

# Swindon Fair Access Protocol

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SWINDON BOROUGH COUNCIL

**Table of Contents:**

<b>Contents</b>	<b>Page</b>
<b>1. Introduction</b>	<b>3</b>
<b>2. Summary</b>	<b>3</b>
<b>3. Purpose and Scope of Fair Access</b>	<b>3</b>
<b>4. Children Eligible for Fair Access Protocol</b>	<b>5</b>
<b>5. Cross Border</b>	<b>6</b>
<b>6. Children not covered by the Protocol</b>	<b>6</b>
<b>7. Interaction between the Fair Access Protocol and in year admissions</b>	<b>6</b>
<b>8. Referral to the Fair Access Protocol</b>	<b>6</b>
<b>9. Interaction with the Appeals Process</b>	<b>7</b>
<b>10. Twice Excluded rule and Challenging Behaviour</b>	<b>7</b>
<b>11. Fair Access Panel Decisions</b>	<b>8</b>
<b>12. Directions</b>	<b>10</b>
<b>13. Membership and Meetings</b>	<b>10</b>
<b>14. Monitoring of the Protocol</b>	<b>11</b>

## 1. Introduction

The Fair Access Protocol (FAP) for the school admission of children who are vulnerable and have been unsuccessful in gaining an in year school place, as laid in the School Admissions Code published in September 2021, and Fair Access Protocol Guidance August 2021.

To be read in conjunction with:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1001050/School\\_admissions\\_code\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001050/School_admissions_code_2021.pdf)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1012993/FAP\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1012993/FAP_Guidance.pdf)

## 2. Summary:

A parent can apply for a place for their child at any school at any time. All applications must be processed by the relevant admission authority in accordance with the School Admissions Code 2021 (“the Code”). When applications are made outside the normal admissions round (and they are not a late application) they are considered in-year applications. Where it can be demonstrated that reasonable measures have been taken to secure a school place through the usual in-year admissions process and this has not been successful, or where a school place has not been sought due to exceptional circumstances, a child may be eligible for referral to the Fair Access Protocol (“FAP”).

The purpose of a FAP is to ensure that vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible, minimising the time the child is out of school.

## 3. Purpose and Scope of Fair Access

This Protocol aims to:

1. Identify the admission needs of vulnerable and challenging children quickly including those who are not on the roll of any educational establishment;
2. Reduce the time that vulnerable and challenging children spend out of Education between placements;
3. Secure a place at a suitable school promptly; although 20 school days should be a maximum, all parties will endeavor to resolve matters sooner;
4. Ensure that schools admit vulnerable and challenging children on an equitable basis;
5. Be fair, consistent, transparent and equitable;

Main Points:

- FAPs exist to ensure that vulnerable children, and those who are having difficulty securing a school place in-year, are allocated a place as quickly as possible.

- FAPs **must not** be used in place of the usual in-year admissions process. A parent can make an in-year application at any time and is entitled to have their preference met wherever possible, as well as the opportunity to appeal a decision when a place is not offered.
- Every local authority **must** have a FAP in place. Once it is agreed with the majority of schools in its area, all admission authorities **must** participate in it.
- FAPs **must** only be used for children that meet the prescribed categories set out in paragraph 3.17 of the Code.
- Admission authorities, school leaders and local authorities should work collaboratively in making decisions under the FAP. They should take into account the needs of the child and the views of the school where the child might be placed.
- There is no duty to comply with parental preference when allocating places through the FAP but parents' wishes should be taken into account.
- When seeking to place a child through the FAP, no school (including those with places available) should be asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are otherwise being placed via the FAP.
- Admission authorities **must** admit children when asked to do so in accordance with the FAP. Where an admission authority fails to comply with the FAP, they may be directed to do so.
- Pupils identified for placement under the Fair Access Protocol will be given priority over those on waiting lists for the same school.
- The FAP is a mechanism developed by the local authority in partnership with all schools in their area. Its aim is to ensure that vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible. Every local authority **must** have a FAP in place. Once it has been agreed by the majority of schools in its area, all admission authorities **must** participate in it.
- FAPs play a key role in helping to keep children safe by ensuring the most vulnerable children are able to access education as quickly as possible. Referral to the FAP should be seen as the last resort to secure a school place for a child and it can be demonstrated that all reasonable measures have been taken to secure a place through the in-year admissions process.
- FAPs should provide a fair and transparent system to ensure that all schools share the collective responsibility of helping the most vulnerable, by admitting their fair share of children being placed via the FAP. This includes supporting those children who have been permanently excluded from other schools and those who display challenging behaviour.

