

**North East Lincolnshire
Fair Access Protocol (FAP)
September 2023**



1. Purpose

The purpose of this protocol is to establish a transparent system for ensuring 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.

As academies are their own admission authority, a collective commitment to providing school places to all Children and Young People across North East Lincolnshire is vital. We can only aim to provide an equitable system with the full participation and commitment of all Schools, Academy Trusts and Partnership agencies.

In accordance with the **School Admissions Code (SAC) 2021 (3.14)**: *'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'*.

The protocol aims:

- To provide a fair, equitable and open allocation of school places.
- To ensure that vulnerable children and young people who require a school place are admitted without unnecessary delay.
- To support the Local Authority's priority for vulnerable children and young people by delivering their entitlement to full-time education in a timely manner.
- To be fair, transparent, and robust, and to have the confidence of all stakeholders.

2. General Principles

All schools within North East Lincolnshire are expected to provide education for the range of children and young people living within the local area. At times it will be necessary for mainstream schools to consider the need to admit pupils who reside in the authority area and have not been able to access a place through normal admission arrangements.

Most school admission applications will be dealt with in the normal admission round as children entering Reception (primary first admission), Year 3 (infant to junior transition), or Year 7 (primary to secondary transition). Others will need a school place during mid-year: these are entitled to apply to the respective admission authority of the parent/carers' preferred school, with their applications processed according to the school's published admissions arrangements.

The Fair Access Protocol (FAP) will apply in the minority of mid-year cases where the normal systems have failed to deliver a school place in a timely manner. The FAP must not be used in place of, or as an alternative to, the in-year admissions process. Where a child has been referred to the FAP, their parents/carers retain the right to make further in-year applications and appeal against the refusal of a school place as normal. The school admission appeal process is separate and independent of the FAP; the fact that an appeal has been lodged for a child is not a reason to delay the FAP process.

3. Children and young people covered by this protocol

The following categories of children are eligible for the FAP (SAC 3.17):

- a) children either subject to a Child in Need Plan or a Child Protection Plan 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
- 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, 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 SAC;
- k) children for whom a place has not been sought due to exceptional circumstances*;
- 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.

*as determined by the local authority

Categories not eligible for the FAP:

Children and Young People with Education, Health and Care Plans (EHCPs):

Children and young people with special educational needs and/or a disability that names a school in their EHCP are required to be admitted to that school even if the school is full. The use of the FAP will not apply to children/young people with an EHCP.

Children Looked After (CLA):

In accordance with the School Admissions Code all admission authorities must ensure that their admission arrangements give priority to CLA and previously looked after children in their oversubscription criteria. The use of the FAP will not apply to a CLA, as these children/young people must be admitted, even if the school is full, and, in most cases, should be unnecessary for a previously looked after child.

4. Key Principles

For this protocol to be successful for all stakeholders:

- All admissions authorities and their respective schools will continue to admit children and young people who apply for a place under normal admissions arrangements in accordance with published procedures;
- All schools will take part, including those which are their own admissions authority;
- All schools agree not to cite oversubscription as a reason for not admitting a child or young person under this protocol. However, if a school can demonstrate reasonableness and has a compelling case in relation to evidenced capacity issues in particular year groups this will be considered as part of the FAP process;
- Children/young people who are referred to the FAP will be given priority for admission over those on a waiting list, or awaiting an appeal;
- All schools will seek to respond immediately to requests for admission so that the admission of the child/young person is not delayed, and establish delegated operational arrangements to allow this;
- All schools will not insist on an appeal being heard or an assessment undertaken before admitting a child/young person under this protocol;
- Children/young people with special educational needs and/or a disability that do not have an EHCP will be treated the same as other applicants;
- Where there is a prior need for particular support or for reasonable adjustments to be made for a child/young person with special educational needs and or a disability, such children/young people will be placed quickly;
- Where a new or returning to area child/young person has been unable to secure a school place through reasonable application* of the normal in-year school admission process and/or has been out of education for 20 school days, the local authority will refer their case to the Fair Access Panel (the "Panel" – see Appendix 2);
- When a school declines to admit a pupil requesting an in-year place and that pupil meets one of the eligibility criteria specified for the FAP, the school must refer that application to the Panel, stating which of the criteria they consider apply, and provide detail of what consideration they have given to that application as well as their reason for not admitting outside of the FAP;
- Where appropriate, the parents/carers' views will be considered, but will not override a decision of the Panel.

