

DETERMINED
Fair Access Protocol
Oxfordshire
2019
onwards

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Introduction

1. The School Admissions Code requires every local authority to have in place a Fair Access Protocol. The Fair Access Protocol for Oxfordshire applies to all state funded mainstream schools¹ in Oxfordshire and is consistent with the requirements set out in paragraphs 3.9 to 3.15 of the Schools Admissions Code 2014, the non-statutory guidance published by the Department of Education in November 2012, the Education (Pupil Registration) (England) Regulations 2006 (as amended in 2016) and the School Standards and Framework Act 1998.
2. The Schools Admissions Code 2014 requires all admission authorities of state funded mainstream schools to participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly. There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.
3. The purpose of the Fair Access Protocol 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.
4. The published guidance from the Department of Education sets out a clear expectation from the Secretary of State that all state funded mainstream schools and local authorities should work together to identify a school place for those children who have had difficulty finding one. This guidance also states that all schools are expected to respond to requests by local authorities to admit a child under fair access protocols within seven calendar days.
5. When reviewing a request to direct admission to an academy the Education Skills and 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.

¹ Academies, free schools, studio schools, voluntary aided schools, trust schools, voluntary controlled schools and community schools

Principles

6. The Fair Access Protocol is binding on all state funded mainstream schools in Oxfordshire.
7. The arrangements regarding the admission of students above the published admission number only apply to mainstream state funded schools and not to establishments providing alternative provision or to special schools.
8. When making placements the Fair Access Panels will take into account any special circumstances, including possible transport costs.
9. There is no duty to comply with parental preference when allocating places through the Protocol but it is expected that the wishes of a child's parents will be considered.
10. When seeking to place a child under the Protocol, all schools will be treated in a fair, equitable and consistent manner.
11. The Fair Access Protocol will not be used 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 if a place cannot be made available.
12. An application to the Secretary of State to direct a child's admission to a specific school will only be requested as a last resort.
13. While a child is on roll at a school the school concerned is responsible for the child's educational provision.
14. Any child without a school place is the responsibility of the Local Authority up until the point at which they are taken on roll at a school.
15. There will be an annual review of the Protocol (see Publication and Review).
16. The number of children admitted under the Protocol to each state funded school in Oxfordshire will be published on the Oxfordshire public website. This data will be updated at the beginning of each term.
17. The Fair Access Protocol is not applicable to admissions made through the normal admissions round for primary, junior or secondary schools and cannot be used where this would involve contravening the regulations on the size of infant classes.
18. The Fair Access Protocol will not be used to require a school to automatically admit another child with challenging behaviour in the place of a child excluded from that school.

Children covered by the Protocol

19. The Fair Access Protocol may be used for the placement of children who fall within the following categories:
- a) children from the criminal justice system or Pupil Referral Units who need to be reintegrated into mainstream education;
 - b) children who have been out of education for two months or more;
 - c) children of Gypsies, Roma, Travellers, refugees and asylum seekers;
 - d) children who are homeless;
 - e) children with unsupportive family backgrounds for whom a place has not been sought;
 - f) children who are carers;
 - g) children with special educational needs, disabilities or medical conditions (but without a statement);
 - h) permanently excluded children;
 - i) children who have been permanently excluded and an independent review panel has directed a governing body to reconsider the exclusion but the governing body decides not to reinstate the pupil;
 - j) children who are at serious risk of permanent exclusion;
 - k) those children whose parents have been unable to find them a place after moving to the area, because of a shortage of places;
 - l) those children who have been refused a place at a school because they are believed by the school concerned to be challenging.

Monitoring of the Protocol

20. The Admissions and Transport Services Manager, assisted by the Exclusion & Reintegration Team, will monitor placements under the Protocol and the operation of the Fair Access Panels.
21. Each Fair Access Panel will receive a report on in year admissions for the academic year. This report will be prepared by the Admissions Team and will normally be presented by the Admissions and Transport Services Manager. It will include the number of admissions under the Fair Access Protocol. The report will not include the names of children and will be a public document.
22. Once issues have been identified the Admissions and Transport Services Manager will seek to resolve them through contact and negotiation with the relevant school, service or panel. Problems regarding the Protocol will be identified in the annual report to the Schools Adjudicator.

