

**Derbyshire County Council**  
**Proposed Fair Access Protocol**  
**for primary schools**

### **Purpose**

The School Admissions Code (September 2021) requires that each local authority has a fair access protocol. All schools and academies must take part in their local authority's protocol. For children who live in the local authority, the protocol must ensure that:

- unplaced children, especially the most vulnerable, are offered a place at a school
- the school is suitable
- the process is as quick as possible
- this includes admitting children to schools that are already full.

The protocol ensures the admission to school of children and young people, living in Derbyshire, who find themselves in challenging circumstances. It outlines the arrangements to support them. It does not cover most children. The in-year and normal admission arrangements apply to most children.

The local authority applies this protocol when a parent of an eligible child has not secured a place.

### **Exceptions**

#### **Children with an education, health and care plan (EHCP)**

Children with EHCPs are not covered by this protocol. Their needs are considered separately through their plans, in accordance with the 'Special educational needs code of practice'.

Schools must not delay in admitting children with special educational needs and children with disabilities or medical conditions. Where there is a prior need for particular support, or for reasonable adjustments, the school should involve the appropriate support services to ensure they are placed quickly.

#### **Looked after children**

Looked after children are not covered by this protocol. These children must be admitted through in-year processes.

## Principles

### The fair access protocol:

- is fair and transparent
- takes into account the needs of the child and the needs of the school
- reduces the time that children spend out of school
- ensures that no schools, including those with available places, are asked to take a disproportionate number of children who have been permanently excluded from other schools, or who display challenging behaviour or who are otherwise being placed by FAP.

### In order for the protocol to be successful:

- all schools will take part, even if they are responsible for their own admissions
- over-subscription will not be a valid reason for not admitting a child
- fair access children will be given priority for admission over any others awaiting an appeal for admission
- schools must treat all requests for the admission of a fair access child as a matter of urgency
- schools cannot insist on an appeal hearing before admitting a child under this protocol; the fact that an appeal has been lodged for a child is not a reason to delay the FAP process.
- the local authority should take account of compelling reasons presented by the school to refuse admission
- parents' and carers' views will be considered, and geographical factors will be taken into consideration, but these will not necessarily override the protocol
- consideration will be given to a child's religious affiliation when considering a suitable school but this will not override the protocol
- there is no duty for the local authority or admission authorities to comply with parental preference when allocating places through the protocol
- the protocol is binding on schools in the Derbyshire County Council area.

### Circumstances in which the fair access protocol can be used:

In the vast majority of cases, children requiring a school place will continue to be admitted in accordance with the usual admission arrangements, rather than through the protocol. FAP may only be used to place the following categories of children, where a child is having difficulty in securing a school place in-year, and it can be demonstrated that reasonable measures have been taken to secure a school place through the in-year admission process.

## The protocol covers the following categories of children:

- 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 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
- m) previously looked after children for whom the local authority has been unable to promptly secure a school place.

## Process

1. In-year refusal for a child without a school place (WASP) is made. The refusing school must inform its Admissions authority and DCC within 5 school days of application. Appendix 1 – Standard school decision form
2. The fair access panel will determine whether a child is identified as being eligible for placement under the fair access protocol, based upon information received from the referring admission authority, which demonstrates that they meet one of the above criteria (a – m).
3. Once a child has been defined as eligible the fair access panel will initiate the protocol and either, according to the agreed criteria, contact the normal/local area school or alert the lead agency to arrange a cluster meeting of up to the 5 nearest Derbyshire schools to the child's home address.
3. A letter of invitation to the meeting will be addressed to the headteacher and copied to the chair of governors.
4. Summary 'profile on a page' information (See Appendix 2) about the child to be placed and confirmation of support available will be circulated at the meeting.

5. The protocol obliges all invited schools to attend the meeting, where attendees will be responsible for agreeing a placement for the child.
6. If the cluster meeting fails to agree a school place, the chair of the fair access panel will take the reasons presented to the fair access resolution panel, whose decision will be based on a majority vote and will be binding. If refusal is due to challenging behaviour school must adhere to Admissions Code criteria in their response (criteria outlined in Appendix 3). This panel will include neutral headteacher and governor representation.
7. Once a school has been nominated, arrangements should be made to admit the child to school within seven calendar days of the nomination.
8. A pupil must be allocated a place in school within 20 school days of the agreement that the pupil meets FA criteria, therefore local authority and school panels will need to reflect these timescales.

