



Leicestershire County Council

Admissions and Inclusion Services Fair Access Protocol

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Introduction

Every local authority is required to have in place a Fair Access Protocol, developed through consultation with local schools and academies. The statutory basis for this is laid out in the [School Admissions Code 2021](#). This is supplemented by the DfE's guidance '[Fair Access Protocols: Guidance for School Leaders, Admission Authorities and Local Authorities](#)' published in July 2021, which 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.

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, minimising the time the child is out of school.

Most children should be able to secure a school place through the normal in-year admissions process, either as a result of a parental application or following an approach by the Local Authority to any school. The Fair Access Protocol is only intended to be used as a mechanism to secure a school place in-year for the most vulnerable children and should not be used to circumvent usual in-year admissions process.

There is a duty on local authorities, schools and academies to work together in partnership to ensure that the best interests of vulnerable children are considered whilst ensuring that no school, including those with places available, should be asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are placed via the Protocol. The School Admission Code 2021 makes clear the shared responsibility in relation to the operation of the Fair Access Protocol, including when it should be used and setting out a clear process of how it should work, including requiring that placement decisions need to be made within 20 school days of a child being referred to the Protocol.

This Protocol has been consulted on and developed in partnership with all schools in Leicestershire. This Protocol has been agreed by the majority of schools in Leicestershire.

Admission authorities of all schools in the Leicestershire **must** participate in the Protocol. Participation includes making available a representative who is authorised to participate in discussions, make decisions on placing children via the protocol and admitting pupils when asked to do so in accordance with the protocol, even when the school is full (suitable authority must be delegated to that individual).

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.

Overall procedures and context

Legislative background

Scope of the Fair Access Protocol

The School Admissions code 2021 (3.17) states that: *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:*

- a) children either subject to a Child in Need Plan or a Child Protection Plan or having had a Child in Need Plan or a Child Protection Plan within 12 months at the point of being referred to the Protocol;
- b) children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol;
- c) children from the criminal justice system;
- d) children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education;
- e) children with special educational needs (but without an Education, Health and Care plan), disabilities, medical conditions, SEMH or poor behaviour;
- f) children who are carers;
- g) children who are homeless;
- h) children in formal kinship care arrangements (as evidenced by either 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 Protocol in accordance with paragraph 3.10 of this Code (see section 3);
- k) children for whom a place has not been sought due to exceptional circumstances (it is up to the local authority to decide whether a child qualifies to be placed via the Protocol on this basis, based on the circumstances of the case);
- 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; and
- m) previously looked after children for whom the local authority has been unable to promptly secure a school place.

The School Admissions Code 2021, para 3.15 states that ‘Once the Protocol has been agreed by the majority of schools in its area, all admission authorities must participate in it. Participation includes making available a representative who is authorised to participate in discussions, make decisions on placing children via the Protocol, and admitting pupils when asked to do so in accordance with the Protocol, even when the school is full. Local authorities must provide admission authorities with reasonable notice and information as to how and when discussions around the placement of children via the Protocol will take place.’

The School Admissions Code 2021 applies to admissions to all maintained schools in England and should be read alongside the School Admission Appeals Code 2022 and other guidance and law that affect admissions and admission appeals in England. Academy Schools (including free schools, university technical colleges and studio schools) are required by their funding agreements to comply with the School Admissions Code 2021 and the law relating to admissions, though the Secretary of State has the power to vary this requirement where there is demonstrable need.

The Leicestershire Context

Leicestershire County Council has established an in-year coordinated admission scheme for Leicestershire community and voluntary controlled schools with an option for own admission authority schools to participate. If a place cannot be offered through the normal in-year admissions process, the application may be considered in line with the County Council's Fair Access Protocol if the criteria are met as set out in the School Admissions Code 2021. As set out in the Code at paragraph 3.17, and in Section of this document.

For those schools not participating in the in-year scheme, the Fair Access Protocol is key in identifying those vulnerable groups to ensure that vulnerable children without school places are not overlooked. Leicestershire County Council has well-established collaborative fair access procedures at secondary and primary level.

In Leicestershire the Fair Access Protocol operates on a North and South regional area. For secondary aged pupils this is done through a weekly on-line meeting collaborative meeting. For primary aged pupils, senior officers from the School Admissions Service (Chair) and the Inclusion Service will lead the process. For the academic year of 25/26, Secondary pupils in the North-West of the region, senior officers from the School Admissions Service (Chair) and the Inclusion Service will continue to lead the process.

Admissions correspondence and agreed admissions processes are designed to enhance continuity, where necessary, between the in-year scheme and the Fair Access Protocol. This is to ensure that when a child has not secured a school place through the normal admissions process and the Fair Access Protocol is triggered a referral will be made to the FAP panel.

Where a school is experiencing challenges in managing the behaviour of a pupil, they should approach Oakfield Short Stay School www.oakfield.leics.sch.uk for advice and strategies to support the young person.

Applications

In year applications

An in-year application is for the admission of a child to a compulsory school age year group, and it is submitted on or after the first day of the first school term of the admission year; or it is for the admission of a child to an age group other than a relevant age group.

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 School Admission Code. Where it considers that the child falls, or may fall, into any such category, the admission authority should notify the local authority (School Admissions Service) of this.

The School Admissions Service will then decide if they agree a FAP trigger has been met, and if so refer the applicant to the FAP panel, for consideration. 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.

Parents' right to appeal

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 on the grounds of 3.10 and 3.11 of the School Admissions Code being met, 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.

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 place via the FAP.

Processing applications and Fair Access eligibility

For applications that are processed through Leicestershire County Council's in-year co-ordinated scheme and where fair access is triggered fair access processes in accordance with timelines laid out in the scheme will apply. Own admission authority schools that are not participating in Leicestershire's County Council's in-year coordinated scheme are required, on receipt of an in-year application, to notify the County Council of the *application within 2 school days and aim to subsequently share the outcome within 10 school days (mandatory 15 school days)*. This enables the local authority to track and safeguard children in the area to ensure they are not missing education and make a referral under the Fair Access Protocol as necessary. You can notify the County Council by emailing admissions@leics.gov.uk.