*This would be expected to include an application for the child's catchment school or at least one school within reasonable distance (2 miles for primary; 3 miles for secondary) of the home address.

The Panel will take account of any genuine concerns about an admission, for example:

- Where there has been a previous serious breakdown in the relationship between the school and the family;
- Impact of alternative or previous educational provision and readiness for transition into a mainstream setting;
- Previous educational and behavioural evidence including the child/young person's exclusion record;
- Evidence of drugs or substance misuse;
- Evidence of lack of parental support;
- Previous known experience of social mix issues and peer group perception (either from the primary phase or for previously known secondary aged children/young people returning to the area), and;
- The reasonable possibility of placement failure.

5. In-Year admissions: school decision-making

On receipt of any in-year application the school (as admission authority) will make a decision and notify the applicant (within 15 school days) as to whether they are able to offer a place. Whether or not the child may meet one of the FAP categories must not be taken into account when making this decision.

The School Admissions Code (SAC) 2021, clearly states that all schools must admit every child who has applied for a place, without condition or the use of any oversubscription criteria, unless admitting the child would prejudice the provision of efficient education or the efficient use of resources. Admission authorities must not refuse to admit a child solely because:

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

There are therefore only two reasons why any in-year application for a school place may be refused:

- 1) That to admit any further children to the school would cause prejudice to the provision of efficient education or the efficient use of resources in the school, or
- 2) That the admitting authority has good reason to believe that the child may display challenging behaviour, and the school already has a particularly high proportion of children with challenging behaviour or those who have previously been permanently excluded, when compared to other local schools, and that to admit a further child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources (SAC 3.10).

Reason 1 is not subjective, meaning the circumstances of the applicant should not influence whether prejudice would be caused to the school by admitting another child. It is worth considering that if a child is refused admission and is vulnerable and eligible for admission under the FAP, the case for refusal will need to clearly describe the prejudice that would be caused to the school if the child were admitted, and why this outweighs the vulnerable child's need for a school place, should the applicant appeal the decision.

Reason 2 (SAC 3.10) is subjective and relates to the circumstances of the child. Meeting one of the FAP Categories must not, in of itself, be taken to imply that the child will display challenging behaviour (see Appendix 3).

Schools will need to evidence why they believe the child may present challenging behaviour before refusing admission on these grounds and can ask the previous school for background information to support this. Any such information gathered should be made available for the consideration of the Panel.

Any unplaced child/young person residing in North East Lincolnshire whose application is refused under these criteria should be referred immediately by the refusing school to the local authority for consideration at the next FAP. A copy of the refusal letter along with evidence to support the refusal should be submitted along with the completed FAP referral form.

6. Operation of the Fair Access Protocol

Normal admissions procedures will apply in most cases. If a child/young person is without a school place, then:

- Where parents/carers have made no application, the Education Welfare element of the local authority's Inclusion Service should encourage them to do so;
- If one or more applications have been made without success (including an application for the child's catchment school or at least one school within reasonable distance (2 miles for primary; 3 miles for secondary) of the home address), then the local authority's School Admissions team should invoke the FAP;
- If a child/young person has been refused a place at school due to challenging behaviour, the refusing school (as the admission authority) should refer the case to the FAP for consideration.

Referral Criteria

Where a school:

- Refuses an in-year application because to admit another child would cause prejudice to the efficient education and efficient use of resources in the school and,
- Has offered the right of appeal to the applicant and,
- Identifies that the application meets one or more FAP categories (see categories outlined in Section 5, above), then:

the application should be referred to the local authority School Admissions team for support with timely admission via the FAP (see Appendix 4 for guidance on the In-Year decision process and points of referral to the FAP).

Any unplaced child/young person refused admission under reason 2 (challenging behaviour) must be referred to the Local Authority for consideration under the FAP (using the appropriate referral form).

The risk of a child/young person missing from education is greater than that of an inappropriate referral.

