

# Warwickshire County Council Fair Access Protocol for Mainstream Primary and Secondary Schools

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## 1. Introduction

- i) The School Admissions Code 2021, issued under Section 84 of the School Standards and Framework Act 1998, requires each local authority to have in place a Fair Access Protocol (FAP) agreed with the majority of schools in its area. (SA Code 3.15). The requirement is supplemented by further advice from the Department for Education (DfE) in 'Fair Access Protocols: Guidance for School Leaders, Admission Authorities and Local Authorities' published in July 2021. This sets out principles to clarify the expectations on all state funded mainstream schools (including academies and free schools) as well as all other admission authorities to ensure that FAPs operate effectively at a local level.
- ii) The purpose of the Protocol is to ensure that, outside the normal admissions round, **unplaced** children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible. The Protocol also seeks to 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.
- iii) Fair Access Protocols should 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 for their child at any time, to any school outside the normal admissions round and is entitled to an appeal when a place is not offered, even if the reason for refusal is for FAP-related reasons.
- iv) All admission authorities **must** participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly. There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.
- v) 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. (SA Code 3.20)

## 2. Warwickshire context and statutory guidance

- i) The Fair Access Protocol (FAP) for Warwickshire has been updated in accordance with paragraphs 3.14 – 3.22 of the School Admissions Code 2014 and the DfE's guidance of July 2021.
- ii) All admission authorities must participate in the Fair Access Protocol (including Academies, all types of Free Schools, University Technical Colleges and Studio Schools) in order to ensure that unplaced pupils are allocated a school place quickly. (SA Code 3.11 & DfE Guidance Nov 12)

- iii) The operation of the Fair Access Protocol is outside the arrangements of co-ordination and is triggered when an eligible pupil has not secured a school place under normal in-year admission procedures. The Fair Access protocol is operated in addition to, and not as a replacement for, our other in-year procedures.
- iv) Children allocated a place under the Fair Access Protocol will take precedence over those children already on the school's waiting list.
- v) Specific to Secondary Schools - Year 11 pupils, unless falling into a relevant category within Chart 1, are not part of the protocol and **schools will be expected to admit Year 11 pupils in accordance with their published admission arrangements**. We do not advise that year 11 pupils transfer school as a pupil can be greatly disadvantaged by a change of school during their GCSEs, particularly when the same subjects and/or syllabi may not be available upon such a change.

When deciding on whether to apply for a transfer out of the current school parents will be advised to consider that work is not transferable between schools and exam boards can rarely be matched and coursework is monitored and cannot be re-done.

- vi) All parents/carers should discuss any requests to transfer with the current school to see if any issues can be resolved and if the child can continue their education without interruptions to their SATS or GCSEs.
- vii) A child without an Education, Health and Care Plan may be assessed as not being suitable to attend a mainstream school where at least two previous mainstream school placements have irretrievably broken down for reasons relating to behaviour, attendance, mental health or other related reasons. Final decisions will be taken by Warwickshire County Council, informed by all circumstances relevant to the case and a decision made as to what education the child is able to access and where the education could be accessed from.

Challenging behaviour is defined in the Admissions Code as behaviour which would be “unlikely to be responsive to the usual range of interventions to help prevent and address pupil misbehaviour or [...] 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”.

- viii) Schools will be considered to have a particularly high proportion of children with challenging behaviour or previously excluded children” if they have a higher percentage of these children across their school than other schools in their network area or consortium.

- ix) Warwickshire has a number of grammar schools, all of whom participate in the operation of the protocol. If a grammar school is identified as the most appropriate setting for a pupil that is currently being placed via the protocol, the following process will be followed; If the pupil has not previously taken a test to identify their levels of ability then they will sit such a test to determine whether they may cope with the academic structure and curriculum within grammar schools. The results will be compared to those of the cohort that they would be joining. If the child has been found to fall within a range consistent with the cohort for the relevant academic year at the grammar school in question then consideration will be given by the grammar school for a placement.

Grammar schools are also encouraged to support the Fair Access process in other ways where appropriate.

