

# **Lincolnshire County Council**

## **Fair Access Protocol**

**For the admission of children and young people to  
schools and academies within Lincolnshire**

**September 2022**

**This protocol should be read in conjunction with the  
The School Admission Code (2021)**

## **1 Introduction**

- 1.1 The School Admissions Code exists to ensure that all school places are allocated in an open and fair way and recognises that the processes used to source these places will meet the needs of all but a small minority of children seeking a school place.
- 1.2 The purpose of these protocols is to ensure that unplaced and vulnerable children that are having difficulty in securing an in-year school place are found and offered a school place as soon as possible.
- 1.3 There is an expectation that children be admitted through normal admissions processes and this protocol is only triggered where in year processes have not secured a suitable school place. This has been re-iterated by the Department for Education in the latest revision of the School Admissions Code.
- 1.4 To support the exceptional circumstances where a school place cannot be secured through the normal admissions procedure, The Education and Inspections Act 2006 introduced a requirement of all local authorities to have a Fair Access Protocol. This requirement is outlined in the School Admissions Code 2021.

## **2 Main Principles**

- 2.1 Every child has a legal right to an education whilst they are statutory school age. Legislation states that a suitable education is determined by the child's age, ability and aptitude. There is an expectation that the majority of children will be educated in mainstream provision. Details of the process for children who have been excluded or for whom mainstream education is not yet possible are included below.
- 2.2 The Fair Access Protocol (FAP) is an agreement between the local authority and all admission authorities in the area and once it has been agreed, all schools must participate in it. This includes having a representative who is authorised to participate in discussions and make decisions on placing children via the protocol.
- 2.3 Local authorities will provide admission authorities with reasonable notice and information as to how and when discussions around the placement of children via the Protocol will take place. This protocol will be reviewed bi-annually, and schools will be advised of when these discussions will take place. The first review of the protocol will occur in the summer term 2022.

- 2.4 There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol but parent/carers wishes should be taken into account.
- 2.5 Eligibility for the Fair Access Protocol does not limit a parent's right to make an in-year application to any school for their child. Admission authorities must process these applications in accordance with their usual in year admission procedures. Schools must not refuse to admit such children on the basis that they may be eligible to be placed via the Protocol.
- 2.6 The parent will continue to have the right of appeal for any place they have been refused, even if the child has been offered a school place elsewhere via the Protocol.
- 2.7 FAP must treat all schools in a fair, equitable and consistent manner. No school - including those with places available – should be 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.
- 2.8 Where an admissions authority does not wish to admit a child with challenging behaviour outside the normal admissions round, even though places are available, it must refer the case to the local authority for consideration under the Fair Access Protocol.
- 2.9 Admission 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.
- 2.10 A Fair Access Protocol must not require a school automatically to take another child with challenging behaviour in the place of a child excluded from the school.
- 2.11 Admission authorities must admit children when asked to do so in accordance with the FAP.

### **3 Scope**

- 3.1 Fair Access Protocols 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 place through the usual in year admission procedures. This is either where they have made an application for at least one school and been refused, or the local authority has confirmed that there are no places available at any school within a reasonable distance.

- 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; those from special schools who have been deemed suitable for mainstream education to be considered within this definition.
- 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; we consider that this also covers circus children.
- j) Children who have been refused a school place on the grounds of their challenging behaviour and referred to the Protocol;
- k) Children for whom a place has not been sought due to exceptional 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 of their home. This does not include circumstances where a suitable place has been offered to a child and this has not been accepted;
- m) Previously Looked After Children for whom the local authority has been unable to promptly secure a school place.

In the interests of placing children as soon as possible, if it is confirmed by the LA that there are no places within a reasonable distance of the child's home address, the protocol will be used to place the child (under category L) even if the child has not yet been out of education for four or more weeks.

#### 4 Recording / Credit System

- 4.1 Due to the dual function of the Fair Access Protocol, LCC recognise three categories by which a child may come under the scope of the Protocol.

