

Fair Access Protocol for Children with Challenging Behaviour



2017

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INTRODUCTION

FAIR ACCESS PROTOCOL FOR CHILDREN WITH CHALLENGING BEHAVIOUR

- The fair access protocol for the school admission of children with challenging behaviour admission code, which came into effect December 2015 and non-statutory guidance from the DfE 'Fair Access Protocols: Case Studies' – November 2012' and 'Fair Access Protocols: Principles and Process' – November 2012'

Key Principles

- To ensure decisions about school placements are made in the best interest of the child while also considering the potential impact on the needs of the other children in the admitting school.
- To ensure admission decisions are made in good time and children are placed in an appropriate placement as quickly as possible; schools must not interview children or young people and parents as part of the decision making process on whether to offer a place.
- To ensure that the six behaviour and attendance school partnership panels have sufficient information to make informed decisions about the placement and provision for vulnerable learners covered by these protocols. Where an application is made directly to an own admission authority school they should collate this information. This will require school representation at panels where the school place for a pupil from that school is being considered.
- To ensure that schools and alternative providers are kept fully informed and transition arrangements are in place to help facilitate successful placements;
- To ensure the procedures to be followed are clear and fully understood by all involved.

Key Considerations

1. Only children **without** a school place will be regarded as fair access. that is: They are not on a school roll and meet the fair access criteria;
2. Children **with** an accessible school place [currently attending an accessible school] who trigger the fair access criteria will not be considered under the fair access protocol. these will be dealt with as a managed move under the managed move protocol; If a managed move cannot be agreed the application will progress as an in year casual admission application to the parental preference school.
3. Children currently home educated who are seeking a school place will be referred to the Children Missing Education Service [CMES]. The CMES will determine if a referral to the partnership is appropriate. Enquiries will be made to the last school the pupil attended (if child was ever registered) to seek information about attendance & behaviour. If the CMES conclude a referral to the panel is not appropriate the pupil will be treated as a casual admission and the school may need to seek any support from the panel post admission.

4. Children in Care, or who have recently left care for adoption, who trigger the fair access criteria, will be referred to the Head of the Virtual School.
 5. Children coming from abroad who have had significant disruption to their education [but no other behavioural, emotional or social needs equivalent] will be dealt with through the normal admissions process. Children for whom English is an additional language will not be considered as 'challenging' under the Bath & North East Somerset (B&NES) fair access protocol and will be dealt with as a casual admission. Support if required can be accessed through the local authority and the panel.
 6. A school which is not named as a parental preference can still be allocated as an appropriate placement by the partnership panel.
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1. The Legal Context

- 1.1 The School Admissions Code requires each local authority to develop a common fair access protocol. Fair access protocols exist to ensure that access to education is secured quickly for children who have no school place and to ensure that all schools in an area admit their fair share of children with challenging behaviour, including children excluded from other schools. Local authorities **must not** require undersubscribed schools to admit a greater proportion of children with a recent history of challenging behaviour than other schools. [Para 3.9 School Admissions Code 2014].
 - 1.2 Each local authority **must** have a fair access protocol. All schools and academies **must** participate in their local authority area's protocol in order to ensure that unplaced children, who live in the home local authority, especially the most vulnerable, are offered a place at a suitable school in the home local authority as quickly as possible. Academies are required to participate as part of their funding agreement. This includes admitting children above the published admission number to schools that are already full.
 - 1.3 Whilst each protocol covers only the schools in its local authority area, the home local authority **should** contact a neighbouring (maintaining) authority to help secure a school place in that area under its protocol where appropriate, and with the maintaining authority's agreement.
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2. Key Principles

