



# Fair Access Protocol

September 2021

## HACKNEY HEADTEACHERS' PROTOCOL FOR THE ALLOCATION OF FAIR ACCESS PUPILS

### 1. Principles

- 1.1** The Fair Access Protocol has been drawn up 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 (see 1.7 below for groups of children covered by the Protocol). A timeline of how the process works is attached as Appendix A.
- 1.2** The Protocol has been developed in partnership with and agreed by a majority of schools in Hackney.
- 1.3** All admission authorities **MUST** participate in the protocol. 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. Exceptionally, a school may be allocated fewer pupils or be exempt from the protocol for a period of time because of the particular circumstances of that school, if agreed by the majority of primary or secondary schools, as appropriate.
- 1.4** Hackney Education will publish at the beginning of each school year the dates of the Fair Access meetings for the remainder of the school year.
- 1.5** No school - including those with places available – will be asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are placed via the Protocol. Schools will be awarded a weighting for each pupil they admit via the Protocol according to 1.7.
- 1.6** Exceptionally, where a return to mainstream school is not yet or might not be possible, the pupil may be referred to New Regents College. Depending on the circumstances of the case, the referral may be made to determine if the pupil is ready to return to a mainstream setting. The panel may specify a minimum number of days/weeks for a mainstream readiness assessment.
- 1.7** The Fair Access Protocol will be used to place the following groups of vulnerable and/or hard to place children, where they are without a school place and are having 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 admission procedures. The weighting for each group is also shown;

| Category   | Weighting |
|--|-----------|
| 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; | 2         |

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|---|---|
| b) Children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol  | 2 |
| c) Children from the criminal justice system  | 6 |
| 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   | 5 |
| e) Children with special educational needs (but without an Education, Health and Care plan), disabilities or medical conditions   | 2 |
| f) Children who are homeless  | 2 |
| g) Children who are carers  | 2 |
| h) Children in formal kinship care arrangements   | 2 |
| i) Children of, or who are, Gypsies, Roma, Travellers, refugees and asylum seekers.   | 2 |
| j) Children who have been refused a school place on the grounds of challenging behaviour and referred to the Protocol in accordance with paragraph 3.10 of this Code;   | 3 |
| k) Children for whom a place has not been sought due to exceptional circumstances   | 2 |
| 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  | 1 |
| m) Previously looked after children for whom the local authority has been unable to secure a school place. (In most cases use of the Fair Access Protocol should be unnecessary for a previously looked after child because there is an expectation that the local authority will secure a school place particularly promptly for these children and for admission authorities to cooperate with this). | 2 |

**1.8** The Fair Access Protocol will not apply to a looked-after child or a child with an Education Health and Care Plan as these children must be admitted.

**1.9** For each pupil allocated via the protocol the named school will be awarded a weighting as shown above depending on the pupil's FAP category. Exceptionally, the chair has discretion to vary the FAP weightings where there is clear evidence that the case deserves a

higher weighting because of other factors. In such cases the reason for the higher weighting will be recorded in the decision summary of the meeting.

- 1.10** Where a school admits a pupil from another Hackney school who is at risk of permanent exclusion following a successful managed move process, they will receive a weighting of 3. The onus will be on the school to notify the clerk of successful managed moves and provide evidence that the pupil was at risk of permanent exclusion where the Out of School team is unable to confirm the child was at risk of permanent exclusion.
- 1.11** In addition to the above weightings, schools will receive a weighting of 0.25 for each pupil offered a place via the in-year admissions process.

## **2. Child with challenging behaviour**

**2.1** The definition of challenging behaviour is as follows:

**2.1.1** 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.

**2.1.2** 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.

**2.2** Where a Governing Body does not wish to admit a child with challenging behaviour, as defined above, it must notify the school admission team and give reasons for the decision using the template attached as Appendix B. If the child is not on the roll of a school, the case will be referred to the Fair Access Protocol panel.

**2.3** Pupils who are not resident in Hackney, who meet the definition of challenging behaviour as described above, will be referred back to their home LA if a school refuses to admit, with the view that the pupil should be considered under the home local authority's Fair Access Protocol/policy.

- 2.4** If a pupil is admitted via the in-year admission process but after admission it is clear the pupil meets the definition of challenging behaviour as set out in paragraph 2.1 above, the case can be referred to the Fair Access Protocol Panel for a retrospective weighting. In such cases the Chair will decide at the next meeting whether to allocate a retrospective weighting.

