In Year Fair Access Protocol

September 2021

In Year Fair Access Protocol

Purpose

The In Year Fair Access Protocol (known as the Protocol) will ensure that school places for maintained schools and academies are allocated and offered in an open and fair way. Outside the normal admissions round, unplaced children (especially the most vulnerable), must be offered a place at a suitable school as quickly as possible. It is recognised that this action will have a significant impact on both future attendance and achievement.

The School Admission Code which came into force on 1st December 2014 includes a requirement for a Fair Access Protocol (FAP) and describes how it is implemented. This protocol reflects the requirements of the Admissions code. The Protocol must be agreed by the majority of schools and academies and all schools and academies must participate.

The Protocol will be used when a child or young person is identified via the admissions process as IYFA or has not secured a school or academy place through the in-year admission procedures.

The Protocol will also ensure that no school or academy, including those with available places, is asked to take a disproportionate number of children and young people who have been excluded from other schools or academies or who have challenging behaviour.

Once it has been agreed that a child or young person should attend a named school or academy that school or academy must be accountable for that person. There is a collective responsibility to ensure the safeguarding of all young people and we must work together to protect them and act in their best interests. Every young person will be made an offer of an educational place as soon as is reasonably practical and within 30 school days.

Principles – Secondary Schools

It is important to emphasise that, in the vast majority of cases, hard to place children in the categories listed below requiring a school place will continue to be admitted in accordance with the usual admission procedures, rather than through the protocol.

The protocol does not cover the admission of children with an Education Health Care Plan (EHCP) which will continue to be managed through the statutory processes.

All schools, including those who are their own admissions authority agree to admit hard to place pupils. The Fair Access Panel (FAP) will consider a ‘weighting’ for small secondary schools where the impact on small year groups may be considerable.

Schools will not insist on an admission appeal being heard before admitting a child under this protocol. There is no duty for local authorities or admission authorities to comply with parental preference when allocating through the In Year Fair Access Protocol.

Schools will not refuse to admit a pupil who has been denied a place at that school at appeal, if through the protocol The FAP identifies that the school as the one to admit the child.

For a pupil to be placed at a North Yorkshire Grammar School in line with the In Year Fair Access criteria, he or she must also meet the academic criteria for that school. It should be noted that designated Grammar schools are permitted under the Education (Grammar School Designation) Order 1998 to select their intake on the basis. It would be appropriate to expect a short delay in the process to enable a child to access the appropriate selective test.

Wherever possible, pupils with a religious affiliation should be matched to a suitable school. If the school with a religious affiliation has already taken pupils under the protocol in that year group, then the pupil may be offered a place at a different school that doesn't have the religious affiliation.

Admissions agreed between secondary schools under the Managed Moves protocol do not count as places allocated under the protocol. The local authority will collate data on the two schemes separately and make the data available to panels on a regular basis.

Whilst working within the spirit of the protocol local FAP's must use discretion and judgement to achieve the best outcome for the child concerned. For example, one school may have compelling reasons (agreed by the FAP) for not admitting to a particular year group at that time. The school might therefore agree to more pupils in a different year group.

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. Schools following receipt of an application should not request that a pupil be considered as a Managed Move (MM) prior to dealing with such an application.

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.

The Process - Secondary

The Fair Access Protocol must be agreed with the majority of schools in North Yorkshire and all own Admission Authorities must participate in it to ensure that children and young people are allocated a school place quickly.

The operation of the Protocol is triggered when a child is identified as hard to place through the information received, or an eligible child has not secured a school place under in-year admission arrangements. This provision does not apply to children looked after by the local authority; a child previously looked after by the local authority or a child with an Education, Health and Care Plan (EHCP) naming the school in question, as these children must be admitted. (Note 1)

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 assessed for special educational needs.

No school will be asked to take a disproportionate number of children who have been excluded from other schools or who have challenging behaviour. Each FAP will determine an appropriate percentage based on local factors.

A list of children and young people that are 'eligible' to be considered is contained at the end of the Protocol.

The Secondary Protocol will be administered through locality Fair Access Panels. The operation of these Panels is described below.

The Primary Protocol will be administered through Fair Access Panels on an ad hoc basis as described below.

Membership of the Fair Access Panels - Secondary

The Secondary Panels will meet in accordance with the frequency agreed by each collaborative. All locality schools will attend and a representative of these schools who has delegated authority will attend. It may be appropriate that council officers are involved along with outside agencies when they have information that could contribute or assist the decision making process.

It is essential the each collaborative clerk records the responses from the FAP, recording and informing the decisions regarding the destination of students referred to the panel. Allocations will be made to schools, regardless of whether they contribute to the meeting, if appropriate and offers made on the day will be binding unless exceptional circumstances or a safeguarding issue comes to light.

