under the School Admissions Code.
- 3.5 Placement changes in lieu of permanent exclusions (school to school placements) as agreed by Behaviour & Attendance Partnerships (BAP) or FAP panels will be recorded against FAP numbers.
- 3.6 Appendix 1 explains the process that will be followed for allocating FAP children (including flow chart). Appendix 2 outlines the thresholds and definitions that will apply to children who are challenging/vulnerable.

4. Deadlines for admission

- 4.1 Generally, schools will be asked to admit a child under the FAP within ten school days from the date of allocation. This is intended to give sufficient time for schools to arrange a pre-admission meeting (if this is considered necessary) with external agencies and to arrange any necessary support for the child's reintegration (which may be provided by the Authority as necessary). It should be understood that any meeting is to arrange provision rather than to determine whether the child should be offered a place, as interviewing in this way is

illegal under the School Admissions Code. Where schools refuse to admit a child under the FAP, the procedure outlined in appendix 3 will be followed.

- 4.2 However, it may be necessary to admit a particularly vulnerable child in a shorter time. In these cases, the Admissions and Transport Manager will consult with headteacher of the receiving school.
- 4.3 Allocation letters will be emailed to schools on the day of allocation. The allocation letter to the parent will be sent by email the following day. In this way, schools can be assured that they will receive their allocation letter before the parent has been notified.

5. Children for whom mainstream provision is assessed as inappropriate

In exceptional circumstances a BAP or FAP/ HRP may deem that the behavioural needs of a particular child cannot fully and immediately be met by a mainstream school and in such circumstances may seek a temporary placement at College Central, subject to place availability, or decide on alternative provision resourced by the school. In these cases the child will normally be placed on the roll (or remain on the roll) of a mainstream school as a dual registration in order to ensure a planned transition to mainstream when appropriate.

Appendix 1

Process for placing children under the Fair Access Protocol

There are only two legal reasons for refusing to offer a place to a child whose parents have applied for admission:

- The school is full and to admit additional children would prejudice efficient education at the school or efficient use of resources, or
- The child in question has challenging behaviour and the preferred school already has a high proportion of challenging children on roll.

The School Admissions Code 2014 states that 'where a governing body does not wish to admit a child with challenging behaviour, even though places are available, it **must** refer the case to the local authority for action under the Fair Access Protocol' (paragraph 3.12). It goes on to say that the use of this provision '**must** be described in the local authority's Fair Access Protocol'. The definition of 'challenging' adopted by East Sussex County Council is those children who fall into group 1 as set out in Appendix 2. All other children **must** be admitted (including those in group 2) where there is a space available. Retrospective FAP credit can then be claimed in respect of group 2 children (by agreement with the Admissions and Transport Manager). Looked after children, previously looked after children and children with a statement or EHCP **must** be admitted even if they fall into group 1.

Where there is no space available, a SAM notification should be returned in the usual way. If all the schools within a reasonable distance are full and the child is unplaced, a school will be approached to admit the child by the Admissions and Transport Manager, and FAP credit awarded. A child will be considered 'unplaced' if he or she does not have a school place, or if he/she has moved home address and attendance at the previous school is no longer practical by reason of length of journey.

