

## **Warwickshire's In Year Fair Access Protocol**

### **Introduction**

The purpose of Fair Access Protocols is to ensure that outside the normal admissions round, unplaced children, especially the most vulnerable, are found and offered a place as quickly as possible. The amount of time any child is kept out of school should be kept to the absolute minimum.

Every local authority is required to have in place a Fair Access Protocol which has been developed in partnership with local schools. All schools (including academies) must participate as Fair Access Protocols are binding on all schools.

Fair Access Protocols must also include details of how the local authority will use provision to ensure that the needs of pupils who are not ready for mainstream schooling are met.

Warwickshire has operated a Fair Access Protocol for a number of years. Set out below is a revised process which takes into account recent guidance issued on the subject. It also takes into account of the changing relationship between schools and the local authority.

### **Key principles**

No school – including those with available places – should be asked to take a disproportionate number of children who fall under one of the Fair Access Protocol categories set out below.

Schools (including Academies) should work together collaboratively, taking into account the needs of the child and those of the school. There is no duty to comply with parental preference when allocating places through the Protocol but it is expected the wishes of the parents will be taken into account.

When seeking to place a child under the Protocol, all schools will be treated in a fair, equitable and consistent manner.

It is expected that all parties will act with a sense of urgency to identify a school place for any child who has had difficulty securing a place and falls under the Protocol.

The operation of Fair Access Protocols is outside the arrangements of co-ordination and is triggered when a parent of an eligible child had not secured a school place under the normal in-year admissions process. Children should not be considered under Fair Access Protocols purely because they fall under one of the categories set out below – they must also have failed to secure a school place via the normal process.

Schools with places who do not wish to admit a child falling under one of the categories set out below must refer the application to the local authority for action under the Fair Access Protocol. This will normally only be considered appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children.

Schools without places can initially refuse to offer a place to a child on the basis that they are full, regardless of whether or not the child falls under the Fair Access Protocol. However, once a child is being considered under the Fair Access Protocol and a school is identified under the relevant mechanism as the appropriate placement, then a place must be offered within seven days of the school being notified of this decision.

Fair Access Protocols should not be used as a means to circumvent the normal in-year admissions process. A parent can apply for a place as an in-year admission at any point and is entitled to an appeal when a place is not offered. There are no exceptions to this.

Where a school refuses to offer a place to a child and the local authority do not agree with this decision the school will be responsible for defending the decision should the parent exercise their statutory right of appeal.

The local authority has the right to direct schools to admit children where it is the admission authority. It also has the right to ask the Secretary of State / Education Funding Agency to issue directions to admit.

Looked After Children and those with Statements of Special Educational Needs cannot be considered under the Fair Access Protocol as separate processes apply.

### **Children who may be considered under Warwickshire's Fair Access Protocol**

The vast majority of children will be placed under the normal in-year admissions process. However, where a school with places wishes to refuse an applicant, and chooses to refer the case for placement to the local authority, the child must not already have a place in a local\* school and must fall under one of the following categories:

- a) children from the criminal justice system or who have been excluded and are eligible to be reintegrated into mainstream education;
- b) children who have been out of education for two months or more;
- 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 (but without a statement);
- h) children in Year 11 at the time the original application is submitted;

It is also expected that the school will have other compelling reasons for refusing admission. The fact that a child falls under one of the above categories will not be sufficient.

*\* A local school is the priority area school, a school geographically closer than the priority area school or a school where WCC is providing transport*

## **The application process**

- 1) Parents wishing to transfer their child from one school to another can complete a change of school application form. Parents should list six schools as part of their application along with reasons for their choice of schools. The application form must also be completed by the child's current school (Section B of the form) and returned to the Admissions Service. Where parents do not arrange for Section B to be completed the Admissions Service will ensure this information is obtained.
- 2) The application will then be sent to the first preference listed. If the school has no vacancies and wishes to refuse the application, or if the school are happy to offer a place, then they should notify the Admissions Service in the normal way. If the school has vacancies but wishes to refuse the application on the basis that they believe it should be treated under the Fair Access Protocol, then they must notify the Admissions Service. The school must provide full details of why they are not willing to offer a place and the basis they consider the application to fall under the Fair Access Protocol.
- 3) Where further preferences have been listed the application will be sent to the next preference and the process set out at 2) will be repeated. A child will not be considered as falling under the Fair Access Protocol at this stage as they have not yet failed to secure a place.
- 4) If, once all of the preferences have been approached, and a place has still not been secured, the local authority will write to the parents refusing their application for the schools preferred. This will contain the reasons for refusal and will trigger the parent's statutory right of appeal for all of the schools where a place has not been offered.
- 5) If none of the schools preferred have referred the application to the local authority to be dealt with under the Fair Access Protocol, then an unplaced offer will be made in line with the local authority's determined admission arrangements. If, however, one of the original schools preferred, or the school at which an unplaced offer is made (where applicable) refers the application to the local authority to be dealt with under the Fair Access Protocol, then the relevant process as set out below will be followed.

## **Placement process for Secondary Aged Children**

All schools will be notified prior to September 1<sup>st</sup> the maximum number of pupils who will be admitted via IYFAP or by the ABP following permanent exclusion or a successful managed move. This allocation will be calculated on the basis of the size each school's published admission number. The overall allocation for Warwickshire will be estimated using historic IYFAP data.