The Fair Access Panel (Appendix 2) has been established to ensure timely access to a school place by applying the FAP where it is needed to deliver the purpose aims, above. The clerk to the Panel will collate case referrals received from schools and the School Admissions team for consideration. The essential role of the Panel is to ensure the delivery of FAP and to identify the recipient school in each individual case.

Details of a child/young person's current or most recent educational provision will be acquired by the local authority's School Admissions Team to determine whether a mainstream school placement is appropriate. If a child/young person has previously been attending a mainstream school in another local authority area it is expected that the pupil/student will be placed in a mainstream school in North East Lincolnshire.

All parties involved recognise the importance of placing children/young people within mainstream schools where it is in their best interest.

Where the Panel has failed to allocate a place in a mainstream school, they will seek to place the child/young person in appropriate educational provision; this would normally be aligned to an

identified school and be subject to agreement of the Panel. The Panel will recognise that this is not exhaustive and each school's individual challenges may need to be considered.

The requirement for a child to be on a school roll:

The Ofsted report "Pupils missing out on education" (Nov 2013) made specific recommendations including that "***every child must be on the roll of a school regardless of circumstances unless parents have elected to educate their child at home.***" The Panel will endeavour to ensure that this is the case for all children/young people however, it is to be noted that any Year 11 pupil who is referred after the January census may be single registered with 'other' educational provision.

Allocation of school places:

The Panel will allocate places at schools so that, as far as possible, each school admits an even share of children/young people. An allocation will be based on:

- The child/young person's needs;
- Accessibility and reasonable distance* of the school to the family's home address;
- Number of children/young people already admitted to that school under the protocol, compared with other secondary schools in North East Lincolnshire;
- Individual children/young people already attending the school who share a common and difficult history with the child/young person to be placed;
- The protocol must operate as far as possible within the context of parental preference. However, in certain circumstances, it may override it where it contradicts this protocol.
- The protocol will operate on a rolling school year basis, so that the position at the end of the summer term will be considered when determining new allocations for the following autumn term.
- Education Transport will be provided in accordance with North East Lincolnshire's Home to School Transport Policy related to distance (see below).

* 2 miles from home address for primary; 3 miles from home address for secondary, as per Home to School Transport Policy.

Returning from Elective Home Education (EHE):

Even though parents/carers are provided with detailed information about the expected requirements of elective home education, they can sometimes change their minds after a short period of time and request a place back at school. Where a parent decides that they want their child to return to school and subsequently apply for a school place, applications should be processed in accordance with the in-year admissions process. For those children who experience difficulty in accessing a school place through the normal process they will qualify to be placed via the FAP under category (I).

Provision of Education Transport:

Education Transport will be provided if a decision made by the Panel meets the criteria for free transport in accordance with the local authority's Home to School Transport Policy.

Role of the Parent / Carer:

Although parents/carers cannot be forced to support an application, it may be suggested under a multi-agency plan as a strategy to avoid a parenting order being sought through the court that they should support this application. The lack of parental support will not prevent the case being referred to the Panel.

Role of the Governing Body:

Governing bodies that are the admission authority for the school are recommended, once they have agreed to the FAP, to delegate the management of the process to the head teacher /

principal of the school subject to regular reports to the governing body on school admissions under the protocol.

Whilst the governing body of a community or voluntary controlled school has no role to play in individual admissions to school, head teachers of those schools are also recommended to report regularly to the governing body admissions to the school under the protocol.

Review:

The FAP will be reviewed on an annual basis. In the event that the majority of schools can no longer support the principles and approach of their local Fair Access Protocol, they should initiate a review with the Local Authority. The existing Fair Access Protocol will remain binding on all schools in the local area until the point at which a new one is adopted.

Appendix 1 - Background and Legislation

The School Admissions Code 2021 <https://www.gov.uk/government/publications/school-admissions-code-->

Fair Access Protocols Guidance for school leaders, admission authorities and local authorities https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100115/3/Fair_access_protocols.pdf

Admissions to school - Children admitted to the Reception Year and those pupils transferring from Year 2 in an infant school to Year 3 in a junior school and from Year 6 in a junior / primary to year 7 in a secondary school do so during the normal admissions round in a process co-ordinated by the local authority. Parents can also make applications to transfer their child from one school to another outside of the normal admission round at any time of year. Such admissions to school are in-year admissions and with these, problems may arise with particular pupils, both of primary and of secondary school age. The purpose of this FAP is to deal with applications to school outside of the normal admissions round and to focus on pupils defined in the categories as defined by the School Admissions Code, in other words, where a placement has not been secured under normal admissions procedures.