## Escalation process

Should a nominated school refuse to admit a child, escalation will be pursued, culminating in a direction to admit by the director of children's services, the Secretary of State for Education, or the Education Funding Agency, depending on the school's governance arrangements, as follows:

Type of school	Escalation route
Voluntary aided and Foundation	The local authority, in consultation with the governing body, which may refer to the school adjudicator within 15 days.
Academies	The Education Funding Agency / Secretary of State for Education
Maintained	Director of children's services, who may refer to the Secretary of State for Education, if not resolved.

## Detail of escalation route

- The Local Authority will make every effort to reach agreement with a school to place a child. Where it is not possible to agree a placement for a child through informal discussion and the fair access process, the Local Authority will follow the process of direction as detailed in the Admissions code of practice which is detailed below.
- A Local Authority has the power to direct the governing body of a maintained school for which they are not the admission Authority to admit a child in their area 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 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.

- 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 headteacher 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.
- If the case is referred to the Schools Adjudicator, the Schools Adjudicator may either uphold the direction, determine that another maintained school **must** admit the child or decide not to issue a direction. The Adjudicator's decision is binding. The Schools 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.
- This power of direction does not apply to Academies (see below)
- A Local Authority also has the power to direct the admission Authority for any maintained school in England (other than a school for which they are the admission Authority) 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.
- 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 Schools 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.
- 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 Schools Adjudicator in reaching a decision.

- The Secretary of State will make a binding decision.

### **Funding and additional support**

Support from the Inclusion pathways team for reintegration of children who have been permanently excluded will be available for a period of up to two Derbyshire terms. Where additional support for successful transition is needed, the receiving school can apply for one Derbyshire term (six weeks) of Inclusion panel funding to support the transition period. The receiving school should submit a clear plan with costings to the Inclusion panel aimed at supporting the child/young person's social, emotional and mental health needs throughout their transition. For subsequent Inclusion panel funding, the school will be required to follow the usual procedure, demonstrating how they have supported the child/young person.

### **Monitoring and reviewing processes**

Numbers of children admitted through this process will be monitored by the fair access panel.

Schools will be responsible for ensuring that children have been admitted within seven calendar days of the allocation date, unless in exceptional circumstances by agreement with the LA.

Schools will be responsible for notifying the LA immediately of the admission date.

Fair Access protocol is scheduled for review in June 2023, and annually thereafter.

## Appendix 1- Standard school decision form



**Private & Confidential**  
The Headteacher

Children's Services  
Admissions and Transport Team  
School Road  
Off Sheffield Road  
Chesterfield  
Derbyshire S41 8LJ

Telephone: 01629 537479  
Fax: 01246 554712  
Minicom: 01629 533240  
Email [admissions.transport@derbyshire.gov.uk](mailto:admissions.transport@derbyshire.gov.uk)  
Ask for:  
Our ref:  
Your ref:  
Date:

Dear Headteacher

### **In-Year School Admission**

#### **Child Surname and DOB:**

The parent of the above pupil has expressed a preference for their child to attend your school. The application details are available for you to view on SAM.

I should be pleased if you would consider the request and notify me of the decision within **5 school days** by completing the attached notification as required by the Schools Admission Code 2021. Please note, that parents have been advised to visit schools prior to making an application but this cannot be a condition for considering a request and must not create a delay in schools responding within 5 school days in order for the Authority to meet the requirements of the new School Admissions Code relating to in year applications.

The *School Admissions Code* states that applications may only be refused if the admission of an extra child would be prejudicial to efficient education and the efficient use of resources. In practice this means considering the request with regard to:

- the school's published admission number
- the pressure the admission would place on accommodation
- the detriment caused to other pupils already in that class in terms of the effects on the quality of teaching and learning in the group
- any health and safety implications
- in the case of infant classes, if the admission will put class sizes over the limit of 30 either now or in the future.