### **3. Procedure for considering pupils under the protocol**

- 3.1** The admission manager will decide whether a child qualifies to be placed via the Protocol based on the circumstances of the case and the categories described above. Where it has been agreed that a child will be considered under the Fair Access Protocol, a school place must be allocated for that child within 20 school days. If the child is on the roll of a school, the case may be exceptionally referred to the Fair Access Panel if the child is vulnerable and there is sufficient evidence available to suggest that a change of school is necessary. The decision to consider the case exceptionally and name a school will be made by the Chair of the Panel after taking into account the views of the panel members.
- 3.2** Eligibility for the Fair Access Protocol does not limit a parent's right to make an in-year application to any school for their child.
- 3.3** Once the decision has been taken to refer to FAP, the clerk will:
- 3.3.1** Inform the parent that the application has been referred to FAP;
  - 3.3.2** Ensure that the Part 2 section of the application form has been fully completed and returned by the current/previous school if applicable;
  - 3.3.3** Ascertain whether the pupil is known to FAST, SEND or the Out of School Team;
  - 3.3.4** Request further information, if necessary. The papers will be prepared on the understanding that more information will facilitate naming the most suitable school. However, a case will not be deferred by the clerk to a later date where the detailed information is not available as this would be contrary to the provisions of FAP and the 20 day deadline referred to below;
  - 3.3.5** Ascertain whether there is a potential conflict of interest and, if so, to discuss with the panel member and seek an alternative panel member if both agree a conflict exists;
  - 3.3.6** Circulate the paperwork to the panel members five school days in advance of the meeting.
- 3.4** Prior to the meeting, the chair will check the paperwork and raise any queries with the clerk.
- 3.5** Meetings will be scheduled to ensure that FAP is able to name a school within 20 school days as per 3.1 above

### **4. Membership of the panel**

- 4.1** The membership of the panel will comprise
- 4.1.1** An independent Chair

- 4.1.2 Head of Wellbeing and Safeguarding
- 4.1.3 Head of Admissions and Pupil Benefits
- 4.1.4 Admissions Manager with responsibility for in-year admissions.
- 4.1.5 One secondary Headteacher on a rotational basis.
- 4.1.6 One primary Headteacher (as required)
- 4.1.7 Representative from Exclusions
- 4.1.8 Representative from SEND

4.2 The Executive Principal of New Regents College or a delegate will attend to present information on those pupils referred under category 1.7(d). Other professionals may be invited to attend to present additional information on a case-by-case basis. For example, representatives from Young Hackney and the Re-engagement Unit.

## 5. **The panel meeting**

- 5.1 Meetings may be conducted virtually, in person or a mix of both.
- 5.2 At the meeting, the Chair will ask panel members to declare any potential conflict of interest and panel members will introduce themselves. A representative from the Admission and Pupil Benefit team will present each case and questions will be asked by panel members as well as comments made regarding views on the cases presented.
- 5.3 The Chair will reach the final decision after taking into account the views of other panel members and having regard to the statistical data detailed below.
- 5.4 There is no duty to comply with parental preference when allocating places through the Protocol, but the wishes of the parents will be considered along with other factors such as any sibling connection; distance from home to potential schools; any religious affiliation and the best interests of the pupil.
- 5.5 In the case of pupils who were electively home educated or are returning to the borough from abroad or another part of the UK, there will be a presumption that the previous school is named.
- 5.6 If during the meeting it becomes clear that a pupil should have been offered a place via the in-year admissions process, that school will be named but will receive no weighting.
- 5.7 A school will not be named if it results in a breach of the Infant Class Size legislation.
- 5.8 The statistical data listed below will be provided to the panel for each school, some of which is based on the last census data:

- 5.8.1** The number of pupils on the school roll;
- 5.8.2** Number and percentage of pupils admitted to the school via the in-year admission process since the beginning of the school year;
- 5.8.3** Number of pupils in each year with Education, Health and Care Plans;
- 5.8.4** Number and percentage of permanent exclusions in each year group during the last school year;
- 5.8.5** Number of pupils admitted to schools via the in-year process since the beginning of the school year for whom a retrospective weighting has been given because the pupil meets the definition of challenging behaviour;
- 5.8.6** The number of confirmed managed moves since the beginning of the school year;
- 5.8.7** The number of pupils admitted to schools via the Fair Access Protocol under all of the categories;
- 5.8.8** Current weightings for all schools.