Principles – Primary Schools

It is again important to emphasise that, in the vast majority of cases, hard to place children in the categories listed below requiring a school place will continue to be admitted in accordance with the usual admission procedures, rather than through the protocol.

The protocol does not cover the admission of children with an Education Health Care Plan (EHCP) which will continue to be managed through the statutory processes.

All schools, including those who are their own admissions authority agree to admit hard to place pupils. The Fair Access Panel (FAP) will consider a 'weighting' for small primary schools where the impact on small year groups may be considerable.

Schools will not insist on an admission appeal being heard before admitting a child under this protocol. There is no duty for local authorities or admission authorities to comply with parental preference when allocating through the In Year Fair Access protocol.

Schools will not refuse to admit a pupil who has been denied a place at that school at appeal, if the protocol identifies that school as the one to admit the child.

Wherever possible, pupils with a religious affiliation should be matched to a suitable school. If the school with a religious affiliation has already taken pupils under the protocol in that year group, then the pupil may be offered a place at a different school that doesn't have the religious affiliation.

Admissions agreed between schools under a Fresh Start agreement do not count as places allocated under this protocol. The local authority will collate data on the two schemes separately and make the data available to panels on a regular basis.

Whilst working within the spirit of the protocol local FAP's must use discretion and judgement to achieve the best outcome for the child concerned. For example, one school may have compelling reasons (agreed by the FAP) for not admitting to a particular year group at that time. The school might therefore agree to more pupils in a different year group.

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.

In the event that the majority of primary 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

The Process – Primary

The Fair Access Protocol must be agreed with the majority of schools in North Yorkshire and all own Admission Authorities must participate in it to ensure that children and young people are allocated a school place quickly.

The operation of the Protocol is triggered when a child is identified as hard to place through the information received, or an eligible child has not secured a school place under in-year admission arrangements. This provision does not apply to children looked after by the local authority; a child previously looked after by the local authority or a child with a statement of special educational needs naming the school in question, as these children must be admitted. (Note 1)

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.

No school will be asked to take a disproportionate number of children who have been excluded from other schools or who have challenging behaviour. Each FAP will determine an appropriate percentage based on local factors.

A list of children and young people that are 'eligible' to be considered is contained at the end of the Protocol.

The Primary Protocol will be administered through locality Fair Access Panels which will be convened on an ad hoc basis. The operation of these Panels is described below.

Membership of the Fair Access Panels – Primary

It is expected that the Primary Panels will meet as and when required and the membership would consist of a Local Authority representative(s) and the Head teachers of the preferred school/academy plus other local schools as well as the current school. Other Council officers attending will be from teams within Children's Services - as well as any other team or department within NYCC or outside agencies working with families and young people, to contribute specific information about children and families that they are working with.

Monitoring and Accountability

The school/academy nominated by a Panel will be accountable for the young person once a school place has been agreed at the meeting. Meetings will be held virtually on a weekly basis unless no applications under the IYFA protocol have been received. Meeting dates will be agreed in advance of the academic year. A record of decisions made by either the secondary or primary FAP will be maintained by the Local Authority following each meeting.

Each young person that is referred to the Panel will be discussed individually and the decision will be made by the FAP as to what they determine is in the child's best interests taking parental preference into consideration and the facts of each case. The decision and the reason for it must be clearly recorded. (Note 2)

Clerks of the Fair Access Panels and the Local Authority should all keep a record of the outcomes of the meetings to avoid any disputes and advise of any issues within five school days of distribution.

In all cases the decision made by the FAP will be relayed in writing by the admissions team to the parent/carer of the young person and the school/academy will contact the family to facilitate the admission.

Where a young person is to be offered a school/academy, the school/academy must meet with the parent/carer of the young person and start the admission of the young person no later than ten school days after the FAP meeting.

The Admissions Team will inform parents of the progress of their case until a start date at an educational provision has been agreed. It is then the responsibility of the educational provider to liaise with the parent/carer.

The information received by admissions from the FAP will form an annual report on IYFA admissions. The completed report will be shared with each FAP and will form the basis of the annual report to the Office of the Schools Adjudicator (OSR) which is a statutory requirement on the Local Authority.

Timelines

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 IYFA Protocol. The FAP will act to ensure that schools are held to account for the timeliness of their admissions in line with the IYFA Protocol and must ensure that children are enrolled within the timescales below. Every effort must be made to keep the time out of education to a minimum. Schools agree not to advise parents to:

Remove their child from school and find another school

Remove their child from the roll of the school and Electively Home Educate (EHE)

All schools, including Academies, are expected to respond to requests by the FAP to admit a child under Fair Access Protocols with the aim of securing a place at a suitable school or academy as quickly as possible and although 30 school days is the maximum stated in this protocol our intention is to act as quickly as possible.

In compliance with the Pupil Registration Regulations the Local Authority must notify the school/academy of the date by which the child is to be admitted and on the school roll.