Please be aware that under part 3 of the School Standards and Framework Act 1998, the only reason to refuse a child in the 'relevant age group' on prejudice grounds, is if

the published admission number has been reached or indeed exceeded. The 'relevant age group' is the school year when children are normally admitted to the school. There is no legal basis to refuse a child once that year group has already begun and PAN has not been reached.

Once one application has been refused for a year group in an academic year then all further applications must also be refused unless there is a change in circumstances. No application may be refused purely on the basis of poor behaviour elsewhere, previous attendance issues or children with special needs who do not have an EHCP. Prejudice will not normally occur unless the number of children in the year group exceeds the school's published admission number. There are exceptions to this and if you require information on the exceptions or any other advice on the circumstances under which a request might be refused please contact the Admissions and Transport Team.

If a place is available for the child at the school I will confirm shortly if the place is to be the one offered to the parent under the co-ordinated scheme.

Yours sincerely

**Patch Officer**  
**School Admissions and Transport Team**



# In-Year Admissions to Derbyshire Schools

## SCHOOL DECISION NOTIFICATION

**Child Surname:**

**Date of Birth:**

**School Applied For:**

**Year Group:**

**Date Place Required:**

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(Please check box as appropriate):

**Place available**

**Place NOT available**

If a place is not available, please confirm below the Published Admission Number (PAN), current number on roll in year group and reasons for refusal. Please note the reason will be included in the decision letter sent to the parent. Where a preference cannot be met the parent will be informed of their right to an independent appeal.

**PAN**

**Number on roll in year group**

**Reasons for refusal:**

Signed on behalf of School

Designation

Date

Please email to [admissions.transport@derbyshire.gov.uk](mailto:admissions.transport@derbyshire.gov.uk) no later than 5 school days after receipt of this form.

## Appendix 2 – Student profile on a page

Controlled on completion

**Name:**

**Year:**

**The person:**

**Pupil's current views on the situation and aspirations:**

**Home:**

**Outside school:**

**Ability:**

**Views of the parent:**

**Initial strategies used (with outcomes):**

**Additional strategies used (with outcomes):**

**Are there any barriers to continuing school input?**

**Attendance:**

**Disciplinary record:**

### Appendix 3 - Challenging behaviour refusal criteria

- Paragraphs 3.9-3.13 of the Code of Practice for Admissions sets out the circumstance under which a school may refuse admission on the grounds of Challenging Behaviour where there are available places.
- Admission authorities **must not** refuse to admit a child on behavioural grounds in the normal admissions round, except where paragraph 3.8 applies (children who have been permanently excluded twice).
- Where an admission Authority receives an in-year application for a year group with places that is not the normal point of entry and it does not wish to admit the child because it has reason to believe that the child may display extremely challenging behaviour **and** the year group applied for is challenging it may submit a case for refusing admission. The Code defines challenging behaviour as follows:

***“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.”***

This is the definition that all refusals on grounds of challenging behaviour will be assessed.

- The Admission Code states clearly that it is unlawful for an admission Authority to refuse admission to a child who has SEN, but has no Statement or EHCP:
  - on the grounds of the child’s challenging behaviour (except in very limited circumstances); or
  - because it believes the child requires a statutory assessment or requires additional support.
- An admission Authority should only rely on the provision in 3.10 of the Code if a school has a particularly high proportion of either children with challenging behaviour or previously permanently excluded children on roll compared to other local schools and it considers that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources.
- The provision in 3.10 **must not** be used to refuse admission for children looked after; children previously looked after; and children who have EHC plans naming the school in question.
- 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.
- In determining whether to refer a child with challenging behaviour under the Protocol, the admission Authority and others involved in deciding must ensure that their actions comply with the requirements of the Equality Act 2010. If, for example, a child’s challenging behaviour is caused by or relates to a disability, refusing the child a place could be deemed to be illegal discrimination.
- The Code states clearly that Admission authorities **must not** refuse to admit children in the normal admissions round based on their poor behaviour elsewhere.