Where children are placed via the Protocol due to meeting criterion L only

'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';

The admissions service will identify the next nearest school with available space and, if this is beyond the safe walking distance as defined in the Leicestershire School Transport Policy, contact the School Transport Service, check eligibility for that school and advise parents of availability and to apply for transport.

If considered under the FAP the Local Authority or admission authorities are not required to comply with parental preference when allocating places through the FAP, but parents' views should be taken into account as well.

Requests by schools for referral to fair access panel regarding children displaying challenging behaviour

Legislative context

The School Admissions Code 2021 (3.10) states that ‘where an admission authority receives an in-year application for a year group that is not the normal point of entry and it does not wish to admit the child because it has good reason to believe that the child may display challenging behaviour, it may refuse admission and refer the child to the Fair Access Protocol’.

An admission authority should only rely on the provision in paragraph 3.10 if it has a particularly high proportion of either children with challenging behaviour or previously permanently excluded pupils on roll compared to other local schools and it considers that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources.

Exceptions under 3.8 School Admissions Code 2021

In line with paragraph 3.9 of the School Admissions Code 2021, ‘Admission authorities must not refuse to admit a child on behavioural grounds in the normal admissions round or at any point in the normal year of entry (ie. year 7 or reception), except for where paragraph 3.8 applies’.

The exceptions are set out in The School Admissions Code 2021 (3.8) which states that ‘where a child has been permanently excluded from two or more schools there is no need for an admission authority to comply with parental preference for a period of two years from the last exclusion, other than in excepted cases detailed in this paragraph of the Code’.

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.

The School Admissions Code 2021 (2.28) states that admission authorities must not refuse to admit a child solely because:

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

We recommend that, in the spirit of collaboration and open communication, headteachers share information to ensure that there are no delays in admitting the child.

Schools will not 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, these will be taken into consideration by the panel before a decision is made to place a child in that school.

Definitions of Challenging Behaviour

‘Challenging behaviour’ is defined in the school admission code as;

'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. The behaviour would be expected to significantly interfere with the pupil's/other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment.'

'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 pupil exhibits a tendency to physical abuse of other persons as a consequence of a disability.'

4.3.3 'Paragraph 1.9(g) does not apply where an admission authority takes account of past behaviour as evidence for concerns about challenging behaviour, solely for the purpose of making a decision on whether it would be appropriate to refuse admission on the basis described in paragraph 3.10.'

The following reasons on their own should 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.

When an admission authority should rely on this provision

Any school may ask the LA to consider action under this protocol where it does not wish to admit a pupil with challenging behaviour outside the normal admissions round.

Admission authorities should only seek to rely on this provision 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 use of this provision must not be used to give time to gather further evidence or unnecessarily delay the admission of children to school. This provision will not apply to a Looked After Child, a Previously Looked After Child or a child with an Education, Health and Care Plan naming the school in question, as these children must be admitted.

School refusals on the grounds of behaviour (see appendix 5)

Where a Leicestershire school does not wish to admit a child because it has clear evidence to show that the child may display challenging behaviour, the school will need to inform the Local Authority via the agreed FAP form with supporting evidence. The application will then be added to the agenda for discussion at the next available meeting.

If an application is to be referred on the grounds of behaviour, additional supporting evidence must be provided by the admission authority describing the lawful basis on which they believe the child should be

referred to the Fair Access Protocol. In the absence of information being provided, the in-year application must then be considered under the normal in-year process in line with the usual admissions procedures.

The Fair Access Panel will refer to school specific data, held by the LA (for example suspensions, mid-term moves, SEND demands etc) to consider current demand and use this information to inform their decision when placing a child. This will be used alongside the evidence provided by schools.

The evidence the admission authority must provide to support their referral to the FAP must include:

- a) documented evidence that the child has a history of significantly challenging behaviour, in line with the definition of challenging behaviour in the Code, and corroborated by an expert diagnosis, school exclusion history, the youth justice system or other appropriate agencies.

And

- b) the school can evidence it has a particularly high proportion of either children with challenging behaviour or has taken on permanently excluded pupils on its roll compared to other local schools and/or it is able to demonstrate that by admitting another child with challenging behaviour, would prejudice the provision of efficient education or the efficient use of resources.

Appendix 4 provides the proforma that should be completed to refer refusals on the grounds of behaviour to the Fair Access Protocol.

Duty on schools to make reasonable adjustments.

Admissions 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 assessed for special educational needs.

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 the presenting behaviours. Schools must be able to evidence what reasonable adjustments were considered, and if not implemented, why not.

How the needs of children who have been permanently excluded and children for whom mainstream education is not yet possible will be met.

The Fair Access Protocol must 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. In Leicestershire the following provisions are in place:

Oakfield Short Stay School provides short term placements to children of primary and secondary age, who have been permanently excluded from school. The school have SEND specialists and adopt a trauma informed approach to supporting children and their families on the journey back into mainstream education or preparation for specialist education.

For further information please contact:

www.oakfield.leics.sch.uk

The FAP should not apply to:

Looked After Children (LAC), Previously looked after children (PLAC) and children with an Education and Health Care Plan (EHCP) do not fall under the Fair Access Protocol, and Leicestershire County Council's expectations are that schools/academies must take these children on roll, but may then seek support from Oakfield, if they wish.

The School Admissions Code 2021 defines Looked After Children as Children who are in the care of local authorities as defined by Section 22 of the Children Act 1989. In relation to school admissions legislation a 'looked after child' is a child in public care at the time of application to a school.

The School Admissions Code 2021 defines Previously Looked After Children as children who were looked after but ceased to be so because they were adopted (or became subject to child arrangements order or special guardianship order).