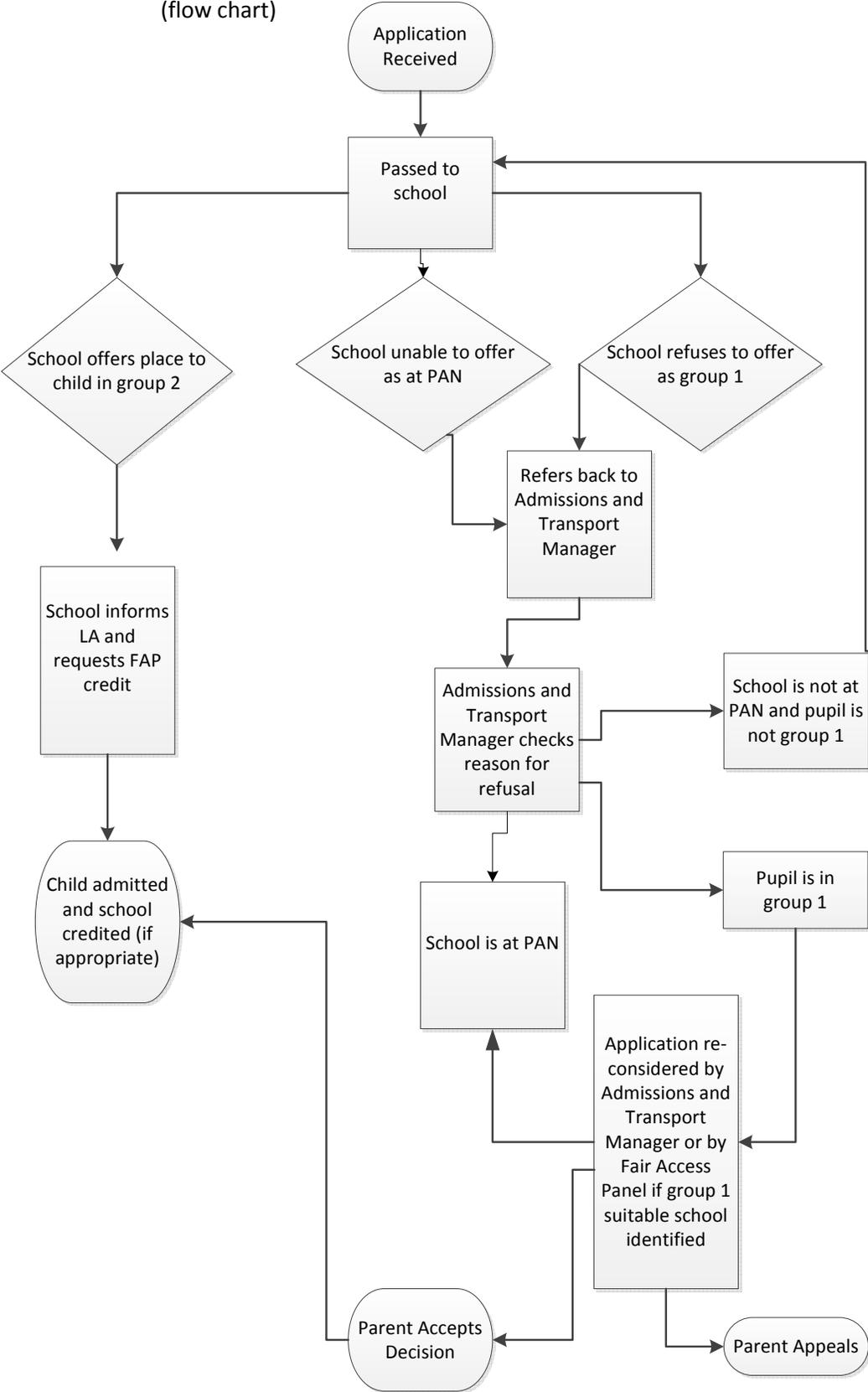
PROCEDURE

- 1) The Admissions and Transport Manager will liaise with the preferred school(s) to establish the reason for refusal (ie whether the school is full or the child is challenging as defined in group 1). In either case if the child is not unplaced then the family will be advised to remain at the current school. If the preferred school is not full and there is no evidence that the child falls into group 1, they will be expected to admit the child. Even if the child falls into group 1, unless the school can demonstrate a high proportion of challenging children already on roll, they are likely to be asked to admit the child.
- 2) **Primary schools:** If a primary age child is unplaced because all the schools within a reasonable distance are full, the Admissions and Transport Manager will identify a school within a reasonable distance and approach the headteacher to admit the child over PAN (usually by email). Headteachers will be given 72 hours to notify the Admissions and Transport Manager of any exceptional reasons that would make the allocation untenable (ie not merely undesirable). In identifying a school, the Admissions and Transport Manager will take into account parental preference, distance from home to school, sibling attendance, numbers on roll at the school and previous allocations under the FAP. Where a child is unplaced because he/she has moved to a rural area served by only one school, the Admissions and Transport Manager will normally ask that school to admit the child.
- 3) **Secondary schools:** Where a child has moved into a community area served by a rural secondary school, it is expected that that school will admit the child in question even if it is full. If a child moves into an area served by more than one school, but all schools within a

reasonable distance are full, the Admissions and Transport Manager will allocate a school as described in 2) above. Challenging behaviour cases will normally be decided by the local BAP group or Fair Access Panel or a delegated subset of this if it does not meet frequently enough.

- 4) If the child is not an East Sussex resident, and the preferred school is not able to offer a place because they are full or the child has challenging behaviour (group 1) and the preferred school already has a high proportion of such children on roll, the application will be refused and the child referred back to his/her home authority for placement.
- 5) BAP/Fair Access Panels should not incur home to school transport costs without prior agreement of the budget holder, unless the child in question lives further than the statutory walking distance from all schools serving his/her age group.
- 6) In all of the above cases, parents will have the right of appeal against any decision not to offer a place at the preferred school, so it is essential that the decision making process is clear, evidenced, and compliant with the School Admissions Code.

Appendix 1 – Process for FAP
(flow chart)



Appendix 2

Fair Access Protocol Criteria

The criteria will be divided into two sections covering the following groups of children:

Group 1 **Children who present with challenging behaviour***:

- 1.1 Permanently excluded children, including those attending alternative provision who need to be reintegrated back into mainstream school
- 1.2 Children supported by the Youth Offending Team, or returning from the criminal justice system
- 1.3 Children who have moved into the county with an established history of exclusion (either permanent or five or more fixed term exclusions within the previous 12 months)
- 1.4 Children withdrawn from school following five or more fixed term exclusions (within the previous 12 months) and unable to find another school place. (For schools that use internal sanctions, the qualifying criterion will be removal from class for a total period of five school days in five or more episodes).

