

# **Fair Access Protocol for In-Year Secondary School Admissions**

[www.bury.gov.uk](http://www.bury.gov.uk)

## 1. Introduction

1.1 In November 2004 the Department for Education and Skills (now DfE) asked each local authority (LA) to develop a protocol for:

- finding schools for pupils who are out of school and who are “hard to place” (HTP)
- sharing out HTP pupils equally amongst schools

From September 2007 the position became mandatory

- each LA has a statutory duty to introduce and operate a protocol
- every school (including Academies and Faith Schools) is bound by the provisions of the protocol, with no exceptions
- the protocol is known as the In Year Fair Access Protocol (IYFAP)

## 2. Aims of the Protocol

2.1 The Protocol is designed to:

- Acknowledge the real need of vulnerable and challenging young people to be dealt with quickly and effectively.
- Take into account the needs of the pupil and the needs of the school.
- Reduce the time that these pupils spend out of school.
- Ensure that schools admit pupils with challenging and diverse needs on an equitable basis.
- Eliminate the need for any one school to admit a disproportionate number of pupils who would fall within the protocol.
- Be equitable, transparent and have the confidence of all secondary schools.

## 3. When the Protocol will be applied

3.1 The Fair Access Protocol may only be used to place the following groups and/or hard to place children, where they have 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 admissions procedures (Admissions Code 2021)

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 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 seemed 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 (Evidenced by CAO or SGO)
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. <sup>1</sup>
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 a 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 (it should not normally be necessary for these pupils to be referred to IYFAP)

## 4. Management of the Protocol

- 4.1 The protocol will be managed and led by School Admissions Team, under the direction of the Director of Education and Skills.
- 4.2 The Local Authority will work in close partnership with local services and secondary schools to ensure there is transparency within the system.
- 4.3 Once the protocol has been agreed by the majority of schools, all admissions authorities **must** participate in it. Participation includes making available a representative who is authorised to participate in discussions, make decisions on placing children via the protocol, and admitting pupils when asked to do so in accordance with the protocol, even when the school is full.
- 4.3 The IYFA Panel will:
- Meet at least half termly during term time
  - Consist of;
    - LA Officers
    - Secondary Inclusion Lead Officer.
    - Head teachers and Principals of secondary providers
- 4.4 The above panel will consider all cases that the Admissions Team have been unable to resolve within the previous month. They will also give consideration and

---

<sup>1</sup> For the purposes of the Admissions Code (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/other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment. 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.

acknowledgement to all Positive Pupil Placements which have taken place between schools.

- 4.5 The panel will take into account geographical proximity, parental preference and the number of pupils already placed under the protocol. The Admission team will request that parents try to provide at least three preferences, however, there is no duty for the local authority to comply with parental preference when allocating places through the Fair Access Protocol.
- 4.6 The Partnership Manager will maintain records of all pupils who move in and out of schools during the year as a result of IYFAP, PPP and PEX and this data will be presented at each panel meeting.

## 5. Main Principles of the Protocol

- 5.1 This Protocol applies to all maintained secondary schools, community aided and academies. All schools will work collaboratively regardless of the type of school.
- 5.2 As such, whilst all schools must be included within the protocol, exceptionally, certain schools may not be expected to take children through the IYFAP. This will only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children and may include a school that is in special measures or which has recently come out of them. However, the determination of which school will not be expected to take a child through the IYFAP will be subject to local agreement by panel members and might change through the year depending on circumstance. The schools may agree that hard to place pupils will not be placed in schools which are graded as inadequate for behaviour.
- 5.3 Schools will continue to admit non IYFA pupils who apply for an available place, under normal admission arrangements.
- 5.4 Schools cannot cite over-subscription if they are asked to admit a pupil under the protocol. IYFA pupils will be given priority for admission over any others awaiting an appeal for admission, with the exception of LAC and pupils with an EHCP. In exceptional circumstances, schools may ask the local authority to consider whether accepting additional pupils into a particular year group, would present a health and safety risk.
- 5.5 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 (School Admissions Code).
- 5.6 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.
- 5.7 An admission authority should only rely on the provision in paragraph 5.6 if it has a particularly high proportion of either children with challenging behaviour or previously permanently excluded pupils on roll compared with other local schools and it considers that admitting another child with challenging behaviour would prejudice the the provision of efficient education or the efficient use of resources.
- 5.6 Children placed under this Protocol must be given priority over others on a waiting list (School Admissions Code).
- 5.7 A child will not be counted as having been placed under the Protocol for a particular school if the placement breaks down within 12 school weeks of the child's start date.
- 5.8 Schools must not insist on an appeal hearing before admitting a child under this protocol.
- 5.9 Wherever possible, pupils with a religious affiliation will be matched to a suitable school, but this will not override the protocol.
- 5.10 Siblings of pupils placed under the IYFA protocol will not be allocated a place in the same school unless there are places in the relevant year group(s). Such applications will be considered under the co-ordinated in-year admission arrangements.