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 admission authorities are expected 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.

Fair access and Elective Home Education (EHE)

Secondary Schools in Leicestershire will use the Fair Access Protocol and Procedure for CYP applying to schools after a period of EHE if the following criteria apply:

- The child is returning to the same phase of education.
- The child has been out of secondary school for no more than a period of two years.
- The child has not moved address so that the journey to the assigned school would be unreasonable.

Schools agree that the default position for a Fair Access decision will be to return the child to the roll of the schools that they have previously attended, unless there is substantial evidence that the child has experienced bullying in the school, and to return would be of a significant detrimental effect on the child.

If the child has additional needs arising from a previous or existing EHCP the child may be referred by the school to Oakfield for support.

Referring under the Fair Access Protocol

When should you make a referral under the Fair Access Protocol

Referral to the Fair Access Protocol 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 admissions process in the first instance.

Before making a referral, please check that you meet all the criteria:

1. The child falls under one of the groups of vulnerable and/or hard-to-place children set out in section 3 (a) - (m)
2. That the child is having difficulty in securing a school place in-year.

and

3. it can be demonstrated that reasonable measures have been taken to secure a place through the usual in-year admission procedures

Where children qualify under FAP, referrals will be made by the Admissions Service to the Fair Access Panel.

The decision of the panel is binding on all parties; this includes schools and parents.

How to make a referral and timescales

For full details of the process and timeline for Fair Access referrals at both primary and secondary level see the appendices to this document.

Where an admission authority or Local Authority service considers the child falls, or may fall, into any one of the categories set out above in paragraph 2.1, the Admission Authority should notify the Local Authority within 2 school days using the form at appendix 2.

The Local Authority should then decide whether the child would be eligible to be placed in school via the FAP.

If eligible:

In the case of primary Fair Access, the Local Authority will aim to convene a panel to place the child within 15 school days.

In the case of secondary Fair Access, the LA will aim to refer fair access cases within 2 school days. A panel meeting to discuss the child's case will be held within 15 school days of receipt of the referral.

Where an application meets a fair access trigger the relevant panel will convene an extraordinary meeting to ensure they comply with the timescales set out in the code.

Panel Decision making

Panel composition

As set out in the School Admissions Code 2021, decisions about admitting children under the Protocol will be made by a FAP Panel. In exceptional circumstances a decision can be made by one individual (Panel Chair) provided that suitable authority has been delegated to that individual, after which, a member of the FAP panel must relay the outcomes to the School Admissions Service.

Responsibility of the school

It is the responsibility of each school to send a representative to the meeting; this representative must be authorised to participate in discussions, make decisions on placing children via the Protocol, and admitting pupils when asked to do so in accordance with the Protocol, even when the school is full.

Consideration of referrals

Schools may ask that the School Admissions Service refer application via the Fair Access Protocol if the CYP is an in-year admission and meets the criteria listed in this guidance.

No school - including those with places available – should be asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are placed via the Protocol. For unplaced children in the locality, who require a place to be allocated via the Protocol, the Local Authority will make recommendations for place allocations, taking into account parental preference, catchment and needs of the child, whilst ensuring a fair and equitable distribution of children. The panel will be expected to consider the parental application, the Local Authority recommendation and the admission authority's referral, where applicable. At each panel current data will be provided by the Local Authority pertaining to the number of children on roll at each locality school and the number of fair access admissions in relevant schools across the academic year in order to support the decision-making process.

The locality panel will be expected to consider the parental application, the Local Authority recommendation and the admission authority's referral, where applicable. The Local Authority or admission authorities do not need to comply with parental preference when allocating places through the FAP, but parents' views should be taken into account. Parents may have valuable contextual information that a panel may wish to take into consideration.

Schools will be required to evidence why they cannot accept a Fair Access child onto their roll. The online form needs to be completed and evidence submitted to the panel at least 2 school days in advance of the Panel meeting.

At each panel, current data will be provided by the School Admissions Service, pertaining to the number of children on roll at each locality school, the number of fair access admissions, in relevant schools across the academic year. The Inclusion team can be asked to provide information about the percentage of children within the school who display challenging behaviour and those who have been permanently excluded from other schools. This needs to be evidenced where it is being used as an argument to refuse a place under Fair Access. A school's record of permanent exclusions issued will be taken into consideration by the panel when placing children through the Fair Access Protocol.

Schools should co-operate to ensure that Fair Access cases are distributed evenly and fairly across schools. Effective FAP meetings have an emphasis on the common goal of ensuring all children referred to the FAP have access to a suitable school place as quickly as possible.

Assessing the suitability of a placement

Where cases to be discussed may involve the consideration of cross local authority border placements, local authorities may wish to include representatives from neighbouring authorities at FAP meetings.

Local authorities should also consider whether the views of other agencies (such as social workers, educational psychologists and occupational therapists) are required to inform FAP decisions.

As part of assessing the suitability of a placement for a child, the panel must take account of any relevant information provided by parents/carers, school, Local Authority, other admission authorities or professional agencies. This could include a previous serious breakdown in the relationship between the school and the family, or strong views about the religious ethos of a school.

Data provided by the Local Authority to panels should be used to ensure an equitable distribution of fair access placements across a locality.

Locality panels are required to give due consideration to the specific needs of any vulnerable pupils that they are seeking to place. They should aim to identify an educational pathway that offers the child the best opportunity to achieve a positive academic outcome. There is, as already stated, no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.

Locality panels are also responsible for ensuring that appropriate educational provision will be sought for children who have a right to educational provision and whose applications are being considered under the Fair Access Protocol, but who are not ready for mainstream schooling. In the majority of circumstances, this will involve placing the child onto the roll of their catchment school to enable the co-ordination of an appropriate alternative curriculum package. Wherever possible, children with a religious affiliation should be matched to a suitable school.

Children eligible to be placed via FAPs are often vulnerable and may have additional needs that require support. Before making placement decisions, consideration should 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 rights of the child under the [Equality Act](#) should be considered where there are protected characteristics to consider.

