



Primary School Fair Access Protocol (FAP)

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Fair Access Protocol

Introduction

Legal background

Section 1 – Why FAP is needed

Section 2 – Key Principles

Section 3 – Children included in FAP

Section 4 – Exemptions

Section 5- The operation of the Fair Access panels / pop up panels

Section 6 – How the FAP will be administered

Section 7 – Approaching the identified school

Section 8 – Escalation procedures

Section 9 – Direction

Section 10 – Reporting

Section 11 – Area Pupil Access Team contacts

Introduction

The School Admissions Code (September 2021) [School admissions code 2021](#) requires each Local Authority to have a Fair Access Protocol (FAP). All schools and academies must participate in their Local Authority's protocol. The Fair Access Protocol ensures that unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible. This includes admitting children to schools that are already full. [Fair access protocols: advice for local authorities and school admission authorities](#)

The Fair Access Protocol is designed to ensure children who find themselves in challenging circumstances are found school places and outlines the arrangements to support this. Children missing education are at a significant risk of underachieving, victims of harm or exploitation and of becoming NEET later in life. Primary schools and academies and all admission authorities do share responsibility for ensuring that vulnerable, new to area children are admitted to school as quickly as possible.

Effective working relationships between schools and the Local Authority and a mutual exchange of information about individual cases and local factors is vital. The majority of Lancashire's in-year primary admissions proceed with minimal bureaucracy and delay, and it is intended that this will continue to minimise Fair Access referrals.

For the Fair Access Protocol to work effectively it is imperative that the Local Authority has an overview of all the pupil placements that have taken place within a district. This document should demonstrate the distribution of pupils amongst the schools and needs to be a 'living' record that will provide a starting point when considering future placements. Although the School Admissions Code precludes a Fair Access admission applying to looked after children and children with Education Health and Care Plans it can be helpful for these pupils to be included in the overview.

Lancashire is committed to developing strong relationships with schools and hopes this protocol continues to support our most vulnerable children and the schools who offer them a place. There is an expectation that we all work in partnership to safeguard and promote the welfare of children.

Legal background

Fair Access Protocols have a legal basis. The School Admissions Code (September 2021) is issued under Section 84 of the School Standards and Framework Act 1998. The Code imposes mandatory requirements upon various groups, including Local Authorities and admission authorities (the Local Authority and Governing Bodies of all voluntary aided and foundation schools and academies and free schools).

The Code specifically requires that:-

- Each Local Authority **must** have a FAP which is agreed with the majority of schools.
- Outside of the normal admissions round unplaced children, especially the most vulnerable, **must** be offered school places as quickly as possible.
- The Local Authority **must** ensure that no school is asked to admit a disproportionate number of children who have been previously excluded or who present challenging behaviour.
- All admission authorities **must** participate in FAP.
- There is no duty to comply with parental preference.
- FAP does not include children in public care (looked after children) or those with full Education, Health and Care Plans naming a school. These children must be admitted.
- Admission authorities **must** admit children when asked to do so

School Admissions Code – Section 3 – (3.14, 3.16 and 3.19)

Section 1 - Why FAP is needed

For some vulnerable children there are occasional refusals to admit or delays in offering places. Fair Access seeks to ensure that the needs of the child and the school are considered in placing children who are included in the protocol.

FAP is needed therefore:-

- To fulfil the legal requirements of the School Standards and Framework Act and the School Admissions Code.
- To quickly place vulnerable children who are accepted within the FAP.
- To avoid refusals to admit which are unlawful and which create gaps in educational provision. Refusals to admit often raise tensions between the parties involved.

Section 2 - Key principles

Most pupils are admitted to schools through the routine admissions procedures. The FAP will be underpinned by a transparent, collaborative approach with the best interests of children at the forefront.

- FAP arrangements must be fair, equitable and transparent.
- FAP must acknowledge and address the needs of children not on a school roll and deal with place requests quickly and sympathetically.
- FAP will seek to reduce the time that vulnerable children spend out of school.
- FAP will seek to share Fair Access admissions between schools in an area though there will be occasions where a strict order cannot be applied.

- FAP will apply to in year admission requests and not to children already within annual intake process.
- Area Pupil Access Teams will administer and monitor FAP and may make referrals direct to primary schools or to 'pop up' Fair Access Panels.
- Decisions made by the Fair Access Panels will be acted upon unless there are exceptional circumstances that the panel members were unaware of. This is essential to avoid delays and the unlawful refusal of places.
- Lancashire's primary FAP will apply to all families resident within the County. Those resident in other areas should approach their home local authority for advice. There may be exceptions where the Local Authority or a panel has accepted a referral within its agreed FAP.
- Parental school preferences and denomination / faith requirements will be noted when considering a suitable school but this will not override the protocol when making referrals for admission.

Section 3 - Children included in FAP

Fair Access admissions only apply to pupils without a mainstream school place.

