



Department  
for Education

# **Fair Access Protocols**

**Guidance for school leaders, admission  
authorities and local authorities**

**July 2021**

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## 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<sup>1</sup> (and they are not a late application<sup>2</sup>) they are considered in-year applications<sup>3</sup>. 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.

This non-statutory guidance replaces previous guidance on FAPs dated November 2012, and provides advice on the effective operation of FAPs as set out in the Code, which comes into force on 1 September 2021. This guidance has been published in advance of this date to help local authorities and admission authorities prepare for the provisions coming into force on 1 September 2021.

## Who is this publication for?

This non-statutory guidance is for:

- local authorities;
- admission authorities; and
- school leaders.

It should be read alongside:

- School Admissions Code 2021;
- School Standards and Framework Act 1998; and
- Equality Act 2012.

Admission authorities and local authorities **must** comply with the relevant law, and act in accordance with the provisions of the Code. Where the words '**must**' or '**must not**' are used in this guidance, they represent a mandatory requirement in the Code or legislation.

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<sup>1</sup> The 'normal admissions round' covers applications for admission in a relevant age group (also known as the normal year of entry such as reception or year 7) which are made in time for the local authority to offer a school place on National Offer Day. The deadlines for submitting applications to be allocated on National Offer Day are 31 October for secondary school and 15 January for primary school.

<sup>2</sup> 'Late applications' are applications for entry in a relevant age group which are submitted before the first day of the first term in the admission year but have not been made in time to enable the local authority to offer a place on National Offer Day.

<sup>3</sup> An application is an in-year application if it is for the admission of a child to a relevant age group but it is submitted on or after the first day of the first term of the admission year, or if it is for the admission of a child to an age group other than a relevant age group.

## 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<sup>4</sup> in its area, all admission authorities **must** participate in it.
- FAPs **must** only be used for unplaced children that meet the prescribed categories set out in paragraph 3.17 of the Code (also set out in pages [5 to 6 of this guidance](#)).
- 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<sup>5</sup> (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<sup>6</sup>, 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<sup>7</sup>. Further information can be found on [page 11 of this guidance](#).

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<sup>4</sup> Unless otherwise stated, in this guidance the term 'schools' should be taken to mean all schools to which the Code applies, including academies.

<sup>5</sup> It is the admission authority of a school that has responsibility to make admission decisions for their school/s. Therefore, any references to 'school' or 'schools' in this guidance, also refers to the school's admission authority, where this is different to the school's governing body. Information on the admission authority for each type of school in England can be found in paragraph 11 of the Code.

<sup>6</sup> Further information on challenging behaviour can be found on [pages 9 to 10 of this guidance](#).

<sup>7</sup> Sections 96 and 97 of the School Standards and Framework Act 1998 sets out the powers of local authorities to direct the governing body of any maintained school, for which they are not the admission authority, to admit a child in their area, even if that school is full. Paragraph 3.29 of the Code sets out the Secretary of State's powers to direct the admission of any child to an academy under the academy's funding agreement.

## What is a Fair Access Protocol?

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<sup>8</sup>, 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. Where possible, children should be placed in school through the usual in-year admissions process in the first instance.

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.

## 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<sup>9</sup> 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;

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<sup>8</sup> In agreeing a local FAP, the view of more than half of the total number of schools in the area should be regarded as the majority.

<sup>9</sup> 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 to 49). Where a local authority is advised that a child who has moved into the local authority had a Child in Need Plan or Child Protection Plan previously and meets the criteria outlined, this information may need to be checked with the previous local authority.

- 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<sup>11</sup>;
- 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<sup>12</sup>.

## Supporting the admission of clinically extremely vulnerable children

During the COVID-19 outbreak, some parents of children who are clinically extremely vulnerable (at very high risk of serious illness from coronavirus) decided to electively home educate their child. Where a parent decides they want their child to return to school and subsequently apply for a school place, applications should be processed in accordance with the local in-year admissions process. Most children should secure a school place this way. For those experiencing difficulties, local authorities should be aware that those 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.

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<sup>10</sup> As evidenced by either a child arrangements order not relating to either birth parent or a special guardianship order.

<sup>11</sup> It is for the local authority to decide whether a child qualifies to be placed via the FAP on this basis, based on the circumstances of the case.

