

# Warwickshire County Council

## Fair Access Protocol – January 2024

| <b>Section</b>    | <b>Contents</b>  |
|-------------------|--|
| <b>Section 1</b>  | Legislation  |
| <b>Section 2</b>  | Safeguarding   |
| <b>Section 3</b>  | Principles   |
| <b>Section 4</b>  | Children covered by the Protocol   |
| <b>Section 5</b>  | The Fair Access Protocol (FAP) Panel   |
| <b>Section 6</b>  | Review of Panel Decision   |
| <b>Section 7</b>  | Reintegration  |
| <b>Section 8</b>  | Managed Moves, Off-site Directions, Excluded Children or Children at Serious     |
| <b>Section 9</b>  | Children with an Education, Health & Care Plan (EHCP) and Children in Care (CiC) |
| <b>Section 10</b> | In-Year Admissions   |
| <b>Section 11</b> | External Support and Data Sharing  |
| <b>Section 12</b> | Annual Review of Protocol  |
| <b>Appendix A</b> | Direction Flow Chart Process   |
| <b>Appendix B</b> | Reviewing a Fair Access Panel (FAP) Placement                                    |
| <b>Appendix C</b> | School Referral to Fair Access Panel (FAP)<br>In-Year Admissions                 |

All references to the Admissions Code in this document relates to School Admissions Code 2021

## **Section 1 - Legislation**

**1.1** The School Admissions Code 2021 requires Warwickshire County Council and all admissions authorities within its administrative boundaries to adhere to a Fair Access Protocol, working in partnership to take a shared responsibility for the admission of our vulnerable children and young people.

**1.2** The purpose of the Fair Access Protocol (FAP) is to ensure that unplaced and vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible.

**1.3** In agreeing a protocol the Local Authority (LA) must ensure that no school, including those with available places, is asked to take a disproportionate number of children who have been permanently excluded from other schools or display challenging behaviour. Fair Access Protocols must also set out how the needs of children who have been permanently excluded, and children for whom mainstream education is not yet possible, will be met.

**1.4** All schools and the LA must have regard and reference to, legal obligations as laid out in paragraphs 3.14 to 3.22 of the School Admissions Code.

**1.5** The Protocol must be consulted upon and developed in partnership with all schools in its area and agreed by the majority of schools in its area. All admission authorities must participate in the operation of the FAP.

**1.6** In accordance with statutory requirement 3.20(b) of the Admissions Code, LAs must produce an annual report on admissions to the Adjudicator, which must include an assessment of the effectiveness of Fair Access Protocols and co-ordination in their area, including how many children were admitted to each school under them.

## **Section 2 - Safeguarding**

**2.1** In all cases, schools and the LA have a duty to safeguard children. Children out of school may be at risk; schools, the Admissions Team, Attendance Team, other relevant representatives of the LA and other agencies and stakeholders must do their utmost to ensure that children are not out of school for extended periods of time.

## **Section 3 - Principles**

In order for this protocol to be successful the following principles will be adhered to:

**3.1** All schools will participate in the fair access protocols, even if they are responsible for their own admissions, admitting a balanced share of children with challenging behaviour (includes those permanently excluded or managed moved from other schools). Participation includes making available a representative who is authorised to participate in discussions, make decisions on placing children via the Protocol, and admitting children when asked to do so in accordance with the Protocol, even when the school is full. Non-attendance by a school at a discussion will not prevent a child being placed via the Protocol at that school.

**3.2** All Schools should work together collaboratively, considering the needs of the child and those of the school. There is no duty to comply with parental preference when allocating places through the protocol, but parents' views should be taken into account.

**3.3** All schools must be confident that there is a rational and consistent structure for decision-making which is seen as fair and transparent, including the sharing of data on the number of placements to each school.

**3.4** When seeking to place a child under the protocol, all schools will be treated in a fair, equitable and consistent manner.

**3.5** The Fair Access Protocol will 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 Admissions Authorities must process these applications in accordance with their usual in-year admission procedures. They **must not** refuse to admit such children on the basis that they may be eligible to be placed via the Fair Access Protocol. 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 via the Fair Access Protocol

**3.6** All schools must respond to requests by the local authority to admit a child under the Fair Access Protocol within agreed timelines laid out in this document.

**3.7** This protocol will not apply to the following group of children:

- **CiC:** Children who are under the care of a local authority fall outside the scope of the Protocol as these children have absolute priority under admissions legislation and must be offered a place at their preferred school. The local authority, as a corporate parent, does not tolerate drift and delay where children the authority looks after are without an education placement that is appropriate to their assessed needs. This includes using their powers of direction in a timely way rather than delay issuing a direction as a result of protracted negotiation.
- **EHCP:** Children with an Educational Health & Care Plan fall outside the scope of the Protocol as they are legally entitled to a place at the provision named on their Plan.
- **Children currently unable to access mainstream education:** Children who have a mainstream school place but are found to be unable to access the curriculum by reason of their behaviour, health needs or otherwise can be directed to alternative provision, whether on or off site. This can be a temporary or permanent arrangement and is outside the scope of the Protocol.
- **Normal intake year:** The School Admissions Code 2021 is clear that the provision to refuse a place on behavioural grounds does not apply in a year group which is the normal point of entry, unless the child has been permanently excluded twice within the last two years. Places must therefore be offered up to PAN in reception, year 3 (of junior school) and year 7 whether there are behavioural concerns or not.

**3.8** Governing Bodies 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 (School Admissions Code 2021 Paragraph 3.13).

**3.9** Admissions authorities will not cite oversubscription as a reason for not admitting a child under this protocol unless an extra child would breach the Infant Class Size Regulations and the child to be admitted could not be treated as an excepted child.

**3.10** Under no circumstances will a school ask a parent/carer to withdraw a child from the school's roll. If a school continues to face difficulty with a child on their roll, such as poor attendance or challenging behaviour a referral should be made to the appropriate

agency such as Area Based Inclusion Partnerships (Secondary) and Primary Consortia meeting. If information comes to light that a school has taken a child off roll inappropriately and has not sought the appropriate support the local authority may need to refer to

either: the Director of Education, the DfE/ESFA and in turn possibly the Schools Adjudicator.