The FAP 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 reasonable measures have been taken to secure a school place through the usual In-Year admission procedures.

The categories for Fair Access admissions are as follows:-

- a. Children either subject to a Child in Need Plan or a Child Protection Plan or having had a Child in Need Plan or 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. pupils that have Special Educational Needs and are currently receiving additional targeted support within school (including children undergoing statutory assessment) but do not have an EHC Plan;
- f. Children who are carers;
- g. Children who are homeless;
- h. Children in formal kinship care arrangements (as evidenced by a Child Arrangements Order not relating to either birth parent or a Special Guardianship Order);
- 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 (see * below for definition)
- k. Children for whom a place has not been sought due to exceptional circumstances; (it is for the LA to decide whether a child qualifies to be placed via the FAP under this category, based on individual circumstances);
- 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 from their home;
- m. Previously Looked After children for whom the Local Authority has been unable to promptly secure a school place.

** 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 (DfE School Admissions Code 2021).*

Where a School Attendance Order (SAO) is being considered these pupils may fall under category k therefore, the Fair Access and Pupil Placement Officer will need to take the following into account before identifying a school to be named for the purpose of the SAO.

The nearest school to the child's home address, or the nearest school that has not admitted a pupil subject to a School Attendance Order during the academic year, or the last school the pupil was on roll at (within the district).

Section 4 – Exemptions

All Lancashire schools must participate in FAP - this is a legal requirement. The only circumstances where referrals will not be made are:

1. Where the child was previously permanently excluded from a school they will not be referred back to the same establishment.
2. Where there is a serious recent or ongoing complaint / legal issue with the child or family in relation to a particular school or a member of staff at a particular school.
3. Where there has been a police investigation of a serious nature involving a pupil or member of staff at a particular school.
4. Infant Class Size Limits (except for category l) above)
5. Additionally, decisions can be made by panel members to exempt a school or a particular year group within a school because of challenging circumstances such as the behaviour of a cohort.

If the Local Authority is aware that a school has recently taken a referred Fair Access admission and in the short term a second request is made, the Area Pupil Access Team

will inform the parents / carers about the principles of sharing Fair Access admissions and about other locally available places.

Occasionally, there may be very good reasons why successive Fair Access admission requests are made to the same school (for example - existing family links or isolated geographical location near to home address).

Section 5 - The operation of Fair Access Panels / pop-up FAPs

For primary Fair Access placements, there are not established Fair Access Panels operating in most districts. Going forward, there will be Fair Access Panels established in the areas where there are a significant shortfall of pupil places across all or specific year groups. Where a FAP has been established it is for the panels to determine how the pupils are distributed within a district and to make decisions on the most appropriate placement for a child. To ensure there is a transparent exchange of comprehensive background information the expectation is that FAP requests should be accompanied with all the relevant educational history including, as a minimum, behaviour chronology, attendance history and academic levels. Background information should be used to support a child after admission and cannot be cited as a reason to refuse admission. It is imperative that any previous conduct that might put staff or pupils at risk is also shared.

Alongside the district based FAPs, there will also be the need to establish a 'pop-up' FAP that will be organised to place pupils that have been previously permanently excluded and where it has been determined that a mainstream school is appropriate. There may also be instances where pop up FAPs are arranged to place pupils with particular vulnerabilities or challenging behaviour that is in line with the School Admissions Code and Fair Access criteria.

If there is a need for a primary FAP meeting, to place a permanently excluded pupil, this should be scheduled as soon as possible after the governors meeting, where the exclusion has been ratified. This does not affect the parents right to ask for the matter to be considered by an Independent Review Panel.

Invitations for school representation will include schools within a two-mile radius of the pupil's home address for children under eight years of age and within a three-mile radius for children eight and over. In most instances, the head teachers of the closest 6 schools to the child's home address will be invited along with the headteacher of any preferred school identified by the parent.

If a school has already admitted a permanently excluded pupil, during the academic year, they will not be invited to any further pop up FAPs.

The destination school **must** be identified via the FAP. A summary of background information relating to the child's educational history will be shared prior to the meeting.

Criteria for consideration will include:

- Parental preference.
- The number of children that are CLA, children with an EHCP and children at SEN support in the year group where a place is sought.
- See section 4 above.

Suggested membership of the Primary FAP

- Chair – Pupil Access.
- School representation from all schools as noted above.
- HT or rep from primary PRU, where appropriate.
- AP Officer.
- Representative of the local Inclusion Hub.

It is up to individual schools to nominate representatives and ensure attendance. Representatives could be head teachers or a senior leader from school, with pastoral responsibility. Representatives of all schools who attend the Fair Access Panel meetings must be empowered to make decisions once a referral has been agreed and take the pupil forward for admission.

If schools choose not to take part in the Fair Access Panel or a representative from a school does not attend a panel, Fair Access referrals will still be made and should be accepted without any second decision making.

Once the destination school has been identified an admission meeting should be arranged with 5 school days, involving the Fair Access & Pupil Placement Officer and an AP officer, where available.