Where the Fair Access Panel conclude that a referral made is not a Fair Access case, the usual school applications process continues.

Recommendations of the panel

Locality panels are required to identify school placements for all children who have been identified as meeting the requirements of the Fair Access Protocol, including those who have been permanently excluded. All schools are expected to admit children who have been allocated to them through this process. Non-attendance by a school representative at a panel meeting does not preclude a decision to place a child at that school and these decisions are still binding.

The School Admissions Code 2021 states 'placement decisions need to be made within 20 school days of a child being referred to the Protocol.' *If in a particular case there are valid reasons why a school cannot be identified at the locality meeting, the protocol requires that locality panels are responsible for establishing the educational provision a child will receive and monitoring its effectiveness.*

Alternative provision

In rare circumstances alternative provision may be recommended. This means that a school will be identified to take responsibility for the learning and wellbeing of the child but the education will take place somewhere other than the main school site.

Off-Site Direction

The process of Off-Site Direction falls outside the scope of fair access legislation and will therefore only apply if individual schools have specifically agreed to develop secure procedures to facilitate such transfers in their area and the parent agrees to participate in that process.

Secondary aged young people who may struggle to cope in a mainstream school following a period of home education may be referred to Oakfield for support.

Local authority support and monitoring role

Cross Border cases

Whilst this Fair Access Protocol covers all maintained schools and academies within Leicestershire , every effort will be made to contact a neighbouring authority to help secure a school place in that area if that is deemed appropriate.

Where cases to be discussed may involve the consideration of cross local authority border placements, local authorities may wish to include representatives from neighbouring authorities at FAP meetings.

In the case of secondaries, where cases cross partnership boundaries, the Chair, or a representative of the area partnership affected will be offered an invitation to attend the panel.

The panel will also consider whether the views of other agencies (such as social workers, educational psychologists and occupational therapists) are required to inform FAP decisions.

If a locality panel meeting is deferred or cancelled, the cases on that month's agenda will be heard at the next available meeting or if necessary a special meeting may be convened to make decisions regarding placements.

There may be rare occasions where a child is not offered a school place by the locality panel or where the school identified by the panel fails to admit the child. In these exceptional cases, the local authority may direct a school to admit the child or may make a referral to the Department For Education.

Admission following allocation of a school place

Once a school place has been allocated, parents should be notified, and arrangements made for the child to start at the school as soon as possible, so as to avoid any gaps in their education.

Para 3.21 of the School Admissions Code 2021 states placement decisions need to be made within 20 school days of a child being referred to the Protocol. Once they have been allocated a school place via the Fair Access Protocol, arrangements should be made for the child to start at the school as soon as possible.

- In Leicestershire, Schools and academies, must reply to requests from the Local Authority to admit a young person under the FAP without delay. The school has a maximum of 7 school days to inform the Admissions Service whether they will accept the child onto their roll.
- The child must then be admitted to the school's roll within 20 school days from the date of the original referral.

The school and/or the local authority should also make any necessary arrangements that may be required to ensure any needs of the child are met, and that they have a successful start at the school.

This may include:

- ensuring parents can source essentials, such as school uniform
- putting in place additional resources that may be required to bridge any gaps in education
- transitional support, depending on what educational setting, if any, the child was previously in
- putting in place support for any special educational needs.

On occasion, schools may request some time to put in place any arrangements. They should be made quickly to ensure the child can start school as quickly as possible.

Allocation of Transport

Eligibility for home to school transport for a child placed through the FAP will be assessed in accordance with the Home to School Transport Policy. Transport will be provided where a child is attending their nearest available school, where the distance from home is over the statutory qualifying distances of 2 miles for primary age pupils and 3 miles for secondary age pupils. The nearest available school, will be taken to mean the school identified by the Fair Access Protocol Panel, as being the nearest school that can reasonably accommodate the child following assessment under the FAP. The Admissions Service will contact the Assisted Transport Service to make the referral for home to school transport.

Where a School fails to admit a child in accordance with the Fair Access Policy

Direction to Schools and Academies

Admissions 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.

Local authority powers of direction for maintained schools

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.

The local authority can only make such a direction in respect of a child in the local authority's area, who has been refused entry to, or has been permanently excluded from, every suitable school within a reasonable distance as detailed in paras 3.23- 3.25 of the School Admissions Code 2021.

Secretary of States power of direction for academies

Where a local authority considers that an Academy will best meet the needs of a child, it can ask the Academy to admit that child, but it has no power to direct it to do so. The local authority and the Academy will usually come to an agreement, but if the Academy refuses to admit the child, the local authority can ask the Secretary of State to intervene. The Secretary of State has the power under an Academy's Funding Agreement to direct the Academy to admit a child and can seek advice from the Schools Adjudicator in reaching a decision. (Para 3.29).

[Appendix 3](#) provides a breakdown of how a direction will be implemented.

Children Missing Education

Children and Family Services maintain information about children missing education as required by statutory guidance *. Therefore it is vital that all placements are resolved quickly to prevent children from missing education.

The named individual responsible for receiving details of children found missing from education and for brokering support for them through the most appropriate agencies is:

Service Manager
Inclusion Service
County Hall, Glenfield
Leicester, LE3 8RF

Tel: 0116 3052071
Email: cme@leics.gov.uk

The process of tracking pupils without an educational placement is part of our collective responsibility and an on-going commitment to safeguarding the welfare of young people. It is vital that anyone who becomes aware that a child is not, or does not appear to be in education, notifies the named person with the responsibility for pupils missing from education in Leicestershire.

Monitoring and Review

Monitoring the effectiveness of the Fair Access Protocol

The local authority must consult on, and develop their FAP in partnership with all schools in its area. Securing the agreement of schools is key to a FAP operating effectively. It will ensure the support and engagement of school leaders and admission authorities and help create a fair and effective system that will benefit the children it is intended to serve.