**Category A - Those children for whom it is not possible to source an offer of a school place within a reasonable distance of their home address**

**Category B – Vulnerable children and children with potentially challenging behaviour**

**Category C – Children being re-integrated into mainstream provision from alternative or specialist provision.**

- 4.2 For the purposes of examining whether a school has a disproportionate number of challenging pupils or pupils allocated through the protocol this will include:
- FAP admissions including retrospective FAP;
  - Students named in a School Attendance Order (SAO) for a particular school where the child has been placed on roll (more information below);
  - Looked After Children for whom retrospective FAP has been agreed.
- 4.3 If the school accepts a child with challenging behaviour, retrospective FAP can still be used for the purposes of maintaining appropriate figures.
- 4.4 A merit system will be used to ensure that the recognition received by a school is proportionate to the level of support required.
- 4.5 For the purposes of acknowledging the distribution of pupils and ensuring this is equitable. unless that school has already admitted, and maintained on roll, one (Fair Access Protocol) merit (or 1% of NOR on first day of term whichever is the greater) within the same year group in the last three full terms and current term, they will not be seen as having taken a disproportionate number of pupils. Once all schools have been exhausted, this process will begin again with a further 1% or two allocations being requested.
- 4.6 Although School Attendance Orders legally must sit outside of this process, schools named in a School Attendance Order (SAO) served on a parent will be merited one credit as if these are FAP admissions for the purposes of Category B. This does not alter the process by which these children are placed as this separate legal process must be followed.

- 4.7 Looked After Children are legally prohibited from being refused on the grounds of their challenging behaviour (except where they have been twice PEx). Schools may apply for retrospective FAP recognition for Looked After Children who meet the relevant threshold for challenging behaviour for the purposes of retaining information about challenging children.
- 4.8 FAP Figures will be maintained by the LA and released in the first week of each term detailing which pupils have been recognised via FAP and their respective FAP merit. Schools should log any queries regarding these figures prior to the start of the next term.
- 4.9 The figure includes any students recognised by FAP in the past 12 months. They will be removed from the schools tally the term after they were accepted on roll of the previous year.

Category A pupils – 1 FAP merit

Category B pupils – 1 FAP merit

Category C pupils – 2 FAP merit

## **5 Timescales**

- 5.1 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 twenty school days.
- 5.2 Prior to issuing a FAP request, the school will be informed that a request will be issued in two school days. This allows time for the school to make an exceptional referral. If no referral is received in this time, then the formal Fair Access request will be issued. Once sent, it is expected that the school will admit the child.
- 5.3 Where a school is notified of a formal request under Fair Access Protocol, schools should respond within two school days. Schools must respond within seven calendar days of the request being made. This is a legal timescale as outlined in Fair Access Guidance at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/275580/fair\\_access\\_protocols\\_departmental\\_advice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/275580/fair_access_protocols_departmental_advice.pdf).
- 5.4 Once a child has been allocated a school place via the Protocol, arrangements should be made for the child to start at the school as soon as possible.

## **6 Retrospective Fair Access Admissions**

- 6.1 On occasion, following the admission of a child, information subsequently received following the transfer of the file from the previous school, may identify that the child meets the criteria B or C for FAP admissions. In such cases, the admitting school may seek a Retrospective Fair Access admission.
- 6.2 The process to request retrospective recognition is as follows:

The head teacher must email a completed 'Retrospective FAP request' on the FAP referral form to the LA within 8 weeks of the child being placed on roll.

The request will be considered against the criteria for Fair Access and a decision will be communicated to the school within ten school days of the request being made.

The child must remain on the school roll and the placement will be recorded as a Fair Access admission, if agreed.

## 7 Data

- 7.1 A termly report will be provided to Lincolnshire head teachers and shared with a range of support services. This will provide numbers of children admitted to schools through the Fair Access Protocol.
- 7.2 If children for which a school has recorded FAP recognition are removed from roll for any reason within a year of admission, the school must contact the admissions team to update records accordingly.

## 8 Review

- 8.1 Schools should write to the LA if they have concerns about the effectiveness of the Protocol in the first instance by emailing the School Admissions Manager.
- 8.2 If the majority of schools in an area can no longer support the principles and approach of their local Protocol, they should initiate a review with the local authority. If the majority of schools in the LA request this within a singular school term, then the Protocol will be examined earlier than the bi-annual review date. Emails requesting a formal review must be sent to [FAP@lincolnshire.gov.uk](mailto:FAP@lincolnshire.gov.uk).
- 8.3 A new Protocol will only be accepted with consent of the majority of schools.
- 8.4 The existing Protocol will remain binding on all schools until the point at which a new Protocol is adopted.