### 3. Overview and Aims of the Fair Access Protocol

- i) The Fair Access Protocol's aim is to ensure every pupil residing within Warwickshire, eligible to be placed via the protocol, has access to the most appropriate education provision within a timely manner, thus avoiding time out of education. Once a pupil has had an in-year application for a place refused on the grounds that the protocol applies, the process timeline will be followed as set out in the attached appendix. **Parental preference does not need to be followed.**
- ii) When seeking to place a pupil under the Fair Access Protocol, all schools should be treated in a fair, equitable and consistent manner.
- iii) All schools should work together collaboratively, taking into account the needs of the pupil and those of the school.
- iv) Warwickshire County Council will pursue the following additional aims through the Protocol -
- Acknowledge and assess the real needs of vulnerable children.
  - Support Schools/Academies with their vulnerable children to avoid exclusion.
  - Ensure appropriate placement is identified either in mainstream or Alternative Provision.
  - Recognise and support Schools/Academies that have a disproportionate number of children with behavioural needs.
  - Record the destination and impact of the children placed through the protocol.
  - Increase participation of children within schools and academies.
  - Reduce the amount of permanent exclusions.

**Please note – The placing of unplaced children through the protocol will take precedence if there is no solution to be found for the admission of any one child which meets all other aims.**

### **Circumstances in which an admissions authority can refuse to admit a child**

Section 86B of the School Standards and Framework Act 1998 requires admission authorities to comply with parental preferences for school places except where “compliance with the preference would prejudice the provision of efficient education or the efficient use of resources”. This is generally interpreted within Warwickshire as meaning that an admission authority can refuse admission in the following circumstances:

- Where the year group to which the child would be admitted is full, and it would be prejudicial to the provision of education and/or the welfare of pupils and staff to admit any additional pupils; or
- Where the admission authority can demonstrate to the satisfaction of Warwickshire County Council that the child exhibits challenging behaviour and it would be prejudicial to the provision of education and/or the welfare of pupils and staff to admit that particular child due to the school having a particularly high proportion of children with challenging behaviour or previously excluded children. This category can only be used in exceptional circumstances.

In all other circumstances a child for whom a valid application is received should be offered a place, except where Section 87 of the School Standards and Framework Act 1998 applies (twice excluded children).

In all the above circumstances, parents have a right to bring an appeal against the refusal to admit their child. The law also requires admission authorities to refuse to comply with Section 86B if doing so would lead to a breach of the ‘infant class size limit’, except in some limited exempt cases, but again parents have a right to appeal such a refusal. Admission authorities are permitted to refuse to admit twice permanently excluded pupils in circumstances when Section 87 of the 1998 Act applies.

Admission Authorities must not refuse to admit a child solely because the Fair Access Protocol applies to that child.

#### **4. Exceptional Circumstances in Schools**

All schools are in scope for admitting children placed through Fair Access. However, there may be exceptional circumstances that justify temporary exemption from the Fair Access process. Schools will be able to present their case for exemption to the Local Authority via the Lead Officer for Fair Access. Schools will be required to complete the School Exceptional Circumstances pro-forma (**Appendix A**) and any granted exemption will only be considered valid for a maximum period of 12 weeks.

## 5. Who will the protocol cover?

The difference between In Year Admissions and Fair Access:

- i) In Year Admissions relate to all admissions to school from reception to Year 11 which are not covered by phase transfer schemes. In most cases the admissions process is straightforward. A parent applies for a place in a school where there is a vacancy and the child is admitted to school if a place is available.
- ii) In other cases there may be extenuating circumstances as to why the child is unable to obtain a school place. Where the child falls within the remit of the Fair Access Protocol then the child will then need to be placed in a school via the Protocol.