In areas where children can be placed across local authority borders, local authorities should consult with neighboring authorities on how they might manage cross-border placements.

The local authority monitors the placement of children identified through Fair Access.

The School Admissions Code 2021 (3.30) requires local authorities to produce an annual report on Admission and Fair Access for all schools and academies in their area. This report must be published locally and then sent to the Adjudicator by 31 October annually. Information for this report must be collated, updated and provided by Oakfield Short Stay School on request.

Review

The local authority should keep the FAP under review to ensure it remains fit for purpose. They should also consult schools before making any changes, as they will need to be agreed by the majority of schools before they can be adopted.

In the event that the majority of schools can no longer support the principles and approach of the local FAP (for example, if they believe it is not operating fairly or effectively), they may request that it is reviewed.

The request for a review should be submitted in writing to the Admissions Service Manager. This request should outline the issues faced under the existing protocol, along with the vision for how the issues could be addressed. The request will be acknowledged within one week.

The Local Authority will then arrange a working group who will review the protocol and make necessary changes that are in the best interests of the children of Leicestershire.

The revised protocol will be distributed to heads for a period of consultation before the revised protocol is adopted.

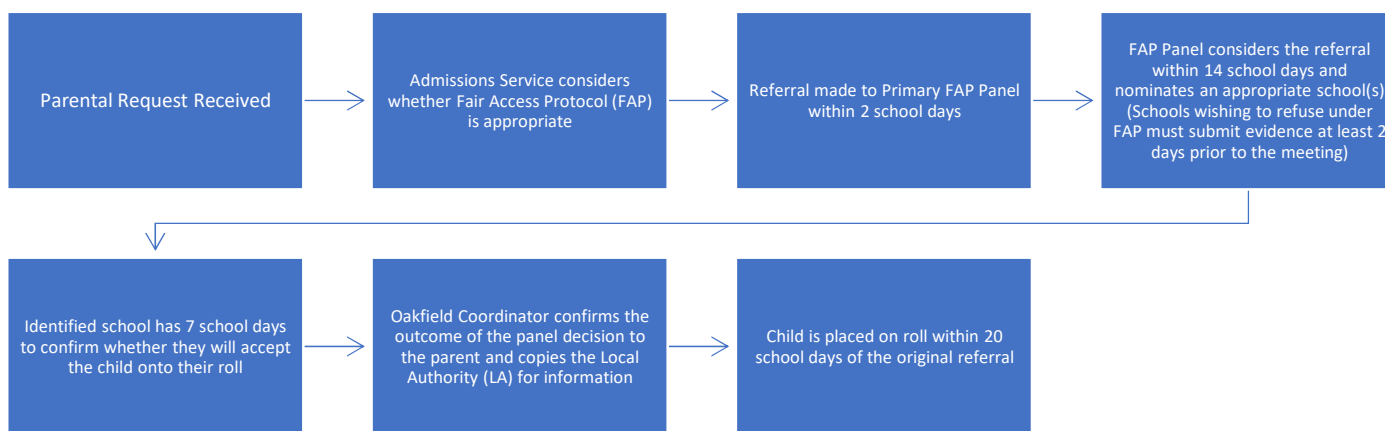
The existing FAP will remain binding on all schools in the area until a new one is adopted.

Appendix 1: Process for Primary and Secondary placement requests via the protocol

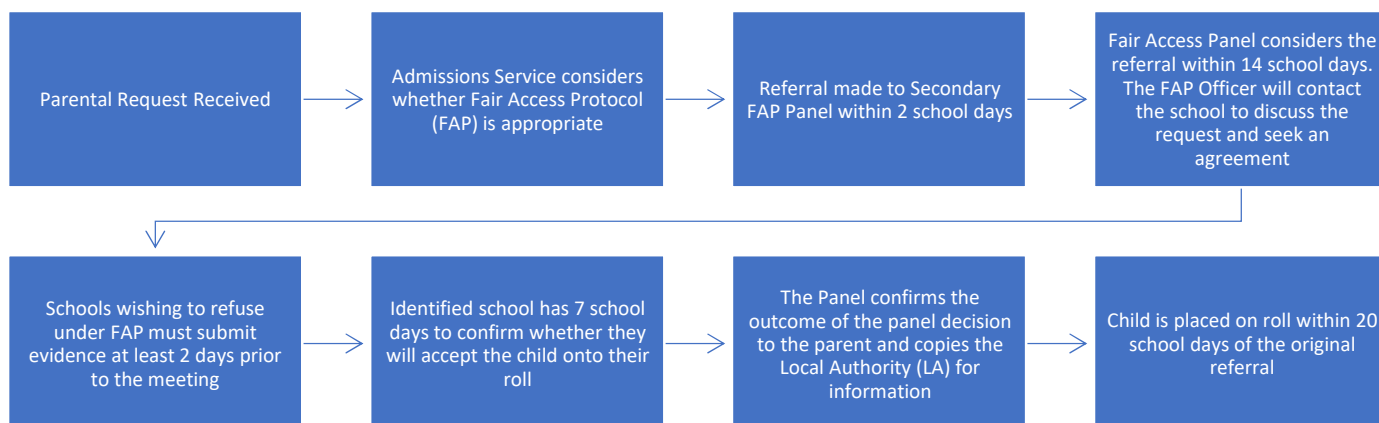
General:

Children are referred for Fair Access by a professional who is aware that the child has no school place and has been out of education for four or more weeks, or if they meet one of the other criteria as set out in para 3.17 of the School Admissions Code 2021. Where it is accepted that a child’s admission should be considered under the Fair Access Protocol, a place must be allocated within 20 school days.

PRIMARY FLOW CHART



SECONDARY FLOW CHART*



***Note:**

- The secondary also applies to North West, whilst the LA Chairs the Panel.
- Funding arrangements for North-West Partnership:

Funding has been delegated to trusts operating in NWL to support inclusive practice within their schools situated in NWL. This funding should be utilised to support the transition of pupils in the school where places have been allocated under the Fair Access Protocol.