- The arrangements regarding the admission of students above the published admission number only apply to mainstream state funded schools and not to establishments providing alternative provision or to special schools.
- When making placements, the FAP will consider any special circumstances that may apply, including the need to avoid or minimise transport costs.
- There is no duty to comply with parental preference when allocating places through the Protocol, but the wishes of a child's parents should still be considered when making a placement decision. When seeking to place a child under the Protocol, all schools will be treated in a fair, equitable and consistent manner.
- The process cannot be used to circumvent the normal in-year admissions process and a parent can, at any point, make an in-year application for a place and if a place is refused a parent has a right of appeal.
- The FAP cannot be applied to admissions made through the normal admissions round for primary, junior or secondary schools and cannot be used where this would involve contravening the regulations on the size of infant classes
- As a guide to good practice only, in any academic year, through the Protocol, normally no more than 2 children per year group will be admitted above the Published Admission Number for those admitted via a) to m). For Primary, Infant Class Size would be taken into account in order to avoid contravening this legislation.

#### **4. Children eligible for the Fair Access Protocol**

FAPs are intended to act as a safety net for the most vulnerable. As such, they may only be used to place the following categories of children, where a child is 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 in-year admissions process:

- 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;
- 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;
- g) children who are homeless;
- h) children in formal kinship care arrangements<sup>10</sup>;
- 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 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

## **5. Cross Boarder (Non Swindon LA Resident) cases**

Only children residing in Swindon LA will be allocated a place through Swindon LA FAP.

## **6. Children not covered by the Protocol**

Children We Care For (Looked After children) and children with an Education Health and Care Plan should not be placed through the FAP.

## **7. Interaction between the in-year admissions process and Fair Access Protocols**

FAPs must not be used as a means to circumvent the usual in-year admissions process. No referral to FAP can be made unless the in year scheme has been exhausted.

Parents have the right to apply for any school place at any time and **must not** be refused the opportunity to make an application.

Where a parent has been refused a school place, they must be offered the right to appeal to an independent appeal panel.

## **8. Referral to the Fair Access Protocol**

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.

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 categories set out in paragraph 3.17 of the Code. 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 should 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 should be notified of this and a school place **must** be allocated to that child within 20 school days.

Referrals for consideration of the FAP can be made by any mainstream schools in Swindon or by the Local Authority. No referrals can be made by parents.

## **9. Interaction with the appeals process**

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.

Admission authorities should be aware that where they refuse a child a school place and subsequently refer them to the FAP, they 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 is not a reason to delay the FAP process.

## **10. Twice excluded rule and challenging behaviour**

As in the normal admissions round, where a school receives an in-year application for a year group that is a normal point of entry (i.e. reception or year 7), they **must not** refuse to admit the child on the basis of their behaviour, unless the child has been permanently excluded from 2 or more schools, with the most recent exclusion being within the previous 2 years.

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.

Admission authorities may only do this if:

- the school has a particularly high proportion of children with challenging behaviour or previously excluded pupils 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.

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

### *What is challenging behaviour?*

Behaviour can be described as challenging where it would be unlikely to be responsive to the usual range of interventions to help prevent and address pupil misbehaviour or it is of such severity, frequency or duration that it is beyond the normal range that schools can tolerate. We would expect this behaviour to significantly interfere with the pupil's or other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment.

The following reasons on their own should not be grounds for considering that a child may display challenging behavior:

- 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.

Admission authorities should consider the effect of the decision of the [Upper Tribunal in C & C v The Governing Body of a School, The Secretary of State for Education \(First Interested Party\) and The National Autistic Society \(Second Interested Party\) \(SEN\) \[2018\] UKUT 269 \(AAC\)](#) about the implications of the Equality Act 2010 when a pupil exhibits a tendency to physical abuse of other persons as a consequence of a disability.

All schools have a duty to make reasonable adjustments for students with disabilities. Schools should be aware that a child who displays challenging behaviour may do so as a result of their disability or any unmet needs. Schools must therefore consider whether any reasonable adjustments can be put in place to support the needs of a particular child when considering whether admission should be refused on these grounds.

The impact and effectiveness of these adjustments must also be 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 pupil with autism, the impact of these arrangements must be factored into a decision over whether the child's behaviour would meet the criteria to be considered challenging.