- 2.1** Each local authority must have a fair access protocol, agreed with the majority of schools in its area to ensure that – outside the normal admissions round – unplaced children, particularly the most vulnerable, are offered a place at a suitable school as quickly as possible.
 - 2.2** Once the agreement of a majority of schools has been secured, the protocol is binding on all admissions authorities, including academies and free schools.
 - 2.3** The LA's duty to safeguard the child is paramount. Children and young people who are out of school for a length of time may be at risk and all schools, working in partnership with the local authority and each other should do their utmost to ensure that children and young people – particularly the most vulnerable – are not left without a school place for extended periods.
 - 2.4** The agreed protocol must ensure that the best interests of the child are properly considered, when making decisions about a school placement including the potential impact on the needs of the other children in the school of admitting the pupil.
 - 2.5** No school or academy, including those with available places, should be asked to take a disproportionate number of children who have been excluded from other schools or who have challenging behaviour.
 - 2.6** A school or academy will not be required automatically to take another child with challenging behaviour in the place of a child excluded from the school or academy.
 - 2.7** The agreed protocol must promote the fair, equitable and open allocation of school places for vulnerable children currently without a school place.
 - 2.8** The agreed protocol must be fair, transparent and have the trust and confidence of all schools and academies involved in its operation.
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3. Responsibilities

3.1 The responsibilities of the Local Authority

- a.** The local authority must ensure that a local fair access protocol is in place and that it has been agreed by a majority of schools in the locality.
- B.** The local authority must ensure that all the categories of pupils covered by fair access are clearly identified in the protocol.

- c.** The local authority must, when approached by a school who have refused an in year admission of a pupil with challenging behaviour, decide whether that pupil should be considered under the fair access protocol arrangements.
- d.** The local authority must monitor the effectiveness of the operation of the protocol and consider how well the existing and proposed admission arrangements serve the interests of children and parents within the local authority area.
- e.** The local authority is required to report to the schools adjudicator on how well the protocol has worked and how many children have been admitted to each school under the protocol.
- f.** The local authority is required to intervene where a panel is unable to make a decision upon the placement for a child who meets fair access criteria, in order to minimise the time that that child is out of school. This will commence from day 6 of the panel decision.
- g.** The protocol **must** include how the local authority will use provision to ensure that the needs of pupils who are not ready for mainstream schooling are met.

In order to meet the needs of pupils who are not ready for mainstream education, the local authority has secured the following arrangements: -

- (i) Devolved funding (£660,000 and £100,000 primary pupil retention grant) to Behaviour and Attendance Partnership Panels
- (ii) Commissioned a range of provisions through the Aspire Academy (known as Aspire Alternative Provision).
- (iii) Commissioned a range of provisions through INCLUDE/Catch 22 Bristol commencing April 2017.
- (iv) Quality assured a range of alternative providers.

Working with schools the range of opportunities will be further developed over time.

3.2 The responsibilities of the Behaviour and Attendance School Partnerships

- a.** The partnerships should work collaboratively with the local authority in order to ensure that children who meet the criteria in this protocol are placed quickly in suitable provision, whether this is mainstream provision or alternative provision.
- b.** The partnerships should use their devolved resources to make appropriate provision for vulnerable learners who need extra support as appropriate.

- c. The partnerships should operate in a climate of mutual trust to ensure that children referred to panel meetings under the protocol are placed fairly and equitably, in accordance with a consideration of the best educational interests of the child including the potential impact on the needs of the other children in the school of admitting the pupil.

There is no legal duty for the partnerships to comply with parental preference in allocating a place, but careful consideration should always be given to this, when making decisions.

- d. Where a school may wish to challenge a place for a young person normally this will be on the basis of achieving equitable distribution of young people with challenges. The partnership constitution must specify that arrangements are in place to allow a school to challenge any proposal to admit a child/young person under the fair access protocol, including situations where the school may feel that the allocation is inequitable. In coming to any decision the partnership must act in accordance with the fair access protocol and the principles set out in the 2014 School Admissions Code.