**** Note:**

- Where the nominated school refuses to accept the Panel's decision and is unable offer sufficient evidence as detailed in the Code. The Panel Chair has the option to request a referral to the Secretary-of-State. The LA will consider the request and determine if a referral to the Secretary-of-State is made.

The Panel

Membership of the Panel

The Panel consists of:

- Oakfield Executive Headteacher (Chair)
- Leicestershire Secondary School/Headteacher representative (Secondary)
- Leicestershire Primary School/Headteacher representative (Primary)
- Head of Service for Education Sufficiency
- Fair Access Officer
- Wider stakeholder representative

Members can delegate attendance as appropriate

Additional members can be co-opted as needed

The headteacher (or-decision making representative) of schools on the agenda will be invited as attendees as well as other professionals as appropriate as pertinent to the agenda, for example, SENA service, school place planning, school improvement or school transport.

Appendix 2: Fair Access Referral Form

Scope of the Fair Access Protocol Triggers



The School Admissions code 2021 (3.17) states that *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:*

- a) children either subject to a Child in Need Plan or a Child Protection Plan or having had a Child in Need Plan or a Child Protection Plan within 12 months at the point of being referred to the Protocol;
- b) children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol;
- c) children from the criminal justice system;
- d) children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education;
- e) children with special educational needs (but without an Education, Health and Care plan), disabilities, medical conditions, SEMH or poor behaviour;
- f) children who are carers
- g) children who are homeless;
- h) children in formal kinship care arrangements (as evidenced by either 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 Protocol in accordance with [paragraph 3.10](#) of this Code (see section 3);
- k) children for whom a place has not been sought due to exceptional circumstances (it is up to the local authority to decide whether a child qualifies to be placed via the Protocol on this basis, based on the circumstances of the case);
- 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; and
- m) previously looked after children for whom the local authority has been unable to promptly secure a school place.

Appendix 3: Where schools do not accept the FAP decisions of the partnerships so that a child remains without a place

The School Admissions Code 2021 para 3.23 states 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.

The local authority must choose a school that is a reasonable distance from the child's home and from which the child is not permanently excluded. It must not choose a sixth-form that selects by ability, unless the child meets the selection requirements, or a school that would have to take measures to avoid breaking the rules on infant class sizes if those measures would prejudice the provision of efficient education or the efficient use of resources.

Para 3.29 of the School Admissions Code 2021 Where a local authority considers that an Academy will best meet the needs of any child, it can ask the Academy to admit that child but has no power to direct it to do so. The local authority and the Academy will usually come to an agreement, but if the Academy refuses to admit the child, the local authority can ask the Secretary of State to intervene. The Secretary of State has the power under an Academy's Funding Agreement to direct the Academy to admit a child and can seek advice from the Schools Adjudicator in reaching a decision.

If the Local Authority does not accept the reason for refusal:

Process for Maintained Schools:

Day 1: the decision is made by the Panel for your school to admit

Day 7: the school to inform the Local Authority whether they will admit the child on roll.

In the event of a refusal to admit a child, the school must clearly outline reasons, supported with documentary evidence and submit this to:

Steve Lee – steve.lee@leics.gov.uk

If the LA feels that the school should take the child the LA must consult with the headteacher of the school, governing body, the parent and the child if they are over compulsory school age.

The period of consultation should take no more than 10 days.

If, following consultation, the local authority decides to direct, it must inform the governing body and head teacher of the school.

The governing body can appeal by referring the case to the Schools Adjudicator within 15 days. If it does this, the governing body must tell the local authority.

The local authority must not make a direction until the 15 days have passed and the case has not been referred. (Para 3.24)

(Para3.25) If the case is referred to the Schools Adjudicator, the Schools Adjudicator may either uphold the direction, determine that another maintained school must admit the child or decide not to issue a direction. The Adjudicator's decision is binding.

The Schools Adjudicator must not direct a school to admit a child if this would require the school to take measures to avoid breaking the rules on infant class sizes and those measures would prejudice the provision of efficient education or the efficient use of resources.

Once a place has been agreed, the child should begin attending school within 3 school days.

Receiving schools are responsible for completing any necessary risk assessment as part of the admissions procedures. Risk assessments should be based on available information and updated if necessary when new information is received. The completion of a risk assessment is not a reason to delay entry for more than 3 school days.

Where a school needs support when admitting a pupil, they should access this through The Inclusion Service or Oakfield Short Stay school.

Undue delays in admission will be referred to the Adjudicator.

For a voluntary controlled school or community school:

The governing body (if the school is a voluntary controlled or community school), may also refer the case to the Schools Adjudicator. They must not refer unless it considers that admitting the child would seriously prejudice the provision of efficient education or the efficient use of resources.

Process for Academies (excluding secondary academies in NW Leicestershire)

Day 1: The decision is made by the Panel for your school to admit

In the event of a refusal to admit a child, the school must clearly outline and submit their reasons to the local Authority.

Day 7: By this time the admission authority of a school must inform the Local Authority whether it is willing to admit the child.

- In the event of a refusal, the school must clearly outline and submit their reasons to the to the Fair Access Panel
- The Fair Access Panel will then inform the Admissions Service within a maximum of 2 school days.

Any response from the school will be given careful consideration. If the LA accepts the reasons for refusal, the Fair Access Panel will be asked to reconsider the placement decision.

A period of consultation will take place with the academy.

- Where the Local Authority does not accept the reasons for refusal, after consultation it will formally write to a nominated academy indicating their intention to write to the Secretary of State to ask for a direction.
- The governing body of an academy can appeal by referring the case to the Secretary of State within 15 days. If it does this, the academy must tell the local authority.
- The local authority must not ask the Secretary of State to make a direction until the 15 days have passed and the case has not been referred.
- The LA in making the request to the Department For Education need to complete the online form – details below.