<sup>12</sup> In most cases, use of the FAP should be unnecessary for a previously looked after child. Local authorities are expected to secure a school place promptly for such children and for admission authorities to cooperate with this. Local authorities should consider swift use of their general powers of direction or should consider asking the Secretary of State to consider issuing a direction (as set out in paragraphs 3.26 to 3.29 of the Code) where a school place for a previously looked after child cannot be agreed with an admission authority promptly.

## Consultation and review

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 neighbouring authorities on how they might manage cross-border placements. For clarity, this should be set out in the FAP.

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 mechanism for invoking a review and the procedure that follows should be agreed during the development of each FAP. The existing FAP will remain binding on all schools in the area until a new one is adopted.

## Participation in the Fair Access Protocol

The admission authorities of all schools in the area **must** participate in the FAP. This means they must authorise a representative to participate in discussion and decision-making on placing children referred to the FAP and admit their fair share of children when asked to do so in accordance with the FAP<sup>13</sup>.

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.

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.

## Making decisions on the placement of children

Decisions on the placement of children should be made in accordance with local FAPs and should include taking into account the following:

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<sup>13</sup> Paragraph 3.15 of the Code enables decisions about admitting children under the FAP to be made by one individual in an admission authority provided that suitable authority has been delegated to that individual. Admission authorities must ensure this process complies with relevant governance requirements.

## 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 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 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.

What constitutes a ‘disproportionate number of children’ should be defined locally when agreeing the FAP. It **must** be clear that schools with available places should not be 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. FAPs must also not require schools 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 should be taken into account. Information from a parent can provide valuable context that may help those involved in the FAP process determine whether a particular school place is appropriate for a child, and any particular needs they may have.

## 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.

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.



## 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 (also set out in [pages 5 to 6 of this guidance](#)). Where it considers that the child falls, or may fall, into any such category, the admission authority should notify the local authority of this. The local authority 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.

## Interaction with the appeals process

The appeals process<sup>14</sup> 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.

## 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<sup>15</sup>.

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<sup>14</sup> School admission appeals are governed by the [School Admission Appeals Code 2012](#).

<sup>15</sup> The twice excluded rule does not apply to the following children: children who were below compulsory school age at the time of the exclusion; children who have been reinstated following a permanent exclusion (or would have been reinstated had it been practicable to do so); children whose permanent exclusion has been considered by a review panel, and the panel has decided to quash a decision not to reinstate them following the exclusion; and children with education, health and care plans naming the school.

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.

## 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 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.

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.

## Admission to school following the 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. 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<sup>16</sup>:

- ensuring parents are able to 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.

Whilst some time may be required to allow schools to put in place any arrangements, they should be made quickly to ensure the child can start school as soon as possible.

### 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<sup>17</sup> 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.

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<sup>16</sup> This is not an exhaustive list. Admission authorities and/or the local authority should consider what arrangements might need to be made based on the circumstances of individual children.

<sup>17</sup> Sections 96 and 97 of the School Standards and Framework Act 1998.

# Glossary

## In-year application

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

## Late application

Late applications are applications for entry in a relevant age group which are submitted before the first day of the first term in the admission year but have not been made in time to enable the local authority to offer a place on National Offer Day.

## Normal admissions round

The period during which parents are invited to express a minimum of 3 preferences for a place at any state-funded school, in rank order, on the common application form provided by their home local authority. This period usually follows publication of the local authority composite prospectus on 12 September, with the deadlines for parental applications of 31 October (for secondary places) and 15 January (for primary places), and subsequent offers made to parents on National Offer Day.

## Relevant accommodation

For the purposes of the Code 'relevant accommodation' is a safe place to stay for victims and their children fleeing domestic abuse. This can include, but is not limited to, refuges, specialist safe accommodation, sanctuary schemes and second stage accommodation.

## Relevant age group

The age group to which children are normally admitted – this is usually reception in primary schools and year 7 in secondary schools, but it may vary. Each relevant age group must have admission arrangements, including an admission number. Some schools (for example schools with sixth forms which admit children into the sixth form) may have more than one relevant age group.

## Suspension

Where a pupil is removed from school for a set period before returning to the suspending school.



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