## 11. Fair Access Panel decisions

Decisions on the placement of children should include taking into account the following:

### *The needs of the child in question*

Children eligible to be placed via FAPs are often vulnerable and may have additional needs that require support. Before making placement decisions, consideration will be given as 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 should be treated in a **fair, equitable** and **consistent** manner. This means 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.

Schools with spaces are not expected to admit all children being placed via the FAP where doing so would mean they are being asked to take a disproportionate number of such children compared to other local schools. A school is not required to automatically admit a child via the FAP in place of another child permanently excluded from the school.

Where a school expresses compelling reasons for not being able to admit a child via the FAP, for example due to health and safety reasons, this should be taken into consideration before a decision is made to place a child in that school.

### *Parental preference*

There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the FAP but parents' views will be taken into account. Information from a parent can provide valuable context that may help the FAP determine whether a particular school place is appropriate for a child, and any particular needs they may have.

### *The Panel will also take into consideration the following:*

- Whether the child is considered by the current or most recent education setting as ready for mainstream school;
- the numbers on roll and vacancies at the preferred school or schools;
- how many children have been placed in this Year Group at local schools as Fair Access and Reintegration admissions during the previous 12 months;
- Which school is best able to meet the child's needs;
- Infant Class Size Legislation;
- Whether the school has a clear and compelling reason why it cannot meet the child's needs;

- Efficient provision of education and the efficient use of resources at the
- school;
- Fair distribution arrangements described above to primary and to secondary schools.
- FAP will consider previous admissions, group dynamics and transport implications before deciding a placement.
- Advice from external agencies will be considered when appropriate (e.g., Police, Health, Social Care).

If a Panel is unable to decide on the most suitable placement for a child and that child is without a school place there will be a vote by the Panel. If there is a tied vote the Chair will have the casting vote, and therefore, the deciding vote.

Non-attendance at one or more meetings of FAP will not preclude the school/schools concerned from being required to admit a pupil who needs to be placed under the Protocol.

### *Offers*

After each meeting, the Admissions Team will notify the relevant school/schools to confirm the panel decisions and the agreement to offer a place under the Fair Access Protocol.

When a place is offered the Admissions Team will write to inform the parents. Within two school weeks of the Fair Access Panel's decision, the school will arrange an induction meeting with the relevant personnel to plan the integration. The school will normally admit the pupil to the school roll within two weeks of the induction meeting. However, this should be undertaken at the earliest convenience.

In accordance with the School Admissions Code, a child must be included in a school's Admission Register from the beginning of the first day on which the school has been notified that the pupil(s) will attend the school.

## **12) Directions**

Admission authorities **must** admit children when asked to do so in accordance with the FAP, including where the school is operating a waiting list.

Where an admission authority has failed to admit a child in accordance with the FAP, they may be directed to do so.

A local authority has the power to direct the governing body of a maintained school for which they are not the admission authority to admit a child in their area even when the school is full. See paragraphs 3.23 to 3.25 of the Code.

Where a local authority considers that an academy will best meet the needs of any child, it can ask the Secretary of State to intervene – the Secretary of State has the power to direct the admission of any child to any academy under the academy's funding agreement. See paragraphs 3.29 of the Code.

### **13) Membership and meetings**

There will be a separate Primary and Secondary Fair Access Panel.

*Primary:*

The panel will consist of:

- The Chair of the Panel will be the Strategic School Admissions Manager from the LA.
- A mainstream representative from each primary school locality area – North, East, South, West, Central and Rural – 6 Primary Head Teachers
- Primary AP (Nyland) Provision
- Officers from Education Psychology, Early Help, and SEND will attend panel meetings as required.
- There must be at least the Chair or Vice Chair plus 2 Primary School representatives present for the panel to be quorate.

*Secondary:*

The panel will consist of:

- The Chair of the Panel will be the Strategic School Admissions Manager from the LA.
- The Headteacher or representative of each mainstream secondary school and UTC.
- EOTAS Head Teacher
- Officers from Education Psychology, Early Help, and SEND will attend panel meetings as required.
- There must be at least the Chair or Vice Chair plus 6 school representatives present for the panel to be quorate.

The FAP Panel will be held virtually on teams.

The Fair Access Panel will meet twice termly and when required.

Meetings of the Fair Access Panel will not be open to the public in view of the sensitive nature of the items under discussion.

### **14. Monitoring of the Protocol**

The Local Authority is responsible for the fair administration of this Protocol.

The Admissions Team will keep a record of the placement of children under the Protocol.

Swindon LA has a duty to report on compliance and the overall impact of admission arrangements in their area on fair access in its annual report to the Office of the Schools Adjudicator.