

# Southwark Fair Access Protocol

## Secondary schools

October 2021

## 1. Introduction

1.1 The School Admissions Code 2021 requires each local authority to have a Fair Access Protocol. The Code states that “*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 school place in-year, are allocated a school place as quickly as possible*”.

1.2 Paragraphs 3.14 to 3.22 of the School Admissions Code 2021 alongside non-statutory guidance published by the Department for Education provide the basis for this Fair Access Protocol.

1.3 The Protocol is designed to:

- Be fair and transparent
- Reduce the time that vulnerable young people who are seeking a school place spend out of school
- Ensure that schools admit children including those with challenging educational needs on a fair and equitable basis

1.4 Southwark Council’s Fair Access Protocol has been developed in partnership with and been agreed by the Headteachers of maintained secondary schools and academies in Southwark. All admission authorities (Academies, Community, Voluntary Aided, and Voluntary Controlled schools) must participate in the Fair Access Protocol.

1.5 This protocol applies only to children resident in Southwark who are seeking a place at a Southwark school. It does not apply to special schools and education support centres.

1.6 The School Admissions Code states that Fair Access Protocols may only be used to place prescribed groups of vulnerable and/or hard to place children, where they are having difficulty in securing a school place, and it can be demonstrated that reasonable measures have been taken to secure a place through the usual in-year admission procedures. The Protocol must not be used to circumvent the in-year admissions process.

1.7 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 not refuse to admit such children on the basis that they may be eligible to be placed via the Fair Access Protocol. Referrals under this Protocol will not be accepted unless families 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.

1.8 Parents 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.

1.9 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.

## 2. Main principles

2.1 Schools will continue to admit all pupils falling outside this Protocol who apply for an available place under normal admission arrangements.

2.2 The Fair Access Protocol does not apply to:

- Children with Education, Health and Care Plans - they must not be referred to the Fair Access Panel as their admission will be in accordance with the appropriate legislation managed by the SEND team; and
- Looked after children as they must be given the highest priority for admissions.

2.3 In most cases, use of the protocol should be unnecessary for a previously looked after child as they are given the highest priority for admissions. As a local authority, Southwark Council is expected to secure a school place promptly for such children and admission authorities are required and expected to co-operate with this. However, where children have other vulnerabilities, the protocol may provide an effective mechanism for discussing their needs and the best way to meet them.

2.4 In most instances parents are able to secure a mainstream school place but there may be occasions where parents are not successful. This is a situation which is only acceptable where:

- Admitting the child would prejudice the provision of efficient education or the efficient use of resources e.g. the school is full.

- The governing body do not wish to admit a child with challenging behaviour via the in year admissions process even though there are places available. This is only appropriate where the school already has a disproportionate number of children with challenging behaviour or previously excluded children. This provision cannot apply to looked after children, previously looked after children or children who have an Education, Health and Care Plan (paragraphs 3.10 and 3.12, School Admissions Code 2021)

2.4 Schools cannot cite oversubscription as a reason for not admitting a pupil under the Protocol.

2.5 Pupils seeking a school place under the Protocol will be given priority over pupils on waiting lists or awaiting an appeal.

2.6 For all admissions under the Protocol it is essential that the allocated school is provided with relevant information from the previous school so that appropriate provision can be made.

### 3. Children who display challenging behaviour

3.1 Admission authorities must not refuse to admit a child on behavioural grounds in the normal admissions round (Nursery to Reception, Infant to Junior transfer and Year 6 to 7 transfer) or at any point in the normal year of entry (Reception, Junior, Year 7), except where the twice excluded rule applies.

3.2 Additionally, 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.

3.3 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.

3.4 An admission authority should only refuse admission on these grounds 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.

3.5 For the purposes of this Protocol, 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 and which would significantly interfere with the pupil's or others education or jeopardise the right of staff and pupils to a safe and orderly environment.

3.6 The School Admissions Code 2021 further states, *“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 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); [2019] AACR 10 - GOV.UK (www.gov.uk) 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.”*

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

3.8 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.

#### 4 Identification of Fair Access children

4.1 A child placed under the Fair Access Protocol is not necessarily a challenging child. Any child considered under the Protocol is however potentially a vulnerable child as long as an appropriate educational placement has not been secured.

4.2 The School Admissions Code 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, 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 been subject to one 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 (*identified as children recorded as SEN Support at their current or previous school; or in the case of medical conditions, children with an individual health care plan at their current or previous school*),**
- 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, 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 section 3 of this Protocol,**
- k) Children for whom a place has not been sought due to exceptional circumstances (*determined by the local authority 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*),**
- m) Previously looked after children for whom the local authority has been unable to promptly secure a school place (*see paragraph 4.5*).**

#### 4.4 Looked after children and children with Education, Health and Care Plans

The Protocol does not apply to looked after children or children with Education, Health and Care Plans.