Publication and Review

23. The Fair Access Protocol will be published on the admissions page of the Oxfordshire public website and will form part of the admission arrangements for all state funded schools in Oxfordshire.
24. The Protocol will be reviewed annually and the review will involve all schools. The Admissions and Transport Services Manager will be responsible for undertaking the review, reporting the outcome to schools and councillors and

submitting the Protocol for approval to the Director of Children's Services. The next annual review of the Protocol will take place for at least 6 weeks between 1 October 2018 and 31 January of 2019 and the Protocol will then be officially determined by Oxfordshire County Council by no later than 28 February 2019.

Looked after children, previously looked after children and children with an Education Health and Care Plan naming a school

25. Requests for places for looked after children, previously looked after children and children with an Education Health and Care Plan will not be referred to the Fair Access Panels.
26. In accordance with legal requirements children who have an Education Health and Care Plan² that names the school will be admitted to that school.
27. A local authority may direct own admission authority schools, including academies, to admit a child if that school is named in the Education Health and Care Plan. This is the case even if the school concerned is in the administrative area of a different local authority.
28. Similarly children who are looked after³ by a local authority within the meaning of section 22 of the Children Act 1989 at the time of their application and previously looked after children will always be admitted.⁴ The term "previously looked after children" refers only to children who were looked after but ceased to be so because they were adopted (or became subject to a child arrangements order⁵ or special guardianship order⁶).
29. Proposals to place children with an Education Health and Care Plan at a school outside the normal admissions round will be the subject of a formal consultation with the relevant school. Following the consultation if the responsible local authority decides a place is still required it will be made available by the school concerned.
30. Looked after children and previously looked after children will normally be placed promptly through the in-year admission arrangements for the school concerned. If this is not possible, or when a school placement needs to be arranged as an emergency measure, a formal consultation will take place with the school concerned.
31. In the case of looked after children for whom Oxfordshire is responsible the Virtual School will approach the Admissions Team to check the availability of

² An Education, Health and Care plan is a plan made by the local authority under Section 37 of the Children and Families Act 2014 specifying the special education provision required for that child.

³ A 'looked after child' is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in Section 22(1) of the Children Act 1989) at the time of making an application to a school.

⁴ This group includes children who were adopted under the Adoption Act 1976 (see section 12 adoption orders) and children who were adopted under the Adoption and Children Act 2002 (see section 46 adoption orders).

⁵ Under the provisions of s.14 of the Children and Families Act 2014, which amend section 8 of the Children Act 1989, residence orders have now been replaced by child arrangements orders.

⁶ Section 14A of the Children Act 1989 defines a 'special guardianship order' as an order appointing one or more individuals to be a child's special guardian (or special guardians).

school places and to establish the distance from the child's placement to local schools. The social worker will then contact the Virtual School for advice on the provision available at the schools being considered. After considering the advice received the social worker will complete an application form for a school place and submit the form to the Admissions Team. The Admissions Team will then write to the school to request a place. The school will then respond within 7 days.

32. Once a place has been offered to a looked after child, or previously looked after child, and the place has been formally accepted (or the child is already on roll) it is open to the school concerned to raise issues such as requests for additional funding at the next available Fair Access Panel. Fair Access Panels are not able to determine alternative school placements for these children.
33. If a looked after child, or previously looked after child, is refused a place by an own admission authority school as part of the normal in-year admission process the Local Authority will consider the reasons given by the school. If a place is still needed the Admissions and Transport Services Manager will carry out a formal consultation on the proposed admission. The formal consultation will last for 7 calendar days from the date of the letter opening the consultation. The Local Authority will then consider the response. If the relevant school is unwilling to offer a place the Local Authority may direct admission to an own admission authority maintained school, or in the case of academies and free schools, it may be request a direction from the Education Skills and Funding Agency (which in these matters acts on behalf of the Secretary of State).
34. The Local Authority is the admission authority for community and voluntary controlled schools. Therefore, places would normally be made available for looked after or previously looked after children through the in-year admissions process. Where difficulties arise the Local Authority will formally consult with the school for a period of 7 calendar days. At the end of this period the Local Authority will then decide whether to place the child on the roll of the school.

