



Department
for Education

Fair Access Protocols: Principles and Process

Departmental Advice

November 2012

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 quickly, so that the amount of time any child is out of school is kept to the minimum. This is why every local authority is required to have in place a Fair Access Protocol, developed in partnership with local schools.

This document sets out some principles to clarify the expectations on all parties to ensure Fair Access Protocols operate effectively at a local level. It is aimed at both admission authorities and schools. It is expected that readers are familiar with the School Admissions Code 2012 (the Code) – in particular paragraphs 3.9 to 3.23.

The Code gives local authorities and schools, including Academies¹, the freedom to develop and agree Protocols which best serve the needs of children in their area. Neither the Code, nor this document, attempts to prescribe the structure or detailed content of Protocols. It is for participating schools to ensure that the local Protocol works for them and is reviewed as required with the local authority.

Principles

- Every local authority must have a Fair Access Protocol, agreed with the majority of its schools, in which all schools (including Academies) must participate since it is binding on all schools.
- 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 are taken into account.
- When seeking to place a child under a Protocol, all schools should be treated in a fair, equitable and consistent manner.
- 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.

¹The term “Academies” in this document refers to all types of Academy schools, i.e. including Academy converters, sponsored Academies, and all types of Free Schools, including University Technical Colleges and Studio Schools, with the exception of Special Schools and alternative providers.

- An application to direct from the Secretary of State should only be requested as a last resort.
- The Secretary of State will base his decision having regard to whether due process, in line with the locally agreed provisions in the Fair Access Protocol, has been applied appropriately.
- The Protocol should establish the education provision a child will receive whilst discussions to identify a school place are taking place.
- In the event that the majority of schools in an area can no longer support the principles and approach of the local Protocol, all the school heads should initiate a review with the local authority. The existing Protocol however remains binding on all schools up until the point at which a new one is adopted.

Timing

- 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 one or who falls under the Fair Access Protocol.
- All schools, including Academies, are expected to respond to requests by local authorities to admit a child under Fair Access Protocols within seven calendar days.
- Before deciding to issue a direction to a voluntary aided or foundation school, a local authority must consult the governing body of the school, the parent, 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. A local authority should do the same when considering requesting a direction for a child to be admitted at an Academy through the Fair Access Protocol.
- The governing body of a maintained school can appeal by referring the case to the Schools Adjudicator within 15 calendar days. Similarly, it is expected that an Academy will agree a starting date for the child or set out its reasons for refusal in writing to the local authority within 15 calendar days (providing contact details to cover any approaching bank holiday or holiday periods).
- If an Academy has not agreed a start date for the child within 15 calendar days, the local authority can apply for a direction from the Secretary of State via the Education Funding Agency who acts on his behalf in these cases.

The process for requesting that the Secretary of State direct an Academy to admit a child

- Local authorities and Academies are expected to mediate between themselves before a request is made to the Secretary of State to direct an Academy to admit a child.
- Where a local resolution cannot be found, it is the responsibility of the local authority and the Academy to document the case for and against admission.
- When reviewing an Academy direction case, the Education Funding Agency will act on behalf of the Secretary of State to consider whether due process has been followed in applying the provisions of the Fair Access Protocol.
- In requesting a direction from the Secretary of State, the local authority must provide evidence that the provisions of the Fair Access Protocol have been applied in a fair and appropriate manner, the Academy's reasons for refusal and the local authority's response.
- The local authority should send the information using the attached template to the Education Funding Agency. On receipt of a request to direct, the Education Funding Agency will inform the school that it has received a request for a direction. The letter will request that the Academy provide any evidence other than that already received that the process has not been properly applied within seven calendar days.
- Where the Secretary of State is asked to consider a direction he will make that decision on the basis of the papers provided, taking into account:
 - whether the local Fair Access Protocol has been applied appropriately;
 - the arguments of the Academy and local authority, whether the authority has considered the arguments for refusal and why it still considers the Academy to be the appropriate provision for the child;
 - whether the Academy has been asked to accept a disproportionate number of children under the Fair Access Protocol compared to other schools.



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Reference: DFE-57507-2012