**3.11** Any out of county in-year applicants who meet the fair access criteria will be referred to their home local authority by the In-Year Admissions Team. In these cases, parents will be advised of their right to appeal against this decision.

**3.12** Fair Access placements are considered outside of an individual school's admission criteria and *must* take priority above applicants on a waiting list (if there is one in operation) and irrespective of number on roll.

**3.13** Schools cannot insist that an admission appeal be heard before a child is admitted under the protocol.

**3.14** The protocol applies to children of compulsory school age who are identified under the categories outlined in Paragraph 3.17 of the School Admissions Code 2021 which are also listed in this document from Reception through to and including, Year 11.

**3.15** Whilst each LA Fair Access Protocol covers only the schools in its local authority area, it may sometimes be necessary to approach neighbouring authorities to request consideration under its Fair Access Protocol if all options within the county have been exhausted.

**3.16** In the event of a school refusing to accept the admission the LA will direct or instruct the school to admit on behalf of the panel. The governing bodies of maintained schools which are their own admissions authority may refer a direction to the Schools Adjudicator who will determine which school is to admit the child. For Academies, the LA will apply for a direction requiring the school to admit the child. (See Appendix A)

**3.17** Where a parent expresses a preference for a school and a place cannot be offered, the parent must be informed of the right of appeal. The Admission Authority for that school must inform parents of their rights. The child's name will also be added to the waiting list for the school in accordance with the admissions criteria for that school.

**3.18** The protocol recognises that, whilst Warwickshire Grammar schools are part of the Fair Access Protocol and children can therefore be placed at selective schools under the protocol, children will need to meet the academic entrance requirements of the school in question before they can be admitted.

## Section 4 - Children covered by the Fair Access Protocol

Children to be placed under this protocol will be resident the area administered by Warwickshire County Council.

**4.1** FAP is intended to act as a safety net for the most vulnerable children, and those who have been unable to obtain a school place through standard in-year admissions processes, to ensure that they are able to access a school place as quickly as possible.

**4.2** As stated in Paragraph 3.17 of the School Admissions Code 2021, 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. For example, where an application has been made to at least one school and this has been refused, or the local authority has confirmed that there are no places available at any school within a reasonable distance.

**4.3** Under the Admissions Code, the list of children to be included in a Fair Access Protocol is no longer determined by locally agreed arrangements. Instead, from 1<sup>st</sup> September 2021, the list must only include children of compulsory school age in the categories (a to m) listed below.

**4.4** The following categories of children are eligible to be placed under the FAP. These children cannot be refused a school place, when it is available, in order to refer to FAP. They can only be referred to FAP when a local, appropriate and accessible school place is unavailable.

- 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 FAP;

*Child in Need Plans and Child Protection Plans are plans of help and protection to address safeguarding and welfare needs, where a child has been assessed by the local authority as being a child in need under Section 17 of the Children Act 1989 and/or as suffering or likely to suffer significant hardship under Section 47 of the Children Act 1989. See also statutory guidance Working Together to Safeguard Children (2018) (pages 35 and 48-49)*

- b) children living in a refuge or in other Relevant Accommodation at the point of being referred to the FAP.
- 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.

*(This will only be children identified by Social Care as formal 'carers'. The SBC FAP will not consider children who self-identify as carers without a written confirmation of their carer status from Social Care.)*

- g) children who are homeless;

*(For the purposes admissions into schools, this would only be children whose family meet the statutory definition of homeless.*

*A statutory definition of homelessness can be found: Part VII of the Housing Act 1996, as amended by the Homelessness Act 2002, sets out the duties owed by English local housing authorities to someone who is homeless or threatened with homelessness and the Homeless Person Reduction Act 2017)*

- h) children in formal kinship care arrangements;  
*(This must be evidenced by either 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 and referred to the FAP in accordance with paragraph 3.10 of the Admissions Code;
- k) children for whom a place has not been sought due to exceptional circumstances;
- l) children who have been out of education for 4 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; and
- m) previously looked after children for whom the local authority has been unable to promptly secure a school place.

**4.5 Prescribed Categories A to J:** These relate to specific groups of children to be covered under FAP.

**4.6 Children who fall into prescribed category K:** It is for the local authority to decide whether a child qualifies to be placed under the Protocol on this basis, based on the circumstances of the case. This could for instance include situations whatever the child is



experiencing is so bad that s/he needs to be moved as soon as possible.

**4.7 Children who fall into prescribed category L:** This relates to all other children that are out of education for 4 weeks (20 school days or more) and there are no places available within reasonable distance of their home. It does not include circumstances where a suitable place has been offered to a child and this has not been accepted.

**4.8 Children who fall into prescribed category M:** In most cases use of the Fair Access Protocol should be unnecessary for a previously looked after child. The local authority is expected to aim to secure a school place particularly promptly for a previously looked after child and for admission authorities to cooperate with this. The local authority may consider swift use of their general powers of direction (under paragraphs 3.26-3.28) or asking the Secretary of State to consider a direction (under paragraph 3.29) to be the most suitable course of action if a school place for a previously looked after child cannot be agreed with an admission authority promptly.

### **Children with Medical Conditions**

**4.9** Children with medical conditions qualify to be allocated a school place via the FAP under category (e) above. Other children in this situation may also qualify to be placed via the FAP under category (l) above.

**4.10** 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. For schools that opt into the LA coordinated In Year Admissions process, the LA will process applications in accordance with their usual in-year admission procedures (as set out in paragraphs 2.23-2.31 School Admissions Code 2021) and those opting out must do the same. Children must not be refused a place on the basis that they may be eligible to be placed via the Fair Access Protocol. 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 via the Fair Access Protocol.