## **6. Following the meeting**

- 6.1** The clerk will compile a decision summary from the meeting which includes a record of the allocated school, the weighting and a summary of the basis for the decision. The decision summary and updated weightings will be circulated to all schools no later than 5 working days after the meeting.
- 6.2** The parent and school will be notified of the panel decision within two school days.
- 6.3** Once the school has been notified of the decision, arrangements should be made for the child to start at the school as soon as possible and no later than ten school days after the decision. If a pupil is not admitted within this time limit, the matter will be escalated within Hackney Education or to the Chair of Governors/Academy Trust depending on the category of the school.
- 6.4** Schools must not insist on a parental appeal to an independent appeal panel being heard before admitting a pupil under the protocol.
- 6.5** A school must admit a pupil who has been denied a place there, including at appeal, where the FAP allocate the pupil a place.
- 6.6** To assist the enrolment meeting, the school should request the pupil's file from the pupil's last school.
- 6.7** All pupils allocated school places via the Fair Access Protocol panel will be monitored by the clerk for up to 6 weeks to ensure the pupil remains on roll. Where pupils are no longer on roll at 6 weeks the weighting allocated to the school will be removed.
- 6.8** Pupils allocated a school place under category 1.7 d) above will be dual registered in the first instance as part of a package of support provided by NRC to ensure a smooth transition. The dual registration is usually for 6 weeks from the date the pupil starts attending the named school. In exceptional circumstances (for example absence due to sickness) the dual registration can be extended to a maximum of 12 weeks by agreement of the Chair supported by the panel members that took the original decision. Such requests should be submitted by the school to the clerk who will seek the decision of the panel.

**6.9** Once dual registration has commenced, the pupil can only be removed from the roll of the named school in accordance with the Education (Pupil Registration) (England) Regulations 2006. This means that both the school and NRC will need to agree to the removal from the school's register.

**6.10** Where a school has concerns about the viability of a placement, the school should contact NRC to discuss the reasons for the concerns. In most cases it is expected that agreement will be reached or that the pupil returns to NRC, if the placement is unsuccessful. If agreement cannot be reached, the case will be referred back to the FAP panel that made the original decision.

## **7. Review of the panel decision**

**7.1** A school can request a review of the panel's decision but only where there is significant new evidence presented to the panel which was not available at the time of the decision.

**7.2** The request for review must be submitted to the clerk within five school days of notification of the FAP panel's decision and must include the new evidence.

**7.3** The chair, supported by other panel members, must find that, on the basis of the new evidence, the pupil cannot attend the named school and should, therefore, be allocated another school. For example, the pupil's older sibling attended the school and there was a serious breakdown between the school and family which was not known about at the time when the FAP panel decision was made. If a new school is named, that school will be expected to admit the pupil within ten school days.

**7.4** Following notification of an unsuccessful review the pupil must be placed on roll according to the timescale established by the panel's original decision ie. not later than 10 school days following that decision..

## **8. Direction**

**8.1** Hackney Education will, where necessary, direct admission in the case of voluntary aided schools that refuse to admit a pupil who has been allocated a place under the protocol.

**8.2** Hackney Education will, where necessary, request a direction from the Secretary of State in the case of academies and free schools that refuse to admit a pupil who has been allocated a place under the protocol.

**8.3** Before a direction is issued Hackney Education will:

**8.3.1** Invite other admission authorities within a reasonable distance of the child's home (3 miles for secondary aged pupils and 2 miles for primary aged pupils), to consider the application and to refuse admission if it is their view that the admission would cause prejudice to the provision of efficient education or the efficient use of resources.

- 8.3.2** Consult the governing body of the school at which they intend to direct admission, the parent, and the child, if they are over compulsory school age. Following consultation, if the local authority decides to direct, it must inform the governing body and head teacher of the school.
- 8.3.3** The Governing Body can appeal by referring the case to the Schools Adjudicator within 15 calendar days.
- 8.3.4** The school must notify Hackney Education if an appeal is submitted within the 15 calendar days to the Schools Adjudicator.
- 8.3.5** If an appeal is not submitted to the Schools Adjudicator within the 15 calendar days, the school must admit the pupil in compliance with the direction issued by Hackney Education.

## 9. **Review of the protocol**

- 9.1** The clerk to the Fair Access Protocol Panel will produce an annual report each Autumn Term summarising the referrals and decisions of the FAP panel in the previous academic year. This report will be distributed to all headteachers/principals.
- 9.2** Admission authorities may request changes to the protocol via the clerk for consideration and agreement by a majority of head teachers. Agreed changes will apply from the start of the following school year.
- 9.3** In the event that the majority of schools in an area can no longer support the principles and approach of the Protocol, all school headteachers should initiate a review with the local authority. The existing Protocol, will however, remain binding on all schools up until the point at which a new or revised Protocol is adopted.

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