In requesting a direction from the Secretary of State, the Local Authority must provide evidence that the provisions of the Fair Access Protocol have been applied in a fair and appropriate manner, the Academy's reasons for refusal and the Local Authority's response.

Where reviewing an Academy direction, the Department For Education will act on behalf of the Secretary of State to consider whether due process has been followed in applying the provisions of the Fair Access Protocol.

There is an expectation from the Secretary of State that the local authority and the academy work together to ensure the successful admission of a child.

A request for the Secretary of State's direction should only be used if the in-year admissions process and the fair access protocol do not secure the child a place. Where the local authority and academy cannot agree:

- the local authority and the academy must document the case for and against admission
- the local authority must provide evidence that the academy has been consulted setting out the academy's reasons for refusal and the local authority's response.

When the Department For Education receive a request, they will inform the academy.

Where the request is for a child that has been considered by the local Fair Access Protocol, the Department For Education will consider:

- if the local Fair Access Protocol has been applied appropriately
- the arguments of the academy and local authority
- whether the local authority has considered the arguments for refusal and why it still considers the

- academy to be the appropriate provision for the child
- whether the academy has been asked to accept a disproportionate number of children under the fair access protocol compared to other schools

The Department For Education can seek advice from the Schools Adjudicator in reaching its decision. This is set out at paragraph 3.29 of the School Admissions Code and Section 25 of the School Standards and Framework Act 1998. The Office of the Schools Adjudicator (OSA) may contact the local authority and the academy regarding this referral.

The Department For Education's decision is final and binding.

Once a place has been agreed, the child should begin attending school within 3 school days. Receiving schools are responsible for completing any necessary risk assessment as part of the admissions procedures. Risk assessments should be based on available information and updated if necessary when new information is received. The completion of a risk assessment is not a reason to delay entry for more than 3 school days.

Undue delays in admission will be referred to the Secretary of State.

Secondary schools will use delegated funding to support transition and may refer to Oakfield Short-Stay School to request support to aid the pupils' transition back into school.

Process for academies in North West Leicestershire:

The local authority should complete this form and submit it using the [Department for Education online enquiry form](#). Please select “Some other academy related query” and put “Request for a Secretary of State direction” at the start of your query.

Background of child named in the proposed direction

| | |
|--|--|
| Full name: | |
| Address: | |
| Date of birth (DD/MM/YYYY): | |
| Year group for which a place is required. | |
| Name of academy to which direction is being sought. | |
| Is a place being sought outside the normal admissions round (as defined in Schools Admissions Code)? | |
| If the child is primary school age, please list the name(s) and address(es) of all schools attended since reception year. If the child is secondary school age, please list the name(s) and address(es) of all schools attended since Year 7. | |
| Dates of attendance for the most recently attended school. | |
| Reason(s) for the child being out of mainstream education (for example: permanent exclusion, family moved and so on). | |
| If the child is out of mainstream education because they have been permanently excluded, please provide full documentation relating to the exclusion. This could include any assessments made prior to exclusion such as educational psychologist report, records of incidents prior to exclusion and full information on the needs of the child. | |

| | |
|---|--|
| Details of assessment of SEN, any relevant medical matters, child's behaviour, attendance. | |
| Details of the child's educational attainment. | |
| Details of all other permanent exclusions within the last five years, including name of school(s), date(s), reason(s). | |
| Length of time out of mainstream education with relevant dates (if appropriate). | |
| Details of any alternative education currently being received as arranged by the LA and including details of when this provision commenced. | |

Consultation with the child and parent/guardian

| | |
|--|--|
| Has the child expressed a view and, if so, what is it? If not, please explain why. | |
|--|--|

| | |
|--|--|
| Have the parents/guardian been consulted? If not, please explain why. Please provide copies of any letters sent to the parents/guardian and / or any evidence of consultation prior to the local authority's decision to direct. Please also summarise any responses received. | |
|--|--|

Please provide documentation from any applications made by the parents for places at schools (including the academy) and information about the outcome of any appeals made by the parents where places were refused (It is not necessary for there to have been an appeal before a direction can be made).

Consultation with relevant school

| | |
|---|--|
| Has a place been sought using the fair access protocol? | |
|---|--|

| | |
|---|--|
| Please provide details on the provision of the Schools Admissions Code that has been applied. | |
|---|--|

If the place is being sought following conclusion of the fair access protocol please provide:

- copy of the fair access protocol
- the minutes of the meeting where this child was discussed
- the panel’s decision including a list of the schools represented at the meeting

Local authority’s case for choosing the school named in the direction request

Please provide:

| | |
|--|--|
| A summary of the consultation | |
| Details of any other schools considered by the authority or by the fair access protocol panel. | |
| A summary of the academy’s response. | |
| A statement on why the local authority regards the named academy as the appropriate provision for the child taking into account the academy’s arguments for refusal. | |
| If applicable, what re-integration package has been offered to the child/school? | |
| Other information the local authority considers to be relevant. | |

Please attach the full consultation. and copies of correspondence and notes of meetings etc) of the local authority’s consultation with the academy asking it to admit the child.

In the table ([Annex A](#)), please list all schools which the local authority considers are within a reasonable distance.

Your details

| | |
|------------------|--|
| Name: | |
| Position: | |
| Local authority: | |

| | |
|---|--------|
| Email address: | |
| Telephone number: | |
| Are you the primary contact for this application? | Yes/No |
| Further local authority contact: | |

Annex A – local background information

Accurate home to school distance: Please list in order:

- a) Academy for which direction is sought
- b) All other alternative schools within a reasonable distance

| Name of school(s) | Distance from home | Is public transport available? (Y/N) | Category of school | Original published admission number (PAN) for the year group in question | Total number of pupils on roll (whole school) | Total number of pupils in the year group in question | FAP admissions made in current academic year | FAP admissions made in last academic year | FAP admissions made in previous to last academic year | FAP admissions agreed for current academic year for the year group the child to be admitted to | FAP admissions agreed for previous 2 academic years for the year group the child to be admitted to |
|-------------------|--------------------|--------------------------------------|--------------------|--|---|--|--|---|---|--|--|
| | | | | | | | | | | | |
| | | | | | | | | | | | |
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| | | | | | | | | | | | |
| | | | | | | | | | | | |

Please provide a map of the local area identifying the home address and schools referred to.