**4.11** All schools will be deemed to have a space in the point of entry year group from 1 September to the last day of the academic year if they are under their published admissions number, regardless of class organisation.

**4.12** In the primary sector, other than in the year of entry, where a school has 'capped' numbers in a year group below their PAN, and where this results in classes not operating in multiples of 30, then that school is not deemed to be full in terms of admitting a child under the categories of children considered to be FAP outlined above.

**4.13** In the secondary sector, other than in the year of entry, a school will be deemed full only when it is at or over PAN in the relevant year group or capacity in other year groups.

## **Children who have been permanently excluded twice**

**4.14** Where an admissions authority receives an in-year application for a year group that is a normal point of entry i.e., Reception, Year 3 (for junior schools) and Year 7, they must not refuse to admit the child on the basis of their behaviour, unless the child has been permanently excluded from two or more schools, with the most recent exclusion being within the previous two years.

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

- a) children who were below compulsory school age at the time of the permanent exclusion;
- b) children who have been reinstated following a permanent exclusion (or would have been reinstated had it been practicable to do so);
- c) 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
- d) children with Education, Health and Care Plans naming the school.

## **Children with Challenging Behaviour**

**4.16** 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 (but they have not met the threshold for the twice excluded rule), it may refuse admission and refer the child to the FAP.( Paragraph 3.10 of the Admissions Code)

**4.17** Admission authorities may only do this if:

- the school has a particularly high proportion of children with challenging behaviour or previously excluded children on roll in comparison to other schools; and
- it believes admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources.

**4.18** This provision in paragraph 3.10 of the Admissions Code cannot be used to refuse admission to looked after children, previously looked after children; and children who have Education, Health and Care Plans naming the school in question. 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 (paragraph 3.13 of the Admissions Code).

### **What is challenging behaviour?**

**4.19** For the purposes of FAP, 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 child misbehaviour or it is of such severity, frequency or duration that it is beyond the normal range that schools can tolerate. It would be expected that this behaviour would significantly interfere with the child's or other children's education or jeopardise the right of staff and children to a safe and orderly environment.

**4.20** The following reasons on their own would not be grounds for considering that a child may display challenging behaviour:

- poor attendance elsewhere;
- a defined number of suspensions, without consideration of the grounds on which they were made;
- special educational needs; or
- having a disability.

**4.21** The Admissions Code highlights that "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. Admission authorities should also 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) about the implications of the Equality Act 2010 when a child exhibits a tendency to physical abuse of other persons as a consequence of a disability. "

**4.22** All schools have a duty to make reasonable adjustments for children 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.

**4.23** The impact and effectiveness of these adjustments must also be taken into account 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 child 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.

**4.24** Schools will need to evidence why they believe the child may present challenging behaviour before refusing admission on these grounds and can ask the previous school for background information to support this. Any information gathered should be made available for the consideration of the Fair Access Panel.

**4.25** If the LA is referring children to FAP based on known Challenging Behaviour, the LA will undertake best endeavours to ensure that as much information as possible can be gathered and presented to the panel to support an appropriate placement as set out under 5.7.

**4.26** If a child is placed for distance reasons through FAP and the receiving school subsequently identifies challenging behaviour, this will be acknowledged within the records maintained by the LA. This information will be provided to support any further placements relating to the school at future panels.

**4.27** It is important to stress that only the categories of children highlighted in Paragraph 3.17 of the School Admissions Code 2021 which are also listed in this document can be referred to FAP for challenging behaviour purposes.

**4.28** These categories of children cannot be refused a school place, when it is available, in order to refer to FAP. They can only be referred to FAP when a local, appropriate and accessible school place is unavailable.

## **INTERACTION WITH THE APPEALS PROCESS**

**4.29** The appeals process is independent from the FAP. Where a child has been referred to the FAP, their parents retain the right to make further in-year applications and appeal against the refusal of a school place as normal.

**4.30** Where a school refuse a child a school place and subsequently refer the child to the FAP, the school may later be required to admit that child if an appeal is upheld. This would still be the case when an alternative school place is offered to the child via the FAP. In all circumstances, the decision of an appeal panel is binding and must be complied with. The fact that an appeal has been lodged for a child will not a reason to delay the FAP process.

## **REFERRAL TO THE FAIR ACCESS PROTOCOL**

**4.31** Referral to FAP should be seen as a last resort to secure a school place for a child. Where possible, children should be placed in school through the usual in-year process in the first place.

**4.32** Upon receipt of an in-year application, an admission authority must not refuse to admit the child to a school on the basis that they would be, or they believe they would be, eligible to be placed via the FAP. The application must be processed in accordance with the usual in-year admissions process.

**4.33** Where an admission authority refuses an in-year application, it should consider whether the child would be eligible to be placed via the FAP, for example, whether they fall or may fall into one of the prescribed categories set out in paragraph 3.17 of the Admissions Code

2021 (also set out above in this document). Where it considers that the child falls, or may fall, into any such category, the admission authority should notify the LA of this. The LA will then decide whether the child would be eligible to be placed in school via the FAP. Where it has been decided that a child is to be placed via the FAP, parents would be notified of this and a school place will be allocated to that child within 20 school days.

**4.34** Paragraph 2.28 of The School Admissions Code 2021 clearly states that with the exception of designated grammar schools, all maintained schools, and academies, including schools designated with a religious character, that have places available must offer a place to every child who has applied for one, without condition or the use of any oversubscription criteria, unless admitting the child would prejudice the efficient provision of education or use of resources.

**4.35** For example, admission authorities must not refuse to admit a child solely because:

- a) they have applied later than other applicants;
- b) they are not of the faith of the school in the case of a school designated with a religious character;
- c) they have followed a different curriculum at their previous school; or
- d) information has not been received from their previous school.