## 6. Process for applying the Protocol

- 6.1 The initial contact between the LA and a school regarding all pupil transfers will be through the School Admissions Team.
- 6.2 School Admissions Team will have the responsibility for identifying a pupil as being covered by the IYFA protocol based upon evidence received from the parent/transferring school/involved services/Local Authority. This will ensure that this work is joined up and schools are allocated pupils on a fair, equitable and transparent manner. Once a pupil has been classified as IYFA the LA will initiate the protocol and place the pupil accordingly, once supporting information has been received (where possible).
- 6.3 The LA will e-mail the named contact at the preferred school within 5 school days following receipt of the application. Schools **must** respond, in writing (e-mail), within 5 school days so that the admission of the pupil is not unduly delayed. Where a governing body does not wish to admit a child with challenging behaviour outside the normal admission round, even though places are available, they must provide their reasons in writing by completing the IYFA School Admissions form and return to School Admissions for referral to the panel. The panel will only hear cases referred by schools, following consideration of HTP pupil application.
- 6.4 The Admissions team, Partnership manager and EWS will meet in advance of the panel meeting to review all cases. Where the evidence from the previous school indicates that the pupil is not school ready, the case will be referred to the Partnership manager who will arrange for provision to be made.
- 6.5 It is important that all schools are asked to admit a balance of pupils under the protocol.

Where a pupil is currently EHE it is expected that the panel would place back at their last school unless there are exceptional circumstances which would mean that this is not possible.

The decision on placement for all other categories, should be mindful but not restricted to the following factors as well as taking account of professional advice from the referring school and appropriate professionals:

- Specific issues in relation to the individual case;
  - Number of placements made by IYFAP to individual schools as reflected in the IYFAP Table;
  - Parental preference (there is no duty to comply with parental preference);
  - Geographical proximity;
  - Distance factor (measured by statutory walking distance).
- 6.6 All pupils referred to panel must be allocated a place. Where there is no offer of a place, the panel will use the following criteria, in order, to identify a school:
    - Place created by PEX within that year.
    - Negative balance in that year group according to the IYFAP table.
    - Negative balance across the school according to the IYFAP table

- Walking distance to school from the home address.
- Spaces in the year group based on PAN

6.7 All schools are invited to send representation to the panel. The decision of panel is binding and will be made irrespective of whether schools are represented at the panel meeting.

Where requests for the placement of IYFA pupils are refused by the identified school following panel decision, the LA will consider further options to arrange the admission.

6.8 Due consideration will be given to ensuring that appropriate “wrap around” support is provided to the child to ensure increased success of the placement. A risk assessment should be completed to identify possible assessment needs and to identify the most appropriate school placement.

6.9 Pupils placed under the protocol will be given a target start date no later than 10 school days after the allocated school has either:

- Accepted and agreed to the placement request.
- Been instructed by the IYFA panel to accept the child following further consideration of the case.

6.10 Pupils placed from a Pupil Referral Unit (REIN) should be dual registered at the receiving school from the first day of attendance at the school. This will ensure systems are in place to enable joint working to be established, increasing the potential success of the placement. The dual placement will be time limited for up to 12 school weeks, with an option to extend to a maximum of 18 weeks.

6.8 **With parental agreement**, In Year moves for IYFA pupils between Bury schools can be considered for managed moves (Positive Pupil Placement) basis. The receiving school should consult with previous/current school, parents and Partnership Manager on receipt of the application and prior to any referral to the panel. These pupils should be dual registered from the first day of attendance at the receiving school. The dual placement will be time limited for up to 12 school weeks, with an option to extend to a maximum of 18 weeks.

## 7. Allocation of Pupils

7.1 All allocations will be managed by the School Admissions Team and panel members.

7.2 School Admissions Team will maintain and update the IYFAP spreadsheet to ensure all allocations are recorded and any panel decisions take account of fair principles when allocating places. This spreadsheet will be available for all Secondary Head teachers/Principals.

7.3 The Terms of Reference for the management of the IYFA panel will be agreed annually between the LA and Secondary Head teachers/Principals.

7.4 Due consideration will be given as to the appropriateness of placing children in a school, academy or other setting which is either in need of LA intervention or is in an Ofsted category following inspection. These decisions will be taken by the IYFA Panel.

7.5 In order for the Protocol to be successful, it is necessary that all schools abide by the decisions of the Panel and to admit pupils within 10 school days. If a school refuses, the LA will inform of an intention to issue a direction to the governing body (maintained schools) or the regional Commissioner (Academies).