The oversubscription criteria, including an individual Year Group that is regarded by a school/academy as “full”, cannot be used as a reason for refusing the admission of a child allocated to the school under the terms of the Fair Access protocol.

NOTE :

Where the Local Authority accepts the reasons for refusal they must inform the school within 5 school days.

The LA must approach other maintained schools and academies within 5 school days.

Appendix 4: Notes to assist schools in providing sufficient evidence to appeal a FAP decision.

Child evidence:

The School Admissions Code states that ‘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/other pupils’ education or jeopardise the right of staff and pupils to a safe and orderly environment’.

Evidence of significant challenge due to behaviour being of such severity, frequency or duration that it is beyond the normal range that a school can tolerate. Pupil behaviour presents significant challenge, supported by external agency involvement and/ or history of fixed term exclusion over the past 2 years of increasing severity and frequency, or has received a permanent exclusion.

Evidence that the behaviour would unlikely be responsive to the usual range of interventions to help prevent and address pupil misbehaviour.

Behaviour has been unresponsive to the usual interventions put in place by the previous setting or evidence provided from another source that behaviour would unlikely be responsive to the usual interventions.

Evidence that the behaviour is likely to significantly interfere with the pupil’s/other pupils’ education or jeopardise the right of staff and pupils to a safe and orderly environment.

The pupil is in receipt of HLN funding for SEND needs that mean that the learning or safety of others is a known concern OR the pupil has a risk assessment or AIMS assessment in place that demonstrates a significant risk of harm OR there is evidence from another source of risk to the safety of others.

School evidence:

The school has a particularly high proportion of either children with challenging behaviour or previously permanently excluded pupils on roll compared to other local schools and it considers that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources

The school or academy have admitted a highly challenging FAP (including previously permanently excluded), LAC or EHCP pupil into the class that term OR the admission would mean placing the young person into a highly complex class. Anonymised evidence of challenge within the class may include having a number of children in receipt of AFN/ HLN funding as a consequence of highly challenging behaviours or who have risk assessments in place because they pose a significant risk to themselves or others.

The School or Academy can evidence concerns held by support services about the number of children with challenging behaviour in the existing cohort. Evidence may come from EPS, SFSS, SEMH team or another acceptable source.

Appealing a FAP decision on the grounds of behaviour form:

In order for any refusal made on the grounds of behaviour to be lawful, the threshold for challenging behaviour as set out in the School Admissions Code 2021 section 3, must be met.

Pupil information

| | |
|---|--|
| Pupil name | |
| Year group | |
| D.O.B | |
| School presenting refusal | |
| Current school or most recent school attended | |

Child evidence

The School Admissions Code states:

‘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/other pupils’ education or jeopardise the right of staff and pupils to a safe and orderly environment’.

| | |
|--|--|
| <p><i>Evidence of significant challenge due to behaviour being of such severity, frequency or duration that it is beyond the normal range that a school can tolerate.</i></p> <p>Pupil behaviour presents significant challenge, supported by external agency involvement and/ or history of fixed term exclusion over the past 2 years of increasing severity and frequency, or has received a permanent exclusion.</p> | <p>Evidence provided below or attached Yes/ No</p> |
| <p><i>Evidence that the behaviour would unlikely be responsive to the usual range of interventions to help prevent and address pupil misbehaviour.</i></p> <p>Behaviour has been unresponsive to the usual interventions put in place by the previous setting or evidence provided from another source that behaviour would unlikely be responsive to the usual interventions.</p> | <p>Evidence provided below or attached Yes/ No</p> |

| | |
|--|--|
| <p><i>Evidence that the behaviour is likely to significantly interfere with the pupil's/other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment.</i></p> <p>The pupil is in receipt of HLN funding for SEND needs that mean that the learning or safety of others is a known concern OR the pupil has a risk assessment or AIMS assessment in place that demonstrates a significant risk of harm OR there is evidence from another source of risk to the safety of others.</p> | <p>Evidence provided below or attached Yes/ No</p> |
|--|--|

School evidence:

The school has a particularly high proportion of either children with challenging behaviour or previously permanently excluded pupils on roll compared to other local schools and it considers that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources.

| | |
|--|--|
| <p><i>The school or academy have admitted a highly challenging FAP (including previously permanently excluded), LAC or EHCP pupil into the class that term OR the admission would mean placing the young person into a highly complex class.</i></p> <p>Anonymised evidence of challenge within the class may include having a number of children in receipt of AFN/ HLN funding as a consequence of highly challenging behaviours or who have risk assessments in place because they pose a significant risk to themselves or others.</p> | <p>Evidence provided below or attached Yes/ No</p> |
| <p><i>The School or Academy can evidence concerns held by support services about the number of children with challenging behaviour in the existing cohort.</i></p> <p>Evidence may come from EPS, SFSS, SEMH team or another acceptable source.</p> | <p>Evidence provided below or attached Yes/ No</p> |

This form must be signed-off by the **Head or Deputy Head** responsible for FAP and can you then please forward this form with supporting documentation, or your evidence base to the Chair or co-ordinator of your local partnership and the LA (fairaccess@leics.gov.uk).

| | |
|-------|-------|
| Name: | Sign: |
|-------|-------|

Appendix 6: Fair Access team contacts

[Inclusion PupilSupport@leics.gov.uk](mailto:InclusionPupilSupport@leics.gov.uk)

[Admissions contact form](#)