The circumstances can include;

- an unplaced child who was not previously permanently excluded but who was attending a Pupil Referral Unit (PRU).
  - an unplaced child whose parent/carer states that the child has medical or educational needs but does not have an Education, Health and Care Plan (All information will be explored to determine the best possible route for admission. (WCC officers may refer to the EIP Steering Group members for advice)
  - an unplaced child who has not previously attended a mainstream school or who has not attended a mainstream school for more than 1 school term (For example a home educated child or persistent non-attender)
- iii) All parents/carers who wish to apply for an in-year school place are required to complete an In Year Online Application Form through the parent portal on Warwickshire's website ([www.warwickshire.gov.uk](http://www.warwickshire.gov.uk)) unless it is a school who administer their own in-year admissions. Details of these schools are on the Warwickshire County Council website.
  - iv) Although parental preference does not need to be complied with when placing under the Fair Access Protocol, the wishes of parents should be taken into account to avoid possible non-attendance (everything will be done to manage expectations).
  - v) Where a parent names a preferred school, but Warwickshire County Council would not place there under any of the processes outlined in this protocol, Admission Officers will inform parents of this outcome and of their right to appeal but will not pursue the place at that school.
  - vi) Schools are responsible for presenting any cases listed above to the Lead Officer for Fair Access. The Lead Officer for Fair Access may utilise the local representative from the EIP Steering Group for guidance and reference;

however, the Local Authority reserves the right to start the formal process of direction to a school, if a school refuses admission and no local agreement can be reached. If schools have Academy status, referral to the ESFA will follow.

- vii) The Local Authority will take all reasonable steps to ensure that admission authorities are provided with all relevant information to ensure that decisions can be made by the admission authority.
- viii) The Admissions Team will undertake appropriate due diligence on all Fair Access cases to ensure that as full as possible an understanding of each child's case is available both to itself and to the relevant placement panels and schools in order for an informed decision to be made as to the child's educational setting placement. It may be a school will accept a pupil even though they are not next on the points system to be considered, in which case they will be given the points for the child as if placed via the protocol.
- ix) The groups of children and young people placed via the protocol are in many cases likely to be classed as vulnerable for various reasons. If after admission, a school identifies that a child presents issues of concern, they should take appropriate steps to engage other agencies, for example through initiating an Early Help Assessment.
- x) Schools will be awarded points for admitting children placed under the Fair Access Protocol (Chart 1) and also for admitting other children who, whilst not fulfilling criteria set out in the Protocol, do pose additional challenges (Chart 2) so long as these are notified appropriately to the local authority
- xi) The list of children who can be placed by the FAP is now stipulated in the Admissions Code and is not subject to local discretion.

**Chart 1 – Children who can be placed under the FAP**

Weighting priority Points

a) Children either subject to a Child in Need Plan or a Child Protection Plan or having 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 refuse or 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) 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 (to be determined by the local authority)		
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.		

**Chart 2 – FAP does not apply but points awarded for admission**

Children who have been accepted permanently into a school following a successful managed move	40
Children whose managed move broke down or ended after a minimum of six weeks	20
Child Looked After	30
Year 11 pre January census;	40
Year 11 post January census;	10
Children who have been removed by their parents from a school roll to be home educated and are now seeking another school place.	20
Children with an Education, Health and Care Plan	25

**6. Operation of the Fair Access Protocol at Primary Phase**

- i) At Primary Phase all Fair Access referrals will be considered by a central Fair Access and Assessment Gateway panel that will meet monthly with dates set in advance for the whole school year.
- ii) Membership of the Primary Fair Access and Assessment Gateway.
  - Five Primary Headteacher representatives identified by Local Area Analysis Groups.
  - Multi agency representatives' e.g. social care, youth offending, RISE, SENDAR, Strengthening Families.
  - Lead officer for CME and EHE
  - Lead officer for In Year Admissions and Fair Access
  - Primary Fair Access Lead.
- iii) For each referral, the School Admissions team will compile centrally held information to inform and support the panel to make decisions. Fair Access decisions will be based on ensuring all schools take a fair share of pupils and the number admitted through fair access over the past three terms will count as a significant factor for allocation.
- iv) The following factors will also be considered when making decisions at panel meetings:
  - distance from home
  - OFSTED category,
  - % of pupils with EHCP
  - % of CLA pupils

- number on roll in the relevant year group
  - exceptional school circumstances
  - ensuring no breach of infant class size laws
  - parental preference
- v) Where schools in particular areas are experiencing higher demand for Fair Access placements, scoring grids may extend beyond the six nearest schools to the child's home address in order to ensure fairness and equity of placements.
- vi) A spreadsheet will be kept updated for each area denoting placements made at panel meetings. This will be used at the following panel meeting to advise whether students allocated previously are now on the roll of that school and to inform new placement decisions.