## 9 Process

### Category A – Availability of Places

- 9.1 Where the referral through the protocol is solely due to being unable to source a school offer within a reasonable distance of a student's home address, these will be dealt with by the School Admissions Team.
- 9.2 **Reasonable distance** is defined as five miles for primary age children and ten miles for secondary age children measured by straight line distance using the Lincolnshire County Council admissions software. These distances are strictly applied when operating the Fair Access Protocol. Where there are less than three Lincolnshire mainstream schools within the reasonable distance, the closest three schools will be considered. Grammar schools will not be considered in this calculation, although they may be approached under the protocol.



- 9.3 Where a school is allocated within fifteen miles of the home address as part of the main admissions round, this will not trigger allocation through the protocol based on distance as this will be deemed a reasonable offer.” For the purposes of examining Category A admissions, all FAP data regarding allocation of places will be evaluated but the closest school will be approached first if schools are tied.

## **Category B – Challenging Behaviour / Vulnerable Children.**

### **9.4 Challenging Behaviour**

- 9.5 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 refuse admission and refer the child for action under the Fair Access Protocol.

- 9.6 Behaviour is 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/other pupils’ education or jeopardise the right of staff and pupils to a safe and orderly environment.*”  
(School Admissions Code (2021))

### **9.7 For the purposes of Lincolnshire's Fair Access Protocol this is applicable in the following circumstance:**

- Children who have Fixed Term Exclusions for 15 or more days within the last full term and / or
- Children who currently have a Pastoral Support Plan or Behaviour Improvement Plan and who are currently open to an external behavioural support services to address challenging behaviour. in exceptional circumstances this will cover those without the relevant plan but where the child has been accessing external support for assistance with behaviour at their current or most recent school.
- Where there are significant safeguarding reasons or legal reasons which make placement at a particular school inappropriate.

This also covers

- Previously permanently excluded children yet to be re-integrated into mainstream provision or without professional support that they are suitable for re-integration and

- Students moving into the county where their last known school is alternative provision, at which they were single registered. These are discussed as Category C below.

A pupil with a current Pastoral Support plan/Behaviour Improvement Plan would not be automatically considered as having challenging behaviours for the purpose of the protocol, as such plans are within the usual range of interventions routinely used in schools to help prevent and address pupil misbehaviour. Where a referral is made, additional evidence must be provided to demonstrate

- that the behaviours are of such severity, frequency, or duration that it is beyond the normal range that schools can tolerate and / or
- why the child's behaviour would be unlikely to be responsive to the usual range of interventions to help prevent and address pupil misbehaviour

As outlined in the definition of challenging behaviour in the School Admissions Code (2021)

- 9.8 An admission authority should only refuse admission on the grounds of challenging behaviour if it has a particularly high proportion of either children with challenging behaviour or previously permanently excluded pupils on roll compared to other local schools, and it considers that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources.
- 9.9 Children eligible to be referred as Category B pupils will still undergo the same application process, if a school is permitted to refuse on the basis of challenging behaviour, parental preferences will be explored first, then all schools within a reasonable distance of home.
- 9.10 Students cannot be refused and referred to the Protocol due to challenging behaviour:
- In the year of entry of a school (typically R/Y7)
  - If the child is a Looked After Child (LAC), Previously Looked After Child (PLAC) or has an Education, Health and Care Plan (EHCP) naming the school.
  - A child with challenging behaviour may also be disabled as defined in the Equality Act 2010. When considering refusing admission on these grounds, admission authorities must consider their duties under that Act.

## **Vulnerable students**

9.11 On occasion, it is recognised that, for children in vulnerable categories or those with challenging behaviour, it may not be appropriate to place in a particular school or it may be that only one school may meet their particular need. This would occur in limited circumstances such as:

- Safeguarding reasons for a child in a refuge to attend the local school;
- A court order or bail conditions preventing attendance at a particular school.

9.12 Where this occurs, a professional, including LA officers, can make an application through FAP for an exceptional referral to name a particular school. It is for the local authority to decide whether a child qualifies to be placed via the Protocol, based on the circumstances of the case. This does not invalidate the normal admissions process. Referral through this route must be clearly communicated using the referral form.

## **Managed Moves**

9.13 Managed Moves can be recognised under the FAP, as they occur before others on a reserve list and can occur when a school is declaring to be full. These moves are recorded from the date which the child goes on single register at the receiving school and the managed move is complete. These are only recorded if the child meets the definition of challenging behaviour as outlined in this document. Schools must apply for this recognition in line with the Retrospective FAP process.