The categories above will be the threshold for any child allocated through the normal in-year admissions process to be referred back to the Local Authority for action under the FAP as described in Paragraph 3.12 of the School Admissions Code 2014. This will only be applicable if the school has reached its Published Admission Number in that year group , or the school has a particularly high proportion of challenging pupils (i.e. Group 1) already on roll. If neither of these applies, then there are no legal grounds to refuse admission and the child must be admitted to the school.

Group 2 **Vulnerable children at risk of being out of school**

- 2.1 Children who have been out of education for two months or more
- 2.2 Children of refugees and asylum seekers
- 2.3 Gypsies, Roma or Traveller children
- 2.4 Homeless children
- 2.5 Children with unsupportive family backgrounds for whom a place has not been sought
- 2.6 Children who are carers
- 2.7 Children who have moved into the area for whom there is no school place because all schools within a reasonable distance are full
- 2.8 Children with special educational needs, disabilities or medical conditions (but without a statement/ EHCP).

As children within Group 1 can prove especially challenging for schools, all allocations in this group will be made via this FAP where they are identified in advance of admission. Children in Group 2 will be allocated to schools by the Admissions and Transport Manager in the 'normal' way. However, schools will be awarded FAP credit for the admission of children who are in Group 2, with the agreement of the Admissions and Transport Manager.

Appendix 3

1) Powers of Direction-Community and Controlled Schools

As the local authority is the admission authority for community and voluntary controlled schools, there is no formal power of direction; school staff and governors have no right to refuse admission where the local authority has made the decision to offer a place.

2) Powers of Direction-other maintained Schools

A local authority has the power to direct the governing body of a maintained school for which they are not the admission authority to admit a child in their area even when the school is full. The local authority can only make such a direction in respect of a child in the local authority's area who has been refused entry to, or has been permanently excluded from, every suitable school within a reasonable distance. The local authority **must** choose a school that is a reasonable distance from the child's home and from which the child is not permanently excluded.

Before deciding to give a direction, the local authority **must** consult the governing body of the school, the parent of the child and the child if they are over compulsory school age. If, following consultation, the local authority decides to direct, it **must** inform the governing body and head teacher of the school. The governing body can appeal by referring the case to the Schools Adjudicator within 15 days. If it does this, the governing body **must** tell the local authority. The local authority **must not** make a direction until the 15 days have passed and the case has not been referred.

If the case is referred to the Adjudicator, the Adjudicator may either uphold the direction or determine that another maintained school **must** admit the child. The Adjudicator's decision is binding. The Adjudicator **must not** direct a school to admit a child if this would require the school to take measures to avoid breaking the rules on infant class sizes and those measures would prejudice the provision of efficient education or the efficient use of resources.

3) Referrals to the Secretary of State for Academies

Where a local authority considers that an Academy will best meet the needs of any child, it can ask the Academy to admit that child but has no power to direct it to do so. If the Academy refuses to admit the child, the local authority can ask the Secretary of State to intervene. The Secretary of State has the power under an Academy's Funding Agreement to direct the Academy to admit a child, and can seek advice from the Adjudicator in reaching a decision.

Appendix 4

Looked After Children, Children with statements of SEN or Education, Health and Care Plans.

1) Legal position

Paragraph 3.12 of the School Admissions Code 2014 makes it clear that looked after children, previously looked after children, and children with a statement of special educational needs or Education, Health and Care Plan naming the school in question do not fall within the scope of the Fair Access Protocol as they **must** be admitted where there are spaces available. In the context of the Code, '**must**' indicates a legal requirement.

2) Looked After Children

As the Code makes it clear that, in the case of looked after children, the LA responsible for the child can direct any maintained school to admit a looked after child, East Sussex County Council's expectation will be that any school named as a preference in respect of a LAC will admit that child without delay, even where the PAN has been reached or exceeded. If there are any exceptional circumstances that make this untenable, the Admissions and Transport Manager must be notified urgently, and certainly within 72 hours. In this case the Admissions and Transport Manager will liaise with the Virtual School to discuss the situation, and the likely outcome is that the preferred school will be directed to admit the child. Looked After Children admitted outside the normal admission round are a specified exception to the infant class size legislation.

3) Special Educational Needs children

Children with statements of SEN or EHCPs are entitled to a place at the school or Academy named on the statement or EHCP, even if the PAN has been reached or exceeded. Before a school or Academy is named in the statement or EHCP, there is a consultation process involving the school or Academy to ensure that all parties have a shared understanding as to how best the needs of the child can be met.

Children with Special Educational Needs (with or without an EHCP) are part of the local community in which they reside. The LA believes there is a moral imperative to recognise this by integrating them into their local school to facilitate both educational and social growth.