Fair Access Panels

Membership

35. For secondary schools the Fair Access Protocol will be applied through Fair Access Panels. If any area panel ceases to operate its functions will be taken over by the Admissions and Transport Services Manager and one of the Exclusions and Reintegration Officers.
36. All state funded secondary schools will have a representative on the Fair Access Panel that serves the relevant secondary school's area. In addition, each Panel will include the Admissions and Transport Services Manager (or his representative) and one Exclusion & Reintegration Officer. All these members are voting members.
37. A representative of Meadowbrook College (the Pupil Referral Unit) will be a non-voting member of each Fair Access Panel.

38. The Chair of each Fair Access Panel will be the Exclusion & Reintegration Officer.
39. If the Chair is unable to attend a Fair Access Panel a temporary Chair will be elected for that meeting by the voting members of the Panel.
40. The following schools are represented on the North Fair Access Panel:
- a) Banbury Academy;
 - b) Bicester Community College;
 - c) Blessed George Napier School;
 - d) The Cooper School;
 - e) Heyford Park Free School;
 - f) North Oxfordshire Academy;
 - g) The Warriner School;
 - h) Space Studio Banbury;
 - i) Studio School, Bicester.
41. The following schools are represented on the West Fair Access Panel:
- a) Bartholomew School;
 - b) Burford School;
 - c) Carterton Community College;
 - d) Chipping Norton School;
 - e) Henry Box School;
 - f) The Marlborough School;
 - g) Wood Green School.
42. The following schools are represented on the Central Fair Access Panel:
- a) Cheney School;
 - b) Gosford Hill School;
 - c) Matthew Arnold School;
 - d) Oxford Spires Academy;
 - e) The Cherwell School;
 - f) The Oxford Academy;
 - g) St Gregory the Great VA Catholic Secondary School;
 - h) Wheatley Park School.
43. The following schools are represented on the South Fair Access Panel:
- a) Didcot Girls' School;
 - b) Chiltern Edge School;
 - c) Faringdon Community College;
 - d) Fitzharrys School;
 - e) Gillotts School;
 - f) Icknield Community College;
 - g) John Mason School;
 - h) King Alfred's School;
 - i) Langtree School;
 - j) Larkmead School;
 - k) Lord Williams' School;

- l) Wallingford School;
- m) St Birinus (Boys) School;
- n) University Technical College, Didcot;
- o) Aureus School (opening September 2017)
- p) Europa School UK

44. All school representatives will be empowered to make decisions at the Panel meetings and be able offer places.

Fair Access arrangements for primary schools currently not covered by a Fair Access Panel

45. In any area not covered by a Fair Access Panel (currently all primary schools) the functions of the Fair Access Panel will be undertaken by the Primary Fair Access Panel. This will be composed of the Admissions and Transport Services Manager, one Exclusion & Reintegration Officer, a representative from the Educational Psychology Team and two representative head teachers from primary schools.
46. If the placement of a Year 6 child is being considered a representative from a secondary school will also be invited to the Primary Fair Access Panel. All those present at the Primary Fair Access Panel will have the right to discuss each case and, if necessary, vote on a suitable placement. The Chair will be the Admissions and Transport Services Manager who will have the casting vote in the event of a tied decision.
47. The Panel will be quorate if the Admissions and Transport Services Manager and one Exclusion & Reintegration Officer are present.

Establishing a Fair Access Panel covering a primary partnership

48. Where a primary partnership/group of primary schools would like to set up a Fair Access Panel to cover the primary schools in its area the Chair of the group should apply in writing to the Admissions and Transport Services Manager.
49. Any primary partnership/group of primary schools that establishes a Fair Access Panel will need to follow this Protocol.
50. As a minimum, the Local Authority's Admissions and Transport Services Manager, or his representative, will be a voting member of any Fair Access Panel established by a primary partnership.
51. Servicing a Fair Access Panel established by a primary partnership will be the responsibility of that partnership rather than the Local Authority.