For each pupil meeting IYFAP eligibility criteria, the Local Authority IYFAP officer will determine the most appropriate school which has not filled its complement of allocated places. In addition to the application, the IYFAP officer will gather any additional evidence required to make this decision. Factors to be taken into account in the determination will include parental preference and the location and character of the school. The IYFAP officer will also consider the impact of the pupil on the particular year group he/she will be joining and other recent in-year admissions. Only in exceptional

circumstances will a school be identified that has received its full allocation of IYFAP/managed move placements.

The school will be contacted and the reasons for the decision will be provided. If the headteacher feels that the decision to place has not been made fairly, or that relevant information that would lead to a different determination has not been considered, then the matter may be referred to the Head of Vulnerable Groups and the Virtual School. He/she may wish to consult with the chair of the relevant ABP before reaching a final decision.

Where the child is judged not to be ready for mainstream schooling, the Head of Vulnerable Groups and the Virtual School will make provision in line with arrangements agreed with ABPs.

The LA IYFAP officer will be responsible for all administrative aspects of the IYFAP including production and dissemination of necessary pupil information to schools in support of requests for placement, and liaison with parents, headteachers and other agencies where appropriate.

The Local Authority will produce termly and annual reports to each of the Area Behaviour Partnerships (ABPs) in order to monitor the performance of the IYFAP locally.

### **Placement process for Primary aged Children**

The placement of primary age children will be managed by the Local Authority IYFAP officer, in liaison with colleagues from the Learning and Achievement Business Unit, the Early Intervention Service, and parents, and in consultation with the Headteacher of the relevant school or schools.

The IYFAP officer will maintain a record of primary age pupils placed under the provisions of the Warwickshire IYFAP by the local authority. Whilst schools will not be given an allocation of IYFAP/managed move admissions at the start of the year, the IYFAP officer will make every effort to ensure that no single school is obliged to take a disproportionate or unreasonable number of pupils in any one class. For each pupil meeting the IYFAP eligibility criteria, the IYFAP officer will determine the most appropriate school. As with secondary age pupils, the officer will take into account parental preference and the location and character of the school when making this determination.

The school will be contacted and the reasons for the decision will be provided. If the headteacher feels that the decision to place has not been made fairly, or that relevant information that would lead to a different determination has not been considered, then the matter may be referred to the Head of Vulnerable Groups and the Virtual School. He/she will evaluate all available evidence including that provided by the identified school before reaching a final decision.

The local authority IYFAP officer will be responsible for all administrative aspects of the IYFAP including production and dissemination of necessary pupil information in support of an admissions application, and liaison between parents, headteachers and, where appropriate, other support agencies.

The aim will be to place all IYFAP pupils within 15 school days following identification.

## **Powers of Direction**

*The School Admissions Code 2012* summarises the powers of direction given to local authorities and the differing requirements in relation to admission to academies:

### **Local authority powers of direction (general)**

3.16 A local authority has the power<sup>63</sup> to direct the admission authority for any maintained school in its area to admit a child 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. 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.

3.17 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 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.

3.18 If the case is referred to the Adjudicator, the Adjudicator may either uphold the direction or determine that another maintained school must admit the child. The Adjudicator's decision is binding. The 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.

### **Local authority powers of direction (looked after children)**

3.19 A local authority also has the power<sup>64</sup> to direct the admission authority for any maintained school in England to admit a child who is looked after by the local authority, even when the school is full. The local authority must not choose a school from which the child is permanently excluded but may choose a school whose infant classes are already at the maximum size<sup>65</sup>.

3.20 Before deciding to give a direction, the local authority must consult the admission authority of the school it proposes to direct. The admission authority must tell the local authority within 7 days whether it is willing to admit the child. If, following consultation, the local authority decides to direct, it must inform the admission authority, the governing body (if the school is a voluntary controlled or community school), the local authority that maintains the school, and the head teacher. The admission authority can appeal by referring the case to the Schools Adjudicator within 7 days. If the child has been permanently excluded from two other schools and the most recent exclusion was within the previous two years, the governing body (if the school is a voluntary controlled or community school) may also refer the case to the Adjudicator. The admission authority or governing body must not refer the case unless it considers that admitting the child

would seriously prejudice the provision of efficient education or the efficient use of resources. If the admission authority or governing body does refer the case, it must notify the local authority that looks after the child. The local authority must not make a direction until the 7 days have passed and the case has not been referred.

3.21 If the case is referred to the Adjudicator, the Adjudicator may either uphold the direction or determine that another maintained school in England must admit the child. The Adjudicator's decision is binding. The Adjudicator must not direct an alternative school to admit a child unless the local authority that looks after the child agrees, nor if the child is permanently excluded from that school, nor if the admission of the child would seriously prejudice the provision of efficient education or the efficient use of resources.

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

3.22 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 Adjudicator in reaching a decision<sup>66</sup>.

<sup>63</sup> Sections 96 and 97 of the SSFA 1998

<sup>64</sup> Sections 97A-C of the SSFA 1998.

<sup>65</sup> Looked after children are excepted pupils outside of the normal admissions round under the School Admissions (Infant Class Sizes) (England) Regulations 2012.

<sup>66</sup> Section 25(3A) of the SSFA 1998.

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