**4.36** There are therefore only two reasons why any in-year application for a school place may be refused:

1. That to admit any further child to the school would cause prejudice to the provision of efficient education or resources in the school, or
2. That the Admissions Authority has good reason to believe that the child may display challenging behaviour and the school already has a particularly high proportion of children with challenging behaviour or those who have previously been permanently excluded when compared to other schools, and that to admit a further child with challenging behavior would prejudice the provision of efficient education or the efficient use of resources (Paragraph 3.10 School Admissions Code)

**4.37 Reason 1** above is not subjective – meaning the circumstances of the applicant should not influence whether or not prejudice would be caused to the school by admitting another child. It is worth considering that if a child is refused admission and is vulnerable and eligible for admission under FAP, the case for refusal will need to clearly describe the prejudice that would be caused to the school if the child were admitted, and why this outweighs the vulnerable child's need for a school place, should the applicant appeal the decision.

**4.38 Reason 2** above (paragraph 3.10 of the Admissions Code) is subjective and relates to the circumstances of the child. Meeting one of the Fair Access prescribed categories must not, in itself, be taken to imply that the child will display challenging behaviour. Schools will

need to evidence why they believe the child may present challenging behaviour before refusing admission on these grounds and can ask the previous school for background information to support this. Any information gathered should be made available for the consideration of the Fair Access Panel.

**4.39** Please note: Challenging Behaviour is not a legitimate reason for refusing to admit any child seeking a place in a point of entry year.

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## **Section 5 - The Fair Access Protocol (FAP) Panel**

### **5.1 Membership**

There will be two separate panels that meet, one for the primary phase and one for the secondary phase.

The membership of each group is as follows:

#### **Core Group\***

- Delivery Lead for Vulnerable Learners (WCC)
- FAP and Vulnerable Learners Co-Ordinator from School Admissions (WCC)
- SEN Representative WCC
- No More than 1 Headteacher per district **(for secondary meetings) \*\***
- No More than 1 Headteacher per district **(for primary meetings) \*\***

**The group will be chaired by an LA Officer.**

#### **Additional group**

Representation from WCC Children's services for social care, early help and youth justice.

\* The core group is the decision-making group. A majority decision will decide. The Chair holds the deciding vote in the event of a tie.

The LA will send equivalent officers as substitutes if unavailable or where required, including a Chair. Core membership of the panel can be reviewed and adapted as needed by agreement with the LA and core group members.

\*\* It is expected that panels will have a rotation system of Headteachers (recommended at least termly to ensure opportunities are provided for participation and wider representation).

Representation from schools (including requests for review of placements) are only on paper, schools will not represent in person.

The LA will schedule dates in for the academic year for Primary and Secondary virtual panels which operate every two weeks. This is to ensure that children referred to FAP can be placed within the 20-day statutory timeframe.

### **5.2 Local Authority Role**

Warwickshire LA will:

- Act fairly and with transparency
- Identify fair access children, through receipt of an in-year application or via a referral received from social care or another local authority;
- Gather all relevant information to present to the FAP panel;

- Present and monitor the cases for consideration by the FAP panel.
- Keep a log of all placements made through the Fair Access Protocol and this data will be circulated as a minimum to all schools at the end of each academic year.
- Action decisions made on behalf of the panel.
- Ensure that that no school – including those with places available – is asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are otherwise being placed via the FAP.

### **5.3 Process**

The FAP panel will meet **fortnightly** during term time to place Fair Access children. The panel will:

- Adhere to the principles of the LA Fair Access Protocol.
- Scrutinise documentation relating to fair access placements.
- Consider whether a child meets the fair access criteria.
- Consider any levels of support than a young person might need before and during being place by FAP.
- Take submissions from previous schools and other settings to support proposed placements where they meet the fair access criteria and where new information is being submitted to the FAP panel, for example social contacts within the setting which may affect the success of the placement, the FAP panel may consider making an alternative placement. (See point 6 – Review of Panel Decision)
- A distinction will be made between those with known challenging behaviour and those being placed under other FAP criteria (in accordance with the Admissions Code)

When a school admits a child under the protocol, this will be recorded on the LA maintained database/records. A distinction will be made between those children placed with challenging behaviour and those placed due to distance. This information will be used to support the FAP panel in making decisions relating to future placements and support the principle of fairness and equity as referenced in 3.4.

As stated in section 3.6 of this document, all schools, including Academies are expected to respond to requests by the local authority to admit a child under Fair Access Protocol within agreed timelines.

The panel will not normally place the child in a school where an appeal was held but was unsuccessful.

### **5.4 Standing Items on the Agenda**

- Welcome
- Apologies
- Declarations of interest
- Minutes of the previous meeting with updates on the progress of individual cases
- New individual cases under Challenging Behaviour



- New individual cases under other FAP criteria
- Scrutiny of paperwork
- Discussion
- Recommendation
- Review of the progress of placements – previous cases child by child.
- General issues raised
- AOBs.

*N.B Minutes and distribution of paperwork for FAP will be undertaken by an LA Officer*

## **5.5 Monitoring and Evaluation**

A log of all placements made through the Fair Access Protocol and supporting information relevant to year groups in each school (as set out in 5.7) will be maintained by the LA 'FAP and Vulnerable Learners Co-ordinator' and this data will be circulated to each individual school at least termly. A distinction will be made (on the agenda) and through records of those children placed at FAP, of those with children with challenging behaviour and those placed for distance purposes. This data will also be available throughout the year if requested. By working in partnership, the schools and local authority can be alerted to a school's circumstances e.g., numbers on roll, recent admissions, managed moves.

### **5.5.1 Monitoring will include:**

- Placement time scales as laid out in this protocol.
- The progress of children into placements and to challenge settings which are not adhering to the timescales for engagement with the child's family setting. This is a "Safeguarding" function of the group.

### **5.5.2 Evaluation will include:**

- The success of placements
- The number of placements

## **5.6 Financial arrangements**

- When a child is excluded from one of the Warwickshire schools, the remaining portion of that child's AWPU (age-weighted child unit) will be recovered from the school. These arrangements apply to children up to and including Year 11.

## **5.7 Factors for placement and decision making**

The educational needs of the child will be the prime factor in deciding a placement, but every effort will be made to ensure that practical issues regarding travel, including arrangements regarding siblings are considered.