## 7. Operation of the Fair Access Protocol at Secondary Phase

- i) At Secondary Phase all Fair Access referrals will be considered through the Area Behaviour Partnership for each area which will meet every 4/5 weeks with dates set in advance for the whole school year. The responsibility for representation at the Secondary EIP Leads meeting lies with the schools. This must be a colleague who is on the SLT and has full decision making authority. Colleagues will collaborate to find the best possible placement for the child, sharing best practice on how to support the admission of any hard to place students.
- ii) No case can be deferred for discussion with the Headteacher following the meeting. **All decisions regarding the admission of any child made at the EIP leads meetings are final and the child should be placed on the roll of the identified school within 5 school days, even if there is to be a phased integration.**
- iii) Membership of the Area Behaviour Partnerships
- A member of the Senior Leadership Team, (SLT) with full decision making authority, from each of the secondary schools within each of the EIP's.
  - EIP coordinators
  - Multi agency representatives' e.g. social care, youth offending, RISE, SENDAR, Strengthening Families.
  - Lead officer for CME and EHE
  - Lead officer for In Year Admissions and Fair Access
- iv) For each referral, the School Admissions team in conjunction with the Education Entitlement Team will compile centrally held information to inform and support the panel to make decisions. The centrally held database for Secondary School Fair Access placements will also be used to ensure all schools take a fair share of pupils.

- v) The following factors will also be considered when making decisions at panel meetings:
- Distance from home/transport links
  - Exceptional school circumstances
  - The ranked order of schools in an area in accordance with the protocol points based system operated by the Local Authority
  - Schools previously attended by the child, including under a managed move. Consideration will be given to any previous serious breakdown in relationships between a school and the family to include failed managed moves and peer relationship breakdown.
  - Parental preference

**Please note:** The database incorporates all previous placements along with census information pulled through on a yearly basis. Children who are still on the roll of the school at the start of the next academic year will be carried over to the new database.

## 8. Refusal to Admit Children and Direction to Admit

- i) 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.
- ii) Where a pupil 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 children who were below compulsory school age at the time of the exclusion, children who have been re-instated following a permanent exclusion (or would have been had it been practicable to do so), and children with Education, Health and Care Plans. It also does not apply to any exclusion which has been quashed by an Independent Review Panel.
- iii) Where an admission authority does not wish to admit a pupil with challenging behaviour outside the normal admissions round, even though places are available, it can refuse to admit the child but **must** refer the case to the local authority for action under the FAP. This will only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children compared to other local schools. This provision will not apply to a Looked After Child, previously Looked After Child or a pupil with an Education, Health and Care Plan naming the school in question, as these children **must** be admitted and requests for admission of such children must not be turned down on.

- i) If the admissions authority refuses to admit a child on challenging behaviour grounds, the case must be referred to the Lead Officer for Fair Access for consideration. The Lead Officer will expect to see evidence in such circumstances of the:
  - particularly high proportion of children with challenging behaviour, and/or,
  - particularly high proportion of previously excluded children, and/or
  - implications of the admission of an additional pupil with challenging behaviour.
- ii) The Lead Officer will then consider the case made by the school. The Lead Officer **may** consult with a member of the EIP Steering Group for the area in deciding whether the FAP does apply.
- iii) **Admission authorities in Warwickshire are required to comply with the terms of this Fair Access Protocol and, as a result, should therefore admit any pupil referred to the school under the FAP.** If an admission authority refuses to admit a child, but the County Council remains of the view that it is the most appropriate school for the child, then the County Council will follow statutory steps under the School Standards and Framework Act 1998, either to direct admission or to make an application for direction to the ESFA, as appropriate.
- iv) Children placed through either panel should be on roll at the receiving school within 5 school days, even if the child is starting on a phased reintegration plan.

**Please Note:** A school/academy placement through the Fair Access Protocol will **NOT** remove a parent/carer's right of appeal for any school/academy for which they have been refused a school place. Parents will be guided to the process of appeals if necessary. Appeal panels will be made aware of the conditions of this protocol.

## 9. Managed Move Process

A managed move protocol is in place which works to support the transfer of pupils between schools for children who are at risk of losing their school place. Such processes operate independently of the Fair Access Protocol but are designed to support difficult cases. Points are awarded (see Chart 2) to acknowledge support of schools with vulnerable children needing to change schools.

**Please note** that any form of managed move must be with the full agreement of the family and used as a support mechanism.

## 10. Referral Process from Schools to Panels

- i) All Fair Access cases will be processed and presented at either the Primary Fair Access and Assessment Gateway or the Area Behaviour Partnership Leads

meetings by the Local Authority's Fair Access Team.

Direct referrals from schools can be made in the following cases:

- **Primary Schools:** referrals directly from schools, via the Primary Fair Access and Assessment Gateway process, for consideration for a managed move or in cases where a Headteacher would like to seek advice on any further interventions which could be accessed or signposted.
  - **Secondary Schools:** referrals directly from schools, via the Area Behaviour Partnership process, for consideration for a managed move or to access alternative provision.
- ii) All referrals must be made using the Warwickshire Learner Information Form (LIF). The form must be completed in full to support a smooth and efficient process for the child. All completed forms must be sent by email in line with the agreed deadlines for consideration at the relevant panel meeting.

## 11. Monitoring the Operation of the Protocol

Any concerns over lack of cooperation with the FAP process will be escalated to relevant Warwickshire County Council colleagues. This will include any School/Academy that has not taken a child on roll within 5 school days of the placement decision being made.

If there is an unavoidable delay beyond 5 school days, the Fair Access Team must be notified to ensure the correct safeguarding is in place for the child.

## 12. Protocol Review

The Fair Access Protocol will be reviewed on an annual basis by the Local Authority in conjunction with Headteachers.

**Appendix A – Fair access request – Exceptional School Circumstances Submission**

All schools are required to participate in admissions through the Local Authority Fair Access Protocol. Under exceptional circumstances, a school may wish a Fair Access panel to consider exemption from taking a Fair Access student in one or more year groups. Being full in the year group cannot be a reason for exemption. Schools wishing to be considered for exemption should complete the additional information below. This should be submitted within the time frame for the year’s FAP & Assessment Gateway panels. It should not be submitted in response to a school being placed in scope for a child. An exemption period is for 12 weeks. **Information is required across each year group for which exemption is required.**

	Yr	Yr	Yr
Number of pupils on roll in each year group			
Number currently over PAN in each year group (please enter zero if not over PAN)			
Number of pupils admitted into each year group through Fair Access in the last 12 months			
Number of fixed term exclusions in each year group in the last 12 months			
Number of permanent exclusions in each year group in the last 12 months			
Number of pupils with behaviour support plans on roll in each year group			
Number of pupils with an EHCP on roll in each year group			
Number of Child Looked After status pupils on roll in each year group			
Number of pupils with additional needs who attract additional funding on roll in each year group			
Number of pupils open to Children’s Services/Early Help in each year group			
Ofsted rating/AAG rating and last inspection date			
Any other exceptional circumstances (Please note, general level of behaviour of the receiving cohort is not classified as an exceptional circumstance). Please continue over the page if necessary.			

**Thank you for your responses. Please send the completed form to marierooney@warwickshiregov.uk.**

**Date Completed \_\_\_\_\_ by who (please print name) \_\_\_\_\_**

For office use only

Date received		Date of panel		Outcome: Agreed or disagreed	
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*Working for Warwickshire*

## Glossary

EHCP	Education, Health and Care Plan
CLA	Child Looked After
RISE	Rise is the name for all emotional well-being and mental health services for children and young people who are registered with a Coventry or Warwickshire GP.
SENDAR	Special Educational Needs and Disability Assessment and Review Team
CME	Children Missing from Education
EHE	Electively Home Educated
EIP	Ethical Inclusion Partnership
FAP	Fair Access Protocol
SA Code	School Admissions Code
DfE	Department for Education
ESFA	Education and Skills Funding Agency
PRU	Pupil Referral Unit
WCC	Warwickshire County Council
CIN	Child in Need
CP	Child Protection
SLT	Senior Leadership Team
LIF	Learner Information Form
PAN	Published (or Planned) Admission Number
AAG	Area Analysis Groups
OfSTED	Office for Standards in Education, Children's Services and Skills

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