## **Category C – Reintegration into Mainstream Education**

9.14 This covers the scenario whereby a child needs re-integration from specialist or alternative provision. The Pupil Re-integration Team deal with these requests on a case-by-case basis, ensuring that these students are distributed as equally as possible between schools.

## **10 Children who have been permanently excluded and for whom mainstream education is not yet recommended**

10.1 A child may be considered for an exceptional referral for alternative provision where the child:

- Was last educated in alternative provision before moving to this county.
- Is yet to be reintegrated to mainstream provision following a permanent exclusion.

- 10.2 In all other cases, where a child does not meet the criteria for an exceptional referral to alternative provision, they will be considered through the normal in year process for a mainstream school place. This is irrespective of whether they have been accessing alternative provision at the school where they are currently on roll or were most recently on roll.

## **11 Further Information**

- 11.1 Schools must not cite oversubscription as a reason for not admitting a child under Fair Access.
- 11.2 Pupils falling under Fair Access must be given priority for admission over others on a reserve list or awaiting appeal.
- 11.3 Schools must not refuse on the grounds that a child requires reasonable adjustments to be made for them.
- 11.4 Schools must not refuse on the basis that there is a poor match of examination subjects/boards.
- 11.5 School must not refuse on the basis that they believe that the child should be placed in alternative provision unless meeting the criteria listed above for an exceptional referral.
- 11.6 Schools must not refuse an application based on their opinion that the child would benefit from a managed move. Whilst this can be explored by the school, there must be agreement from both schools and the parent that this is appropriate for the child and cannot occur without parental consent.
- 11.7 In most cases, use of the Fair Access Protocol should be unnecessary for a Previously Looked After Child. The DfE expect the local authority to aim to secure a school place particularly promptly for a Previously Looked After Child and for admission authorities to cooperate with this.
- 11.8 It is recognised that frequent school moves can be detrimental to a child's education. The FAP will not seek alternative placements for children already attending a school within a reasonable distance of home where the usual in year process has not resulted in an offer, unless an exceptional referral for action under the Protocol is agreed to name a particular school at which attendance is necessary.

11.9 Alternative provision is deemed as suitable education for permanently excluded children unless the child has been deemed ready for re-integration from the professionals working with that child.

### **Infant Class Sizes**

11.10 A school will not be directed to take a child if this would require the school to take measures to avoid breaching legislation regarding infant class sizes and those measures would prejudice the provision of efficient education for all children in the school; it will be for the school to provide detailed evidence to demonstrate that this will be the case.

11.11 It is possible that the school and the local authority will agree that an exception to the Infant Class Size limit set out in section 2.15 (e) of the School Admissions Code (2021) applies. This discussion between the school and the local authority is necessary to comply with The School Admissions (Infant Class Sizes) (England) Regulations 2012. If a child is not within the scope to be agreed as an allocation under the FAP, this will be a voluntary over offer by the school and may not be exceptions to Infant Class Size limits.

### **Grammar Schools**

Grammar schools are not expected to admit children who do not meet their qualified standard as described in their school admissions policy. Parents are not obliged to submit children for testing. Parent/Carer or professional consent is to be provided before a grammar school will be named on a FAP request.

## **Information Regarding Behaviour**

- 11.12 Schools should only collect necessary information to complete the application process. Schools should not seek further information regarding a child's behaviour if the school will not be referring the case for consideration under the Fair Access Protocol (for example where the school does not have places available). Schools are permitted to request further information if allocating from a reserve list and the child is due to be offered a place.
- 11.13 If a child is Electively Home Educated (EHE) their most recent school may be contacted for information regarding behaviour, for the purposes of determining whether the child exhibits challenging behaviour, providing that this school was attended within the last 12 months.
- 11.14 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) regarding 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 considered 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.

## **Children who have been Twice Permanently Excluded**

11.15 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.

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

- Children who were below compulsory school age at the time of the 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 considered by a review panel, and the review panel has decided to quash a decision not to reinstate them following the exclusion; and
- Children with Education, Health and Care Plans naming the school.

## **12 Process of Direction**

12.1 The Local Authority is the admission authority for Community and Voluntary Controlled schools and is therefore permitted to insist that these schools will admit a given child. In the case of Foundation and Voluntary Aided schools, the Local Authority has the power of direction. Where agreement cannot be reached with an academy, the LA can apply for a direction from the Secretary of State via the Education and Skills Funding Agency.

12.2 Where Lincolnshire County Council wishes to direct a maintained school or seek a direction for an academy, we will follow process as outlined by the Department for Education.