For children referred to FAP due to challenging behaviour, information provided to the FAP panel aims to be brief but essential and should include where possible (list is not exhaustive):

- Curriculum information and attainment levels
- Attendance records
- Previous school moves with reason for leaving
- Previous Managed Move(s) with reason for the move
- Social Care involvement and details of current status
- Evidence of challenging behaviour, interventions and outcomes
- A record of external support, including Educational Psychology, CAMHs, Child Protection Plan
- Any other background information

The following factors in addition to the above will be considered when making placements:

- The child's needs and the previous placements for schools and education providers. As far as possible in making its decision the FAP panel will consider, where appropriate, any other factors specific to that child. Consideration will be given to whether a child has any particular needs and which school might best be able to meet and support those needs.
- The views of the school/s concerned. All schools will be treated in a fair, equitable and consistent manner. This means that no school – including those with places available – will be asked to take a disproportionate number of children who have been permanently excluded from schools or who display challenging behaviour.
- Exclusion data from schools (\* Where schools have a number of exclusions the panel may consider they have less children with challenging behaviour.
- Numbers on roll and cohort information (including if the school currently has a bulge class operating within the year group
- Numbers of previous admissions for the year group and across the school via the protocol in the academic year
- Numbers of off-site directions in the year group in the academic year
- If the school has any construction works that is likely to impact capacity to take additional children.
- Consideration of information from schools on suitability of proposed placement including the matching of examination boards where applicable
- Transport and distance from home to school in compliance with WCC's existing transport policy.
- Parent and carer views and geographical factors will be taken into consideration, but these will not necessarily override the protocol; there is no duty for the LA or admission authorities to comply with parental preference when allocating places through the protocol.
- When choosing suitable placements for children under this protocol, due consideration should be given to the additional challenges faced by schools who have been identified by Ofsted as being 'inadequate' or 'requiring improvement', where that has led to a 'notice to improve' or a school has been in special measures within the preceding 12 months
- As a general principle siblings should be placed in the same school unless there are good reasons not to do so.
- For the purpose of allocation and analyzing schools taking on a disproportionate number of children with challenging behavior, the prescribed categories stipulated paragraph 3.17 of the Admissions Code and in Section 4 of this document will be used as a point of reference.

- For children referred to FAP for reasons other than challenging behaviour, the priority school to the home address should normally be the starting point for placement.

## 5.8 Timeline for placements

Below is the process and timeline for placements:

### 5.8.1 Agreed placements

| Decision                            | Action   |
|-------------------------------------|--|
| FAP panel place a child at a school | <ol style="list-style-type: none"> <li>1. LA informs school of outcome in writing <b>within two school days</b> of FAP meeting</li> <li>2. The school must respond in writing <b>within three school days</b> if they wish for the decision to be reviewed (see section 9)</li> <li>3. If the LA <b>has not heard back</b> from the school in writing then <b>the school accepts the child</b> and the LA will inform the parents.</li> <li>4. The school makes arrangements to enroll the child <b>within 10 school days</b></li> </ol> |

### 5.8.2 Review of Panel Decision\*

| Decision                            | Action  |
|-------------------------------------|---|
| FAP panel place a child at a school | <p><b>1.</b> LA informs school of outcome in writing <b>within two school days</b> of FAP meeting</p> <p><b>2.</b> The school must respond in writing <b>within three school days</b> if they wish the panel <b>to review</b> the decision <b>(see section 6)</b></p> <p><b>3.</b> If the LA receives a review request in writing <b>within three school days</b> then the case goes back to FAP panel to discuss <i>(note a specially arranged meeting between the chair and the core group may need to be convened if it is too long between FAP meetings)</i></p> <p><b>4a.</b> FAP panel reviews school evidence and decides on a <b>different placement.</b></p> <p><b>4b.</b> FAP panel upholds <b>original decision.</b> The school will be informed in writing and is expected to accept the placement within <b>10 school days or sooner.</b></p> <p><b>4c</b> If school refuses placement following review the LA informs school of <b>intention to issue direction.</b></p> <p><b>5.</b> See <b>Appendix A</b> for statutory guidance on directions and timescales</p> <p><b>6.</b> The LA will either direct where it is the Admissions Authority or apply to the Secretary of State where it is not (see Appendix A)</p> |

\*Failure to complete review paperwork within timescales above means it will not be considered and the school will be expected to accept the placement or go through the process of a direction.

## Section 6 - Review of Panel Decision

**6.1** Schools can only request that the panel reviews its decision in cases where there is **significant new evidence which must be relevant and substantial that was not available to the panel at the time.** The request for review must be submitted to the LA in writing **within three school days** of receiving the decision and include the new evidence on the pro- forma (see Appendix B). The panel must be convinced, on the basis of the new evidence, that the child cannot attend the named school and should, therefore, be allocated another school. For example, the child's older sibling attended the school and there was a serious breakdown between the school and family which was not known about when the decision was made.

The school will normally be notified of the decision in writing, within one school day following the next FAP panel meeting and have one school day to respond.

The decision is binding on the school.

If a school refuses to take in a child following this procedure, then the LA will make a

## Section 7 - Reintegration

7.1 Decisions on fair access placements will be notified to the Admissions Team for formal notification to the parent or carer. Schools must contact the parent to arrange admission.

Once the FAP panel has identified a school, an offer letter will be sent to the parent by the Admissions Team. Schools must notify the Admissions Team of the admissions date in each case confirming that the child is on roll.

Schools must enter children on the admission register and attendance register from the beginning of the first day on which the school has agreed, or been notified, that the child will attend the school.<sup>2</sup>

If a child or young person does not start school within 10 school days of the agreed start date the school must make a Children Missing Education (CME) referral to the Attendance team and inform the Admissions Team. The school identified by the FAP Panel will remain the designated school.

Subsequent FAP Panel meetings will review prior placements to ensure that these children and young people continue to receive full time education.

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<sup>2</sup> School Attendance - <https://www.gov.uk/government/publications/school-attendance>

## Section 8 – Managed Moves, Off site directions, Excluded Children or Children at Serious Risk of Exclusion

**8.1 Managed Moves and off-site directions** do not form part of the Fair Access Protocol allocations process. These should be discussed and covered at Area Based Inclusion Partnerships (Secondary) and Primary Consortia meetings.

All managed moves and off-site directions must be reported to the LA and presented at the FAP panel\*, and where schools have accepted a permanent placement following a managed move they will be credited as such for purposes of future FAP placements. A pro-forma should be used for managed moves and these should be recorded at each FAP meeting. This information will assist in making decisions on placements and considering equity and fairness of distribution in accordance with this protocol. The school from which the child originated will have an exit debit.

\*The decision is a matter for schools, not LA or FAP panel but the LA requires the information as part of its safeguarding, inclusion and monitoring role for children at risk. In addition, there is a wider role for early help and support to families (see section 11)

## Section 9 - Children with an Education, Health & Care Plan (EHCP) and Children in Care (CiC)

**9.1** The provision of the Fair Access Protocol will not apply to a CiC.

It is a legal requirement that a CiC and previously looked after children (as defined by the Admissions Code 2021) be given first priority for admission to all schools within their oversubscription criteria. **Any consideration of a school move for a child in care must be preceded by a Personal Education Plan (PEP). The PEP should have representation from the existing school, social care and Virtual School.**

**9.2** Children with an Education Health and Care Plan (EHCP) are not covered by this protocol as their needs are covered by specific guidance in the SEN Code of Practice. These placements of children are managed through a separate process. Any consideration of a school move must be preceded by an Annual Review of the EHCP.

Children who are in the process of undergoing an EHC Needs Assessment, and are awaiting a decision about whether an EHCP will be issued, will continue to be considered under the normal admissions process, including the Fair Access Protocol if appropriate.

## Section 10 - In-Year Admissions

**10.1** All in-year applications must be processed in accordance with the usual in-year admissions process. On receipt of an application, an admissions authority must not refuse to admit a child to school on the basis that they would be, or they believe eligible to be placed via the FAP.



Where a school considers that the child falls, or may fall into any of the prescribed categories, the school must notify the local authority in writing **within three school days\*** of receiving notification, using the correct pro- forma (see appendix C). The request will be taken into consideration in accordance with the FAP protocols.

If the FAP panel agrees then the case will be treated in line with protocols. If the FAP panel believes the child does not meet the FAP criteria based on the evidence it has received, then the school will be expected to admit as an in-year acceptance.

\*Failure to complete required paperwork within timescales above means it will not be considered at the FAP panel and the child will be allocated through in-year admissions.

## **Section 11 – External Support and Data Sharing**

**11.1** There are a number of external support agencies involved in the FAP panel and placements. The purpose of this is not only to ensure children are placed in schools as soon as possible but that any further issues may be identified where the child or family could benefit from available external support.

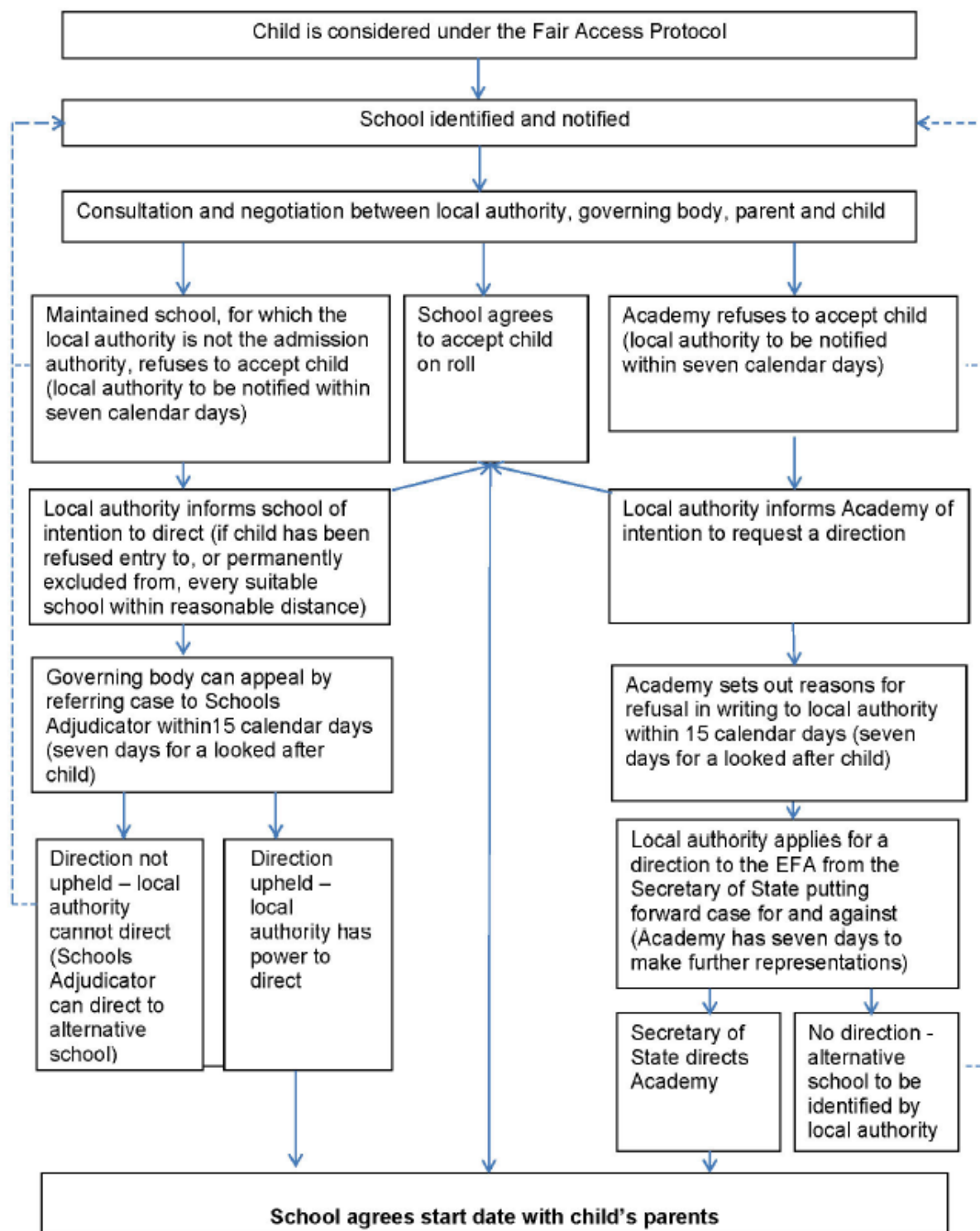
To this end data may be shared with agencies recommended by the board that would be of benefit to children and families that are discussed at FAP panel meetings.