Parental Preference - An admission authority has a duty to comply with a parental preference for a place except under specific circumstances. This duty is not relieved by having a Fair Access Protocol. Where an admission authority has determined that a child will not be offered a place at a school, the parents have a right to an independent appeal. For twice excluded pupils there is no duty to comply with the preference or offer an appeal, but the duty to provide education does and the LA power of direction may still apply.

Admission Appeals - Where the admission authority determines not to offer a place, the parent can appeal against the decision and the admission authority has to defend the legality of its decision.

Links to Other Provisions - The FAP is consistent with and complementary to, the DfE guidance on identifying and maintaining contact with children missing, or at risk of going missing from education. It contributes to the prevention of children falling out of the education system because they:

- Fail to start the appropriate provision and hence never enter the system;
- Cease to attend, due to exclusion or withdrawal (e.g. illegal unofficial exclusions);
- Fail to complete a transition between providers (being unable to find a new school place after moving to a new LA or moving across the borough).

The FAP is further underpinned by the Schools Standards and Framework Act 1998 and Equality Act 2010

Appendix 2 - The Fair Access Panel (Panel)

Constitution, Quorum and Proceedings:

The core membership of the Panel shall be representatives from the local authority (i.e. Inclusion Lead, School Admissions and Children Missing Education Manager (non-voting members)) and senior representation from all schools and alternative provision (voting members). Panel members representing schools/academies must have authority (delegated or otherwise) to offer a place at their educational establishment in respect of cases to be heard.

The Local Authority will facilitate the meeting and the panel will meet as and when required. The clerk to the panel will be drawn from Education and Inclusion Service and a record of the proceedings will be kept, with minutes distributed to attendees post-meeting.

When appropriate, other representatives may be invited to attend the panel.

Cases referred to the FAP will be circulated to all school representatives for them to determine if they may be identified as the receiving school in order that they can attend or send written representations.

Decisions will be by consensus. If there is no consensus the decision will be made by the majority vote of the panel members. Any decision made by the panel will be binding to the school to which the decision refers. In the unlikely event of a dispute the Local Authority will negotiate with all relevant parties.

The receiving schools will determine the appropriate support strategies, if any, relating to the placement in the receiving school. The Local Authority will support the identification of any appropriate support.

All pupils placed by the panel will be issued an unconditional offer of the place and the receiving school should make all arrangements to admit the pupil without undue delay (within 5 school days of the panel's decision).

Appendix 3 - Challenging Behaviour

Where, under 3.10 of the School Admissions Code, an admission authority has expressed their wish not to admit a child on the grounds of challenging behaviour outside the normal admissions round, even though the school has places available, it may refuse admission and refer the child to the FAP.

DfE FAP Guidance 2021:

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.

Any unplaced child/young person residing in North East Lincolnshire whose application is refused under these criteria should be referred immediately by the refusing school to the local authority for consideration at the next FAP. A copy of the refusal letter along with evidence to support the refusal should be submitted along with the completed FAP referral form.

Appendix 4 - In-Year Admissions Process and Referral Points to FAP

In-Year application received by school/admission authority ↓				
Does the school have vacancies (i.e. under PAN/agreed no. in year group) ↓				
YES ↓			NO ↓	
Does the school have reason to believe the child may display challenging behaviour in line with SAC 3.10? ↓			Does the school have reason to believe the child might qualify for FAP consideration? ↓	
NO ↓		YES ↓		
Place Offered (applying oversubscription criteria where necessary)	NO ←	Can it be demonstrated that the admission of pupil would present prejudice to the efficient provision of education or use of resources? ↓	YES ←	NO ↓
		YES ↓	Can it be clearly demonstrated that the admission of the pupil would present prejudice to the efficient provision of education or use of resources? ↓	
		Refer to LA as a potential Fair Access Pupil. Place refused and appeal offered.	YES ↓	NO ↓
			Place refused and appeal offered. If pupil is unplaced, refer to LA for FAP consideration.	Place Offered (applying oversubscription criteria where necessary)