3.3 The responsibilities of individual schools

- a. Schools must ensure that they send a representative to partnership panel meetings where a fair access place is being considered for a pupil to attend that school. The representative must have the authority to recommend to the admission authority that a place be offered. (The precise pattern and frequency of attendance required will be determined by the constitution adopted by each partnership.) Primary schools may have to rely on collaborative arrangements to send a delegate.
 - b. Schools must not cite oversubscription as a sole reason for not admitting a child under the protocol. The only exception to this is when admission would breach infant class size regulations and the child to be admitted could not be treated as an excepted pupil. [Key Stage 1 pupils only].
 - c. Any school which is subject to a partnership recommendation to admit a pupil must consider this promptly and provide a response within 5 school days if they feel the placement is not equitable.
 - d. Schools 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.
 - e. Schools have a duty to work collaboratively, regardless of the type of school.
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4. The application process and decision to refer as fair access

- 4.1 A casual admissions application form including additional information form is used for all in year applications. This and the fair access protocol is available to download on the school admissions page of the council website:

<http://www.bathnes.gov.uk/services/schools-colleges-and-learning/admissions-schools/changing-schoolscasual-admissions>

The form asks questions to enable a decision to be made on whether the application should be considered under the fair access criteria. The parent is required to ask the child's latest/previous school to confirm the relevant section of the form. It is made clear on the form that the request for a school place can only be processed if this has been completed.

- 4.2 If the application is deemed to meet the fair access criteria, a referral will be made to the Partnership Pupil Support Manager by the admissions authority. Applications are made directly to the relevant admission authority. Own admission authority schools will therefore need to identify if the pupil should be fair access using the criteria set out in Section 5 and make the referral to the Partnership Pupil Support Manager. The B&NES Admission Team will offer advice and support if required.

- 4.3 Where necessary a Children Missing Education Officer may attend to present a fair access case.

The Pupil Support Manager will provide a summary of the information collated about the young person who has been referred under this protocol.

If required the school the young person last attended (within B&NES) will be invited to attend and present information: -

- 4.4 Only pupils without a school place and who meet the fair access criteria will be referred to the partnership under the fair access protocol.

5 Criteria to be used in making a decision of Fair Access

In line with the School Admission Code, fair access arrangements will apply to the following groups who do not have a school place:-

5.1 National Priorities

In line with the 2014 School Admissions Code the following children **must** be included as part of the fair access protocol:-

- a. Children from the criminal justice system or Pupil Referral Units who need to be reintegrated into mainstream education;

- b. Children who have been out of education for two months or more. NB children in Elective Home Education are not out of education.
- c. Children of Gypsies, Roma, Travellers, refugees and asylum seekers;
- d. Children who are homeless;
- e. Children with unsupportive family backgrounds for whom a place has not been sought;
- f. Children who are carers;
- g. Children with special educational needs, disabilities or medical conditions without an Education Health Care Plan (EHCP). (Please note children with an EHCP, are **not** covered by this protocol).

5.2 Bath & North East Somerset agreed priorities:

- h. Children permanently excluded from school;
- i. Where it appears to the local authority that a child of compulsory school age is not receiving a suitable education the CMES may request the fair access partnership to identify a named school for an Attendance Order as part of the procedure to return a child to education under section 437 of the Education Act 1996.
- j. Children returning to a registered school from a period of home education where the CMES has determined that the pupil should be treated as fair access (see page 3 Key Considerations point 3)
- k. Children who are moving into B&NES from another local authority area who trigger the fair access criteria will be regarded as being **without** a school place;
- l. Permanently excluded pupils in alternative provision ready for reintegration;
- m. Pupils with less than an average 80% attendance during their last 12 months of full time education. For year 7 pupils their attendance will be calculated from the beginning of the current academic year. Children who are **sick** are dealt with separately by the B&NES Education Inclusion Service;
- n. Where a Governing Body does not wish to admit a pupil with challenging behaviour outside the normal admissions round, even though places are available, it must refer to the local authority for action under the fair access protocol.
- o. Children who are already known to the police or a number of other agencies;
- p. Children who have to move school because of domestic violence;
- q. Pupils in Year 11; should not be disadvantaged from being admitted under the fair access protocol;