## **Section 12 - Annual Review of Protocol**

This protocol will be reviewed annually with head teachers or exceptionally where an issue affecting the majority of schools and academies arises.

## Appendix A - Direction Flow Chart Process

**Directions flow chart (overview of process)**



\* Note: A community or voluntary controlled school cannot refuse to admit a pupil if requested by its own admissions authority.

## Appendix B – Reviewing a Fair Access Panel (FAP) Placement

### Reviewing a Fair Access Panel (FAP) Placement

To be completed by the school requesting a placement review made by the Fair Access Panel **(must be completed within three school days of receiving to be accepted)**.

|                                       |  |
|---------------------------------------|--|
| Referring School                      |  |
| Child's name                          |  |
| Date of Birth and Yr Group            |  |
| Parent/Carer name and contact details |  |
| Address                               |  |
| Previous known schools                |  |

### REASONS FOR REVIEWING PLACEMENT

**(Please write what significant new evidence was not available to the panel at the time of the decision)**

### FORM COMPLETED BY

|                       |  |
|-----------------------|--|
| Referral completed by |  |
| Date referral made    |  |

Completed form to be emailed to [faplead@warwickshire.gov.uk](mailto:faplead@warwickshire.gov.uk)

**Appendix C - School Referral to Fair Access Panel (FAP) In-Year Admissions**

**School Referral to Fair Access Panel (FAP) In-Year Admissions**

To be completed by schools requiring a child's case to be considered by the Fair Access Panel (FAP) in accordance with the Protocol following an in-year admission **(must be completed within three school days of receiving to be accepted).**

|                                       |  |
|---------------------------------------|--|
| Referring School                      |  |
| Child's name                          |  |
| Date of Birth and Yr Group            |  |
| Parent/Carer name and contact details |  |
| Address                               |  |
| Previous known schools                |  |

**REASON FOR REFERRAL**

1. That to admit any further child to the school would cause prejudice to the provision of efficient education or resources in the school,
2. That the Admissions Authority has good reason to believe that the child may display challenging behavior and the school already has a particularly high proportion of children with challenging behavior or those who have previously been permanently excluded when compared to other schools, and that to admit a further child with challenging behavior would prejudice the provision of efficient education or the efficient use of resources (Paragraph 3.10 School Admissions Code)

If referring under challenging behavior, please complete the attached form (Appendix D)

*Please note: Schools will need to evidence why they believe the child may present challenging behavior before refusing admission on these grounds and can ask the previous school for background information to support this. Any information gathered should be made available for the consideration of the Fair Access Panel*

**FORM COMPLETED BY**

|                       |  |
|-----------------------|--|
| Referral completed by |  |
| Date referral made    |  |

Completed form to be emailed to [faplead@warwickshire.gov.uk](mailto:faplead@warwickshire.gov.uk)

## Appendix D – Warwickshire County Council Challenging Behaviour Refusal Form

|                           |  |             |  |
|---------------------------|--|-------------|--|
| <b>Child Name:</b>        |  | <b>DOB:</b> |  |
| <b>Current Placement:</b> |  | <b>NCY:</b> |  |
| <b>Home Address:</b>      |  |             |  |

Challenging behavior is defined as:

**‘Such severity, frequency, or duration that it is beyond the normal range that schools can tolerate’**

OR:

**‘Unlikely to be responsive to the usual range of interventions to help prevent and address child misbehavior’**

In both cases it is expected that the child’s behaviour would:

**‘Significantly interfere with the child’s/other children’ education or jeopardise the right of staff and children to a safe and orderly environment’**

When seeking to refuse a child under 3.10, a school should demonstrate how the child’s behaviour is beyond that which **any** school could reasonably manage **or** that it is beyond the range of response the school is able to give. In both cases, it should be demonstrated that the child’s behaviour would cause prejudice to the school despite any usual interventions being applied.

The following matters cannot be used as part of a refusal for challenging behaviour:

- poor attendance elsewhere;
- a defined number of suspensions, **without consideration of the grounds on which they were made;**
- special educational needs; or
- having a disability.

It will also not be appropriate in seeking to refuse a child on the basis that another Warwickshire school offers a different or ‘better’ programme for that child’s behaviour. A baseline of response to child’s with challenging behaviour is expected at all schools and schools with particular successes should not be perversely disadvantaged because of their strength of provision.

The more information that can provided as part of a refusal form is of benefit for the panel considering the strengths of the refusal.