Referrals to Fair Access Panels

52. Referrals for consideration under the Protocol can be made by any state funded schools in Oxfordshire or by the Admissions Team.
53. No referrals can be made by parents.

54. In any academic year, normally no more than 1 child per year group will be admitted above the Published Admission Number of a primary, infant, or junior school through the Protocol.
55. Regarding to secondary schools in any academic year those schools with fewer than 900 pupils on roll would not normally be expected to admit more than 2 above the Published Admission Number in each year group through the Protocol. Those secondary schools with 900 or more pupils on roll may be expected to admit, in any academic year, up to 3 above the Published Admission Number in each year group through the Protocol. These figures are meant to be a guide to good practice and are not meant to be slavishly followed irrespective of circumstance.
56. The following secondary schools are expected to have less than 900 pupils on roll in the period covered by the Protocol:
- Heyford Park
 - University Technical College
 - Bicester Technology Studio
 - Space Studio
 - Carterton Community College
 - Chiltern Edge School
 - Langtree School
 - Aureus School (new school)
 - Icknield Community College
 - Europa School UK
57. The flow chart at Appendix 1 shows the referral process.

Dates of Meetings

58. Fair Access Panel meetings will be agreed by each Panel at the beginning of the academic year and they will be circulated by the Exclusion & Reintegration Team.
59. If dates are changed during the year, the published programme will be amended and reissued.

Information to be provided prior to a meeting of the Fair Access Panel

60. Fair Access Panel referral forms should be sent to the Exclusion & Reintegration Officer following meetings/conversations within schools.
61. There is no requirement to complete a referral form for those children who are without a school place unless no admission application form has been received.
62. All members of the Panel will be sent case details and an agenda prior to the meeting of the Fair Access Panel.
63. Prior to the Fair Access Panel meeting any school recommending a planned

transfer (suitable for a child at the point of permanent exclusion) will ask the parent to specify alternative school preferences (these will be treated as advisory and will not be binding on the Panel).

64. Any referral from the Admissions Team or from the Exclusion & Reintegration Officer should normally be made with information on the parent's expressed preference of school/schools.

Transport Costs

65. Possible placements that depend upon the provision of free transport will need to be cleared with the Admissions and Transport Services Manager prior to a referral being considered at the relevant Fair Access Panel.
66. Where there has been no prior agreement to transport cost, these costs may, at the discretion of the Admissions and Transport Services Manager, be charged to the Fair Access Panel.
67. No additional expenditure on taxi transport will be accepted without prior agreement by the Admissions and Transport Services Manager.

Considering cases

68. The Fair Access Panel will consider previous admissions, group dynamics and transport implications before deciding a placement.
69. Fair Access Panels may consider whether additional support can be made available from the Panel's resources for pupils who are not transferring schools.
70. Fair Access Panels should ensure that where a child is without a school place, or there is an agreed need to transfer a child to another school, that a placement is agreed at the meeting at which the case is considered.
71. If a Panel is unable to decide on the most suitable placement for a child and that child is who is without a school place the Admissions and Transport Services Manager will name a school after taking into account the recorded comments of the Panel, any expressed preferences of the parent concerned, the available data on admissions over the academic year and the number of children admitted to each school under the Protocol.
72. Non-attendance at one or more meetings of the relevant Fair Access Panel will not preclude the school/schools concerned from being required to admit a pupil who needs to be placed under the Protocol.

Recording

73. The Exclusion & Reintegration Team is responsible for ensuring accurate minutes are taken at the four secondary Fair Access Panel meetings. The Admissions Team is responsible for recording the decisions of the Primary Fair Access Panel.
74. The Exclusion & Reintegration Team will keep a register of those considered

for a move (whether the move is agreed or not) and of those admitted and leaving schools under the Fair Access Protocol in the area covered by each Fair Access Panel. All the Exclusion & Reintegration Officers will provide this data to the Admissions and Transport Services Manager for inclusion in the Local Authority Report to the Schools Adjudicator and for publication on the Oxfordshire County Council public website.

75. The numbers admitted to each school under the Protocol will be published on the Admissions Page of the Oxfordshire County Council public website. This data will be updated every term.

Offers

76. After each meeting the Admissions Team will write to the relevant school/schools to confirm the agreement to offer a place under the Fair Access Protocol.
77. Schools will respond within 7 calendar days to confirm agreement to offering a place through the Protocol.
78. The offer of a place will then be sent out by the Admissions Team. The letter offering a place will specify a start date. This start date will generally be 15 working days from the date the letter is sent out.
79. Parents will be asked to confirm or reject acceptance of the place by responding to the Admissions Team rather than directly to the offered school.
80. Parents will have 7 calendar days to respond to the offer of a place.
81. A school may agree an earlier start date with the parents once the parent has responded to the Admissions Team (if the placement has been accepted).

Arrangements for being taken on roll

82. Children referred by schools, for whom there is no admissions application form and who have an existing school place will receive a letter from the Admissions Team offering a place or, in the case of own admission authority schools, offering a place on behalf of the Governors/Directors. The letter will specify a start date. This date will normally be 15 working days from the date of the letter. The child will not be taken on roll until the parent has confirmed to the Admissions Team that the place has been accepted. The parent will have 7 calendar days to respond. The offer will lapse if no response has been received after those 7 days.
83. Those children who do not currently have a school place will be taken on roll from the date specified in the letter from the Admission Team offering a place or, in the case of own admission authority schools, offering a place on behalf of the Governors/Directors.
84. When a child is added to the school roll, they will automatically be added to the attendance register.

85. On the day the pupil is expected to arrive at school, the Attendance Register should be marked in the normal way. If a pupil fails to appear and no explanation is provided, then an "N" should be used. This is only a temporary code and therefore should only be used until the reason for absence is confirmed by the parent. If no reason is given by the child's parent the code should be changed to an unauthorised absence.

Refusal to admit a challenging pupil

86. Challenging behaviour will normally be defined as:
- a) serious criminal behaviour resulting in a conviction or a police caution within the previous two years preceding the request for a school place; and/or,
 - b) behaviour resulting in a significant number of fixed term exclusions from which it is clear that the child is at serious risk of permanent exclusion within a period of at least one year preceding the request for a school place; and/or,
 - c) behaviour resulting in a permanent exclusion within the last two years preceding the request for a school place
87. Children with attendance problems, or those for whom English is an additional language, will not, as a result of these problems, be considered "challenging" under the Fair Access Protocol.
88. No child will be refused admission because that child has special educational needs.
89. In exceptional circumstances when a governing body receives a request for a place outside the normal admissions round and does not wish to admit the child with challenging behaviour, the case must be referred to the Admissions Team for action under the Fair Access Protocol. However, this will normally only be appropriate where the school can provide evidence that it has a particularly high proportion of children with challenging behaviour or previously excluded children.
90. In the case of secondary schools, the UTC and studio schools the evidence presented must be accepted by a majority of voting members at a meeting of the Fair Access Panel. Where the Fair Access Panel accepts that the child should not be admitted to a school under this provision it will arrange an alternative placement which will normally be in another mainstream school. However, no other school will be offered through the Protocol if the child concerned does not live within Oxfordshire.
91. In the case of primary schools, unless they are part of a Primary Fair Access Panel, the role of such a panel will be undertaken by the Admissions and Transport Services Manager assisted by one of the Exclusion and Reintegration Officers.
92. If any of the Fair Access Panels cease to meet, until this is resolved, the functions of the Panel will be undertaken by the Admissions and Transport

Services Manager assisted by an Exclusion and Reintegration Officer.

93. If a place has been refused on grounds of the child's challenging behaviour the parent will have a right of appeal to an independent admission appeal panel. The appeal process will take place within the timescales set out in the School Admissions Appeal Code.
94. Paragraph 3.12 of the School Admissions Code 2014 makes it clear that governing bodies cannot refuse to admit looked after children, previously looked after children and children with an Educational, Health and Care Plan/ Statement of Special Educational Needs naming the relevant school and refer their cases for consideration under the Fair Access Protocol. Children falling within these groups must be admitted. The relevant text from the Code is shown below:

“Where a governing body does not wish to admit a child with challenging behaviour outside the normal admission, even though places are available, it must refer the case to the local authority for action under the Fair Access Protocol.....This provision will not apply to a looked after child, a previously looked after child or a child with a statement of special educational needs or Education, Health and Care Plan naming the school in question, as these children must be admitted.”

Alternative provision

95. In Key Stage 3 short term places are available on courses operated by Meadowbrook College.
96. In Key Stage 4 long term, usually part time, provision may be made available at Meadowbrook College.

Directions

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

97. Requesting the Secretary of State to direct an academy to admit a child will only occur when a local resolution cannot be found.
98. If the Secretary of State is asked to direct an academy to admit a child the request will be made by the Admissions and Transport Services Manager on behalf of the Local Authority.
99. The Education Funding Agency will act on behalf of the Secretary of State in considering whether due process has been followed in applying the provisions of the Fair Access Protocol.
100. In requesting a direction from the Secretary of State, the Local Authority will need to provide evidence that the provisions of the Fair Access Protocol have been applied in a fair and appropriate manner. The Local Authority must also set out the relevant academy's reasons for refusal (assuming that these have

been given) and the Local Authority's response.

101. When seeking a direction from the Secretary of State the Local Authority will use the template provided by the Education Skills and Funding Agency.
102. On receipt of a request to direct, the Education Skills and Funding Agency will inform the relevant Academy that it has received a request for a direction and ask the relevant Academy for any evidence that has been supplied that shows the process has not been properly applied. The Education Funding Agency can be expected to give Academy 7 calendar days to respond.
103. When the Secretary of State is asked to consider a direction, the non-statutory guidance makes it clear that she can be expected to make a decision on the basis of the papers provided, taking into account:
 - whether the local Fair Access Protocol has been applied appropriately;
 - the arguments advanced by the relevant academy and the Local Authority;
 - whether the Local Authority has considered the arguments for refusal;
 - the Local Authority's reasons for still considering the placement to be the appropriate;
 - whether the establishment has been asked to accept a disproportionate number of children under the Fair Access Protocol compared to other local schools.

The process for directing a maintained school for which the Local Authority is not the admission authority when the school concerned refuses to accept a child

104. Directing a maintained school to admit a child following a decision made under the Protocol will only occur where a local resolution cannot be found.
105. Initially a letter will be sent from the Admissions Team stating that a place needs to be made available following a decision under the Protocol. Any maintained school approached in this way must respond to the Local Authority within 7 calendar days.
106. If the child concerned has been refused entry to, or permanently excluded from, every appropriate school within a suitable distance the Admissions and Transport Services Manager will then write to the school to inform the Governors and Head of the intention to direct admission.
107. The Governing body may appeal by referring the case to the Schools Adjudicator. The Governors have 15 calendar days within which to refer the case
108. If the Schools Adjudicator does not uphold the direction the Adjudicator may direct admission to an alternative school.

109. If the Schools Adjudicator upholds the direction the child must be admitted to the school. The school will then need to agree a start date with the child's parents.

Queries

110. Queries regarding the operation of the Protocol should be directed to the Admissions and Transport Services Manager at:

Admissions and Transport Services Manager
School Organisation and Planning
County Hall
New Road
Oxford OX1 1ND
Email: neil.darlington@oxfordshire.gov.uk

111. The non-statutory guidance on Fair Access Protocols can be obtained at:
<http://dfe.gov.uk/aboutdfe/advice/f00217650/fair-access-protocols-advice>

APPENDIX 1

Placement at a school via the Fair Access Panel