#### 4.5 Previously looked after children

In most cases, use of the Fair Access Protocol should be unnecessary for a previously looked after child as the local authority will aim to secure a school place particularly promptly and admission authorities are required and expected to cooperate with this. The local authority may consider following processes for direction if a school place for a previously looked after child cannot be agreed with an admission authority promptly.

## 5. Process

5.1 If a school place cannot be secured for a child under the normal in year admissions processes the School Admissions team will consider whether an in-year application falls within one of the categories listed in paragraph 4.2. Appropriate applications will be referred to the local authority's Fair Access Panel for consideration. Information will be provided along with the application which demonstrates that reasonable measures have been taken to secure a place through the usual in-year admission procedures. As such the local authority will exhaust attempts to place the child before it will refer or allow a school to refer a child to the Fair Access Protocol.

5.2 The Fair Access Panel meet on a termly basis in term time and is made up of the Headteachers of each maintained school in Southwark and relevant representatives from the local authority. Where a Headteacher is unable to attend, or chooses to delegate representation for their school, they are expected to arrange attendance of a representative who has the authority to make decisions without reference to the Headteacher.

5.3 The following process will be applied by the Fair Access Panel:

- a) The Fair Access Panel will determine whether the application meets the Fair Access Protocol criteria. Where it is agreed that the application will be considered under the Fair Access Protocol, the family will be notified of the decision by the local authority and a school place must be allocated within 20 school days of this decision.
- b) Re-integration referrals from SILS or AP (via the LA) will be presented to the panel at each meeting.
- c) The School Admissions team will send confirmation of the Fair Access Protocol allocation by email to the Headteacher of the allocated school.
- d) The allocated school is encouraged to send an introductory/welcome letter to the family as soon as possible after the allocation has been made.
- e) The allocated school will be expected to arrange for the child to start at the school as soon as possible. This date will be communicated by the allocated school to the family.
- f) The allocated school will be expected to confirm the date on roll at the earliest opportunity with the School Admissions team.

5.4 Whilst parental preference will be considered, there is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.

5.5 Parents have the right to appeal following a decision to refuse their child a place at any school for which they have applied and this also applies to refusals made under the Fair Access Protocol.

5.6 Where there is clear and confirmed evidence that mainstream education is not be suitable for a child, the local authority will consult parents and other agencies and seek to provide appropriate alternative provision where appropriate/available.

## 6. Allocation of Schools

6.1 Fair Access Protocol admissions to schools will be managed on a 'fair share' basis. The Fair Access Panel will determine which school should be allocated a Fair Access placement, taking account of parental preference and the number of pupils each school has already admitted in the relevant year group and in total through the Fair Access Protocol. Consideration will also be given to other in-year admissions, including those of Looked After Children and children with Education, Health & Care Plans at each school.

6.2 Consideration will also be given to what the most appropriate school might be in terms of the needs of the pupil where possible.

6.3 The size of each school is an important factor and the School Admissions team and Fair Access Panel aims to achieve a similar percentage of pupils admitted via the Fair Access Protocol across each of the maintained schools in the local authority area. Data will be provided to the Fair Access Panel by the School Admissions team.

6.4 Whilst children can be admitted to schools above the published admission number under the Fair Access Protocol, consideration will be given to identifying an alternative school if a school is significantly oversubscribed in the relevant year group.

## **7. Powers of direction**

### **7.1 Local authority powers of direction**

The 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. 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.

7.2 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 Headteacher of the school.

7.3 The governing body can appeal by referring the case to the Schools Adjudicator within 15 days. If it does this, the governing body must inform the local authority. The local authority must not make a direction until 15 days have passed and the case has not been referred.

7.4 If 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.

7.5 Local authorities also have powers of direction relating to looked after children, which are detailed in the School Admissions Code 2021.

### **7.6 Secretary of State's power of direction (Academies)**

Where a local authority considers that an Academy can 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.

## **8. Monitoring and Review**

8.1 The Fair Access Panel will coordinate the admission of all children under the Protocol. All data will be maintained by the School Admissions team.

8.2 Rolling data on the number of pupils admitted to each school via the Protocol will be collated by the local authority and, reported to Headteachers at Fair Access Panel meetings and at other agreed intervals.

8.3 The Fair Access Protocol will be reviewed annually before the start of each academic year and following every revision of the statutory School Admissions Code to ensure it adequately meets the needs of children and schools in the area. As the Protocol must be agreed by the majority of schools within the area, Headteachers may also initiate a review at any time.

*For further information about Southwark Council's Fair Access Protocol, please contact our School Admissions team by email [schools.admissions@southwark.gov.uk](mailto:schools.admissions@southwark.gov.uk)*

Sign off:

