



***Fair Access Protocol
2021/2022
For all
Havering Schools and
Academies***

This policy reflects the Local Authorities responsibility for safeguarding and promoting the welfare of children and their educational attainment and achievement

**Issue Date: 01 September 2021
Review Date: 01 July 2022**

Contents

1. INTRODUCTION.....	2
2. PURPOSE.....	3
3. REFUSING TO ADMIT A CHILD.....	3
4. DEFINITION OF CHALLENGING BEHAVIOUR.....	4
5. COMPLYING WITH PARENTAL PREFERENCE	4
6. THE LOCALLY AGREED SCHEME FOR FAIR ACCESS PLACEMENTS.....	4
7. LOCAL AUTHORITY POWER OF DIRECTION	5
8. APPEALS PROCEDURE.....	5
9. FREQUENCY OF PANELS.....	6

FAIR ACCESS PROTOCOL VERSION CONTROL

FAIR ACCESS PROTOCOL 2021/2021	Page
Complete change to the previous IYFAP Policy to comply with new Schools Admissions Code (September 2021)	All pages

1. INTRODUCTION

This document should be read in conjunction with the School Admissions Code 2021 (<https://www.gov.uk/government/publications/school-admissions-code>)

Where this document references ‘admissions authority’ this means the local authority or where the school is a Voluntary aided, Foundation school or Academy, the admissions authority is the Governing Body or Academy Trust.

Academies are required by their funding agreements to comply with the School Admissions Code 2021 and the law relating to admissions.

As with all matters relating to admissions, it is the responsibility of admission authorities to ensure that their admission arrangements and procedures are compliant with the School Admissions Code 2021. Where a school is the admission authority, this responsibility falls to the Governing Body or Academy Trust.

All Havering Head Teachers and Governing Bodies agree to the aims, principles and procedures of the Fair Access Protocol by continuing to provide their fullest support and recognise their collective responsibility. They will work collaboratively to support and manage children with challenging behaviour, encourage the best outcomes, and continue to work together in unity to commit to securing an inclusive ethos within Havering.

The Admissions, Attendance & Inclusions Team will work closely with all maintained schools to support the processes within this Fair Access Protocol.

2. PURPOSE

Section 2.28 of the 2021 School Admissions Code ('The Code') states that all maintained schools and Academies that have places available must offer a place to everyone who has applied for one, without condition, unless admitting the child would prejudice the efficient provision of education or use of resources. For example, admission authorities must not refuse to admit a child solely because:

- a) They have applied later than other applicants;
- b) They are not of the faith of the school;
- c) They have followed a different curriculum at their previous school; or
- d) Information has not been received from their previous school.

Each local authority must have a Fair Access Protocol to ensure that, unplaced and vulnerable children, and those who are having difficulty in securing a place in-year are allocated a school place as quickly as possible (section 3.14 of the Code).

Children may only be placed in accordance with the fair access protocol when an application is made to transfer from one school to another during a school year. Children admitted to school during the normal admissions round cannot legally be considered or placed using fair access procedures.

3. REFUSING TO ADMIT A CHILD

Where an admission authority receives an in-year application and it does not wish to admit the child because it has good reason to believe that the child may display challenging behavior (see Section 4 for definition), it may refuse admission and refer the child to the local authority for consideration under the Fair Access Protocol (Section 3.10 of the Code). Alternatively, at this point, where pupils are wishing to transfer between Havering schools, Head Teachers may wish to agree to a Managed Move in accordance with Havering's Managed Move policy which can be found via www.havering.gov.uk/AAI/policies password is @AAITeam.

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 (Section 3.16 of the code).

An admission authority should only rely on the provision in paragraph 3.10 of the Code 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 because of this, it considers that admitting another child with challenging behaviour would prejudice the provision of efficient education and the efficient use of resources (Section 3.11 of the Code).

Admissions authorities cannot refuse to admit looked after children, previously looked after children; and children who have Education, Health and Care Plans naming the school in question (Section 3.12 of the Code).

Admission authorities must not refuse to admit a child thought to be potentially disruptive, or likely to exhibit challenging behaviour on the grounds that the child is first to be assessed for Special Educational Needs (Section 3.13 of the Code).

4. DEFINITION OF CHALLENGING BEHAVIOUR

The 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 misbehavior **or** it is of such severity, frequency, or duration that it is beyond the normal range that schools could tolerate. Such 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 admissions on these grounds, admission authorities must consider their duties under that Act.

5. COMPLYING WITH PARENTAL PREFERENCE

Eligibility for the Fair Access Protocol does not limit a parent's right to make an in-year application to any school for their child. Admission authorities **must** process these applications in accordance with their usual in-year admission procedures (as set out in paragraphs 2.23-2.31 of the Code). They **must not** refuse to admit such children on the basis that they may be eligible to be placed via the Fair Access Protocol. The parent will continue to have the right of appeal for any place they have been refused, even if the child has been offered a school place via the Fair Access Protocol (Section 3.18 of the Code).

There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol, but parents' views should be taken into account (Section 3.19 of the Code).

6. THE LOCALLY AGREED SCHEME FOR FAIR ACCESS PLACEMENTS

Parents/carers who wish to transfer their child to another school part way through a school year must complete the local authority's in-year application form. The parent/carer must submit the completed application form to the school admissions team.

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 school 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 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 or medical conditions;
- f) children who are carers;

- g) children who are homeless;
- h) children in formal kinship care arrangements;
- i) children of, or who are, Gypsies, Roma, Travelers, 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 section 3.10 of the Code;
- k) children for whom a place has not been sought due to exceptional circumstances (It is for 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.

Where it has been agreed that a child will be considered under the Fair Access Protocol, a school place must be allocated for that child within 20 school days. Once they have been allocated a place via the Protocol, arrangements should be made for the child to start as soon as possible (section 3.21 of the Code).

7. LOCAL AUTHORITY POWER OF DIRECTION

The Local authority has the power to direct the admission authority for any maintained school in its area to admit a child even if 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. The local authority must choose a school within a reasonable distance from the child's home address and from which the child is not permanently excluded.

Before deciding to give a direction, the local authority must consult the governing body of the school, the parent of the child and the child if they are over compulsory school age. 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 school's 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.

8. APPEALS PROCEDURE

Paragraph 3.24 of the School Admission Appeals Code states that the allocation of a place in accordance with a Fair Access Protocol does not override a parent's right to appeal against the refusal of a place at any school for which they have applied. If an application has been refused despite there being places available, the admissions authority must present their case for refusal, demonstrating how admission of the child in question would prejudice the provision of efficient education or efficient use of resources. When considering such an appeal, in addition to considering the appellant's argument for their

child to be admitted, the panel must take account of the requirements set out in the local authority's Fair Access Protocol. The panel must then carefully consider whether the presenting officer has clearly proven that admission of the child would be prejudicial to the school or other children in attendance at the school.

9. FREQUENCY OF PANELS

Panels are held on a monthly basis with additional panels arranged as and when required, all cases are open to overview and scrutiny as part of the decision making process.

All admission authorities **must** participate in the Fair Access 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.

Panels are chaired by a senior member of the Local Authority. The quorum will be four, with at least three school representatives who have been given the authority to make decisions.