- u. Children of UK service personnel where a change of location ordered by the service necessitates a change of school

Pupils from abroad

- 5.3 Where a pupil is coming from abroad and they have had significant disruption to their education (but no other obvious specific needs) they should not be considered as fair access but should be considered under normal admission arrangements to enable school admission at the earliest opportunity. If necessary where needs later become evident their case should be referred back to panel where points may be applied. If there is information the pupil meets the fair access criteria they will be referred to panel as fair access.
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6. The Decision making process to place a fair access pupil:

- 6.1 The admission authority will identify if the pupil should be fair access and refer to the appropriate partnership. Applications will be made directly to the relevant admission authority. Own admission authority schools will therefore need to identify if the pupil should be fair access and make the referral to the Pupil Support Manager. B&NES Admission Team will offer advice and support if required.
- 6.2 The partnership Pupil Support Manager will place the pupil on the appropriate partnership panel agenda
- 6.3 Pupil status within the fair access criteria will be recorded on the partnership agenda.
- 6.4 The partnership will consider each fair access case presented and determine the appropriate school placement with the necessary support.
- 6.5 If the partnership is unable to agree on a school, the process (for example a points based system) identified in the partnership's constitution will be used to determine the placement. Decisions must not be deferred or delayed.
- 6.6 The B&NES Admissions Team will be notified of the decision and will confirm this in writing to the parents/carers and the admission authority within 5 school days of notification. The letter will be copied to the Children Missing Education Service and the school.
- 6.7 Any school which is subject to a partnership decision to admit a pupil must consider this promptly and provide a response to the partnership chair within 5 school days of receiving the written notification if they feel the placement is not equitable.
- 6.8 The B&NES Children out of Education Panel (COOEP) will monitor any written response from the school and the decision taken by the

partnership with emphasis on finding an early solution to prevent further delay for the child or young person.

B&NES COOEP will take the necessary and appropriate action if the partnership cannot resolve the fair access admission case by issuing a direction notice to the school of the intention to refer to the Schools Adjudicator or EFA.

- 6.9** If the pupil is not admitted within 5 school days B&NES will notify a maintained own admission authority school of the intention to direct admission. In the case of an academy or free school B&NES will apply to the EFA for a direction.
- 6.10** If it becomes necessary for B&NES to issue a direction, the B&NES allocated officer will identify the most appropriate school, using the following criteria:
- a.** The educational, social, emotional and behavioural needs of the child;
 - b.** The decision made by the partnership;
 - c.** The potential impact on the needs of the other children in the school of admitting the pupil or any specific concerns raised by the named school.
 - d.** The preference of the parent;
 - e.** The views of the child;
 - f.** Geographical accessibility and availability of transport;
 - g.** Whether siblings already attend the school;
 - h.** Advice received and the risk assessments completed by the last school the child attended;
 - i.** Intelligence from a range of services about patterns of social relationships within the school and the wider community, to protect the safety and well-being of all parties;
 - j.** The points system (if used by the Partnership) and patterns of placement of vulnerable learners across the schools in the Partnership.
- 6.11** While the child/young person is still out of education, the appropriate Lead Officer will arrange alternative provision. The cost will be borne by the partnerships.
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7. Children who meet Fair Access criteria, but who already have an accessible school place

- 7.1 Requests for children who trigger the fair access criteria but have an accessible school place will not be regarded as fair access. These cases will be dealt with as follows:-
- 7.2 Parents will initially be informed that they should contact their child's current school so their request can be discussed and planned as a managed move. The current school will then follow the B&NES Managed Move Protocol.
- 7.3 If a managed move cannot be organised within a reasonable timeframe [i.e. three weeks] and the parent still wishes to request a place, the casual admissions process will be used. At the same time as processing the application the Admissions Authority will inform the partnership Pupil Support Manager that an admissions request has been received. This will enable the case to be placed on the agenda for the next Panel meeting for consideration of additional support if required.
- 7.4 When the Admissions Authority notify the parent of the result of their application they will also inform the parent a referral has been made to the partnership Behaviour and Attendance Panel and may receive contact from the Student and Family Support Team to help achieve a successful transition into a new school.
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8. Children in Care