**Please explain why you feel the child displays challenging behaviour that is of such severity, frequency, or duration that it is beyond the normal range that schools can tolerate and would significantly interfere with the child's/other children' education or jeopardise the right of staff and children to a safe and orderly environment.**

You may wish to consider\*:

- Any suspensions or exclusions the child has received
- Any managed moves or respite periods the child has had
- The views of the child's current placement
- Any incidents of external agency involvement
- The reasons the parent has expressed for the move
- The child's school history and any school moves

**AND/OR**

**Please explain why you feel the child's behaviour is unlikely to be responsive to the usual range of interventions to help prevent and address child misbehaviour at your school and would significantly interfere with the child's/other children' education or jeopardise the right of staff and children to a safe and orderly environment.**

You may wish to consider\*\*:

- Any concerns specific to the child's year group
- Any known associations the child may have to current children in your school
- The capacity or resource of any on-site provisions at the school
- If the child displays any specific concerns that would cause a demonstrable impact to your school that would not be true at other settings
- The number of children with challenging behaviour you have previously taken through in-year admissions, either from the IYFA panel or as direct admissions
- Concerns facing your setting at the current moment

**The panel will vote on whether or not your case is made, and if, based on this, the child should not be admitted to your school.**

**If the refusal is upheld for an unplaced child, the panel will then have the burden of placing the child. At this point, a discussion must take place that determines the best placement for that child based on the information provided by the refusing school, as well as information about all schools that may be relevant to the placing of this child.**

*\*Guidance for refusing a child on the basis of challenging behaviour*

All cases are different and unique to the child in question. You may wish to consider:

- Any suspensions or exclusions the child has received

*You must consider the context of any suspensions or exclusions. For example, one incident of suspension due to a weapon incident may display significant challenging behaviour in a way a half-day suspension of PDB may not. In the same way, a one-off incident may be seen differently to a pattern of many suspensions for PDB. Think about whether a suspension record is demonstrative of a pattern of behaviour likely to continue in a new setting or a one-off incident where a fresh start may be effective.*

- Any managed moves or respite periods the child has had

*We agree that the admissions process should not be used to circumvent a failed managed move and so such moves are relevant to discussion. The impact of respite on a child's behaviour can also be demonstrative of whether or not a child's behaviour is likely to respond to a new setting or not.*

- The views of the child's current placement

*Professional views are important. If a school is stating that they believe a child they are educating does or does not meet the threshold of challenging behaviour, this is key evidence.*

- Any incidents of external agency involvement

*These should be relevant to behaviour, such as police involvement or if SEMH needs have been supported with no impact on behaviour at school.*

- The reasons the parent has expressed for the move

*This is particularly key when it comes to identifying possible off-rolling. If the parent has expressed any reasons for a preference school or connections at their current or potential new school, these should also be part of the discussion.*

- The child's school history and any school moves

*This will again be key for identifying any possible off-rolling as well as educational neglect. While a chequered school history is not grounds for refusal in itself, this may paint a picture as to whether a child's behaviour has been able to stabilise in any setting.*

\*\*Guidance for refusing a child with challenging behaviour on the basis that the school cannot respond to the needs of the behaviour.

You may wish to consider:

- Any concerns specific to the child's year group

*If you have a particularly challenging year group, please make the panel aware of this. It may be that the year group is challenging across the city, but if a child will have a demonstrable impact on a specific cohort, this is key evidence.*

- Any known associations the child may have to current children in your school

*We are aware that often our children who are involved in CCE or CSE will have links in many schools. However, if there are specific associations that are only true at one or a small number of schools, it may not be appropriate to admit the children in question. The level of risk once the school's safeguarding procedures are in place should be weighed up by the panel.*

- The capacity or resource of any on-site provisions at the school

*It will not be suitable for a school to say 'we do not have an AP and other schools do so we cannot take them' as there is an expectation that all schools can meet the needs of children with challenging behaviour to the same level. However, if a school's provisions are over-burdened and the admission of a further child with such behaviour would cause prejudice, this should be taken into account. It may not always be possible to avoid prejudicial placements, but these should be noted so that the school is not disproportionately directed with allocations.*

- If the child displays any specific concerns that would cause a demonstrable impact to your school that would not be true at other settings

*This will be very case-specific but should look at matters such as associations, geography and the child's circumstances. This could include things such as split school sites, sites allowing children to go off-site at break times or other logistical matters that are relevant.*

- The number of children with challenging behaviour you have previously taken through in-year admissions, either from the IYFA panel or as direct admissions

*The panel should allocate places on the needs of children, but also with mindfulness to not disproportionately burden schools with children displaying challenging behaviour. It may be appropriate that some schools take more than others due to the requirements of the children, but this should not be in extreme amounts.*

- Concerns facing your setting at the current moment

*It may be relevant to a discussion if there has been a recent serious case review involving a school, a change in leadership or significant concern. It will not be appropriate for a school to say 'we do not have a SENDCo, DSL etc. at present' as these are requirements for schools and non-compliance should not mean the school*



**Warwickshire**  
County Council

*do not fulfil their duties; however it may be relevant if there are current vacancies in roles that would be beneficial to the child that can be addressed more successfully at other placements.*

## Appendix E – Applications for In Year school places

As set out in the Admissions Code:

### 1. Information that can be demanded

Beyond the child's name and date of birth (to determine eligibility for a particular school year) the only information that can be demanded is that which needs to be known for the purposes of applying the oversubscription criteria, such as the child's address. Details of the child's sex can be demand for single sex schools only, for other schools it can be requested but not demanded

### 2. Information that can be requested but not demanded

- Evidence of meeting the 'challenging behaviour' definition (see below)
- Evidence that would allow a child to be placed higher on the oversubscription criteria: e.g. Looked After status, religious affiliations, siblings in the school etc.

### 3. Information that must not be requested

- Details of personal details of family such as parental occupational, financial, religious, marital or educational status, except for children of staff and those eligible for pupil premium or service premium (in which case it can be requested but not demanded)
- Details of the child or family's first language
- Details of a child or parent's disabilities, special educational needs or medical issues, except for those with Education, Health and Care Plans
- Details of children's past behaviour, attendance, attitude, or achievement, or that of any other children in the family, except for evidence of meeting the 'challenging behaviour' definition
- Details of child or parental interests and/or activities, except if selection by aptitude is in place (in which case it can be requested but not demanded)
- Photographs of the child or family
- Details of medical or social need, except if this is listed as an oversubscription criteria (in which case it can be requested but not demanded)