Section 6 - How the FAP will be administered

In-year applicants

In the vast majority of children, requiring a school place, will continue to be admitted in accordance with the usual admission arrangements, rather than through the protocol.

Fair Access admissions will apply predominantly to Lancashire resident children, without a school place, who are seeking admission to a Lancashire school and meet one of the prescribed categories. The FAP applies where preferred schools / year groups are already full.

When an in-year admission request is made for a school place that is subsequently refused, the admission authority should consider whether the child would be eligible to be placed via the FAP. Where it considers that the child falls, or may fall, into any such category, the admission authority should notify the local authority within 2 school days and submit evidence which demonstrates that they meet one of the Fair Access criteria (a-m).

The Fair Access and Pupil Placement Officer will investigate any Fair Access referrals and advise the school accordingly.

- Where the in-year applicant does not meet the criteria for a Fair Access admission, the pupil should be admitted to the school without further delay or the parent should be informed of their right of appeal where the school is full.
- Where the in-year applicant meets the criteria for a Fair Access admission the Local Authority should notify the parent/s of this, and a school place **must** be allocated within 20 school days.

Pupils being reintegrated from a Pupil Referral Unit

Where a pupil is identified as ready to return to mainstream provision, preferences will be discussed with parents. Whilst consideration will be given to parental preference, any identified school will be in line with current Fair Access admission arrangements. When a school has been identified, the PRU will submit all relevant documentation to enable a reintegration to proceed.

Allocations of school places for children who are being reintegrated from a PRU will be considered as and when and a Primary pop-up FAP will be arranged, if necessary.

Section 7 – Notifying the identified school

Following the pop-up FAP meeting, the decision will be communicated in writing (email) by the Pupil Access Team.

LCC's Fair Access and Pupil Placement Officer will oversee reintegration requests from PRU to mainstream school. Once agreed, an admission meeting will be arranged with all relevant parties.

As outlined in the School Admissions Code, the FAP sits outside the other admission processes and therefore

- Schools cannot cite oversubscription as a reason not to admit a Fair Access pupil
- Fair Access pupils must be given priority for admission above other pupils who may be on a school's waiting list

There is an expectation that the school will agree to the request to admit unless any of the criteria in Section 4 are met. In any event, schools should respond in writing within 5 school days to avoid a delay in the process. Where a school is declining the request to admit they must clearly set out their reasons for refusing to offer a place.

It should be noted that parents have the right to appeal for any school, at any time.

Section 8 – Escalation procedures

If a school fails to respond, causes undue delay or refuses to admit a Fair Access pupil, the Fair Access and Pupil Placement Officer will make every attempt to discuss the request with the head teacher, preferably by telephone but by email if need be. It is always preferable to negotiate an agreed placement.

A refusal to admit by a head teacher or school representative inevitably results in a vulnerable child being out of education for a protracted period and therefore results in exactly the opposite of what the Fair Access Protocol intends to achieve.

Where the school still refuses to admit, the Area Pupil Access Officer will assess the circumstances of the case and follow the steps below:-

- Liaise with the school in question to resolve the block to the admission, liaising with the Chair of Governors where necessary.
- Where these discussions are unsuccessful, the Area Pupil Access Officer will discuss with senior colleagues whether it is appropriate to issue an intention to direct.
- If it is agreed that there are good grounds to refuse admission the Fair Access and Pupil Placement Officer will secure an alternative place at another local school.

Where the Local Authority remains of the view that the school is the most appropriate placement and the reasons put forward for refusal are not legitimate, it will direct the school to admit. For academies, the decision will be whether to seek a direction to admit from the Secretary of State.

Section 9 – Direction

Section 6 of the School Standards and Framework Act 1998 confirms that the Local Authority is the admission authority for community and voluntary controlled schools. It states that governing bodies have a duty to implement any decision relating to the admission of pupils which is taken by or on behalf of the admission authority.

For voluntary aided and foundation schools, the Local Authority has powers to legally direct admission in certain circumstances. Prior to this happening there would be liaison with the Governing Body (usually via the chair of governors).

For academies and free schools, the Local Authority can request that the Secretary of State intervenes if it is not possible to reach an agreement through consultation. The Secretary of State will usually take advice from the Office of the Schools Adjudicator in deciding to legally direct an academy or free school to admit a child.

The governing body of a maintained school can appeal by referring the case to the Schools Adjudicator within 15 calendar days. Similarly, it is expected that an Academy will agree a start date for a child or set out its reasons for refusal in writing to the local authority within 15 calendar days.

If an Academy has not agreed a start date the local authority can apply for a direction from the Secretary of State via the Education Funding Agency.

Section 10 – Reporting

The Area Pupil Access Team will produce an annual report that provides data on the number of permanent exclusions, suspensions and Fair Access referrals within each district.

Section 11 - Pupil Access Team contacts

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Further contacts are available via your [area education office](#)