

## Changes to the School Admissions Code that impact on Fair Access Protocols

School Admissions Code was published May 2021 and comes into effect from 1 September 2021.

[School admissions code - GOV.UK \(www.gov.uk\)](https://www.gov.uk/school-admissions-code)

### Children who have been permanently excluded twice or display challenging behaviour

- Where a pupil has been permanently excluded from two or more schools an admission authority does not need to comply with parental preference for a period of two years from the last exclusion.
- The twice excluded rule does not apply to children;
  - (a) Who were below compulsory school age at the time of the permanent exclusion.
  - (b) Who have been reinstated following a permanent exclusion (or would have been reinstated had it been practicable to do so)
  - (c) Whose permanent exclusion has been considered by an independent review panel and such panel has decided to quash a decision not to reinstate the pupil
  - (d) Children with and Education, Health and Care Plans naming the school
- Admissions authorities **must not** refuse to admit a child on behavioural grounds in the normal admissions round or at any point in the normal year of entry. The exception to this is where a child has been permanently excluded from two or more schools for a period of two years from the last exclusion.
- Where an admission authority does not wish to admit a 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.

Challenging behaviour is not defined in the Admissions Code for the purpose of admission to school, However, it does refer to supplementary detail in footnotes of the code. The code states

- *“76 - For the purposes of this Code, 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/other pupils’ education or jeopardise the right of staff and pupils to a safe and orderly environment. 77 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 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”.*

- An admission authority should only consider refusing an admission and referring a child to the Fair Access Protocol 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 admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources.

## **The Fair Access Protocols**

Important changes and/or clarification include;

- A child is only eligible to be placed via the Fair Access Protocol (FAP) where they have not been able to secure a school place in-year and they fall into one of the specified FAP categories.
- The Government believe that most children should be able to secure a school place through normal in-year admission process. The FAP should be used as it was intended – providing a mechanism to secure a school place in-year for the most vulnerable children. The FAP may only be used to place vulnerable and/or hard to place children, having difficulty securing a school place. As within the previous Admissions Codes No additional groups of children other than those identified below are to be considered;
  - 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 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, 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 paragraph 3.10 of this Code;
  - k) children for whom a place has not been sought due to exceptional circumstances;

- 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. N.B. the Code stipulates that in most cases use of the Fair Access protocol should be unnecessary for a previously looked after child.
- Admission authorities **must not** refuse to admit the aforementioned 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.
  - For the sole purpose of participating in the FAP, the governing body or academy trust may delegate admission decisions to an individual, such as the headteacher. The Code is clear in that the FAP is a mandatory requirement. To not participate or to reject the FAP decisions is a breach of the Code.

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