Decision Making

Children and young people will only be referred to FAP who have been identified as eligible based on the information received by the admissions team or where a child has been refused entry through the normal admissions process, any refusal under the normal admissions process must include a full explanation of why the young person cannot be admitted with regard to the prejudice of efficient education and efficient use of resources. (Note 2)

Where a Fair Access Panel judges that a child is not yet ready for mainstream provision, based on the information provided, they will allocate a school roll and will consider which provisions are appropriate. The school is responsible for securing appropriate full-time educational provision.

The decision as to which school/academy will be offered to a child will be taken by the FAP as a whole. Where a Panel fails to make a decision the Local Authority Inclusion officer will ensure that the schools representatives have input into the decision of any instructions and will support a request for direction from the EFA, or local authority, if required.

Children returning from Elective Home Education should be offered a place at the school which they previously attended if appropriate. If the child now lives outside of the previous school's panel area and there is a more appropriate or accessible school within a different area, an alternative should be considered, once the child is back on roll at their previous school unless there are exceptional circumstances which would prevent a return to that school e.g. safeguarding issues, distance

Children returning to an area in which they previously lived, should be offered a place at the school which they previously attended, unless they left due to extended leave when it is up to the Panel to determine if this is appropriate. The Panel may also consider previous

attendance, behaviour and any safeguarding issues in their decision making. This only applies to children continuing in the same phase of education.

Children who are referred to a FAP due to being out of education for two months or more will be referred because they have not accessed any education at all, anywhere.

Local Authority Instruction

If a FAP does not make an offer of a school place, the Local Authority will identify a school/academy to admit the young person taking into consideration the number of young people already accepted by each school under the Protocol and the accessibility of the school/academy for the young person. Consideration can also be given to any other personal circumstances of the young person.

The allocated school/academy may not always be within the Panel area within which the young person lives. (Note 3)

If a school/academy refuses to agree to an 'instruction' from the Local Authority they must put their reasons in writing within seven days. The Local Authority will then consider the reasons given and decide whether or not to issue a direction (community schools) or in the case of Academies refer the matter to the Education Funding Agency (ESFA) using the processes in place to seek a direction.

Children and young people eligible to be considered under the protocol

The list of children included within this FAP includes the following children of compulsory school age who may have difficulty securing a school place:

Mandatory

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; and

g) Children with special educational needs, disabilities or medical conditions (but without an Education, Health and Care Plan).

h) Children permanently excluded from a school or children with fixed term exclusions exceeding 15 days in the current academic year;

i) Children without a school place and with a history of serious attendance problems (i.e. less than 85% attendance)

Locally agreed categories

a) HM Forces children moving into area

b) Children returning from Elective Home Education (EHE)

c) Children that have been missing from education (CME)

d) Children who are permanently excluded who are not placed/referred to the Behaviour & Attendance Collaborative

e) Children whose parents have been unable to find them a place after moving to the area because of a shortage of places within a 'reasonable distance' as defined in legislation.

General application of the protocol

Following consultation it was agreed that the local authority would revisit the protocol in light of discussions and feedback received. The Local authority has amended the protocol to ensure effective integration of children outside of the normal admission rounds who are vulnerable and to ensure compliance of the requirement within the IYFA protocol (admission code 2014).

As part of the discussion and feedback it was clear that a more effective process would be to use a Fair Access Panel (FAP). The FAP would consist of representatives of existing locality schools within existing areas for secondary's and appropriate primary schools based on a geographical area for primaries. Details on how the FAP will operate can be found at annex 1

Transport

Free or assisted transport will be provided to enable a pupil to attend the school agreed by the panel if it is over two miles from home for primary age pupils under the age of 8 and three miles from home for all other pupils. Transport provision will comply with the Home to School Transport Policy.

Financial procedures

Where a pupil is permanently excluded the excluding school must return any remaining Age Weighted Pupil Unit (AWPU) and Pupil Premium (PP) funding for that particular pupil to the Local Authority for transfer to the receiving school.

Cross Border issues

The Local Authority will consult with neighbouring authorities over financial arrangements and equity for pupils who meet the IYFA protocol, and who attend school

in one authority and live in another. It is the home local authority who has responsibility for the IYFA of their pupils.

NOTES:

Note 1

Children who are Looked After by the Local Authority or children who are Formerly Looked After by the Local Authority (in accordance with the School Admissions Code of Practice 2014) must always be admitted to the preferenced school when requested by the legal guardian. The Code applies to all schools regardless of status and these requests are dealt with through the normal In Year Admission process.

Note 2

Admissions undertake background checks with the previous school. On receipt of this information, the Admissions Team will pursue any additional background checks which are needed. This information should provide the FAP with the details required to make an informed decision in the best interest of the child. Details of these decisions should be recorded accurately and retained.

Note 3

It may sometimes be necessary to instruct a school to take a child even if the child does not live in