The 2014 School Admission Code states that Fair Access criteria do not apply to looked after children:

3.13 [Fair Access provision]...will not apply to a looked after child, a previously looked after child or a child with a statement of special educational needs or Education, Health and Care Plan naming the school in question, as these children **must** be admitted.

All schools have the option of offering an immediate Fair Access placement without waiting for a Partnership Panel decision.



FAIR ACCESS – KEY POINTS

*Only children **without** a school place will be regarded as Fair Access. That is: They **are not on a** school roll and meet the Fair Access criteria;*

- Children **with** an accessible school place [currently attending an accessible school] who trigger the Fair Access Criteria will not be considered under the Fair Access Protocol. These will be dealt with as a managed move under the managed move protocol;
- Children currently home educated who are now seeking a school place will be referred to the Children Missing Education Service [CMES]. The CMES will determine if a referral to the Panel is appropriate, referring to the last school the pupil attended (for attendance information), especially if this was recent attendance. If the CMES conclude a referral to the panel is not appropriate the pupil will be treated as a casual admission and the school may need to seek any support from the Panel post admission.
- Fair Access criteria do not apply to looked after children or previously looked after children.
- All schools and Academies **must** participate in their local authority area's protocol in order to ensure that unplaced children, who live in the home local authority, especially the most vulnerable, are offered a place at a suitable school in the home local authority as quickly as possible.
- Schools must ensure that they send a representative to panel meetings where a fair access place is being considered for a pupil to attend that school. The representative must have the authority to recommend to the admission authority that a place be offered.
- The Panel will consider each Fair Access case presented and determine the appropriate school placement with the necessary support.
- If the Panel are unable to agree on a school, the process (for example a points based system) identified in the Panel's Constitution will be used to determine the placement.
- The named school should place the pupil on roll within 5 days of the notification of the Fair Access decision.
- If it becomes necessary for the Local Authority [Divisional Director] to direct a school to admit, the Local Authority will identify the most appropriate school.
- A Fair Access decision on a school place for a PEX pupil cannot be made until the Governors have upheld the decision and the deadline for an independent review request has been exceeded. (If parents indicate they are not planning to request an independent review then a Fair Access decision can be taken under the criteria.)

MANAGED MOVES – KEY POINTS

Requests for children who trigger the Fair Access Criteria but have an accessible school place will not be regarded as Fair Access. These cases will be dealt with as follows:-

- Parents will initially be informed that they should contact their child's current school so their request can be processed as a managed move. The current school will then follow the Local Authority Managed Move Protocol.
- If a managed move cannot be organised within a reasonable timeframe [i.e. three weeks] and the parent still wishes to request a place, the casual admissions process will be used. At the same time as processing the application the Admissions Authority will inform the Behaviour and Attendance Panel Pupil Support Manager that an admissions request has been received. This will enable the case to be placed on the agenda for the next Panel meeting for consideration of additional support.

[Please refer to Managed Move Protocol.](#)

Fair Access/Managed Move Cases

Please Note:

- *Even though your school has not been named as one of the parental preference choices, it could still be named for the Fair Access placement.*
- *All around the table should have the authority to make a decision on behalf of the school you represent.*
- *The named school should place the pupil on roll within 5 days of the notification of the Fair Access decision.*
- *Pupils who are attending the Aspire AP can remain at the Aspire AP until a school is ready for them to take up their mainstream school placement or have an appropriate package put in place for them by the named school.*
- *The Fair Access decision or the managed move process can take place outside of panel meetings. Any decision can be brought to the panel for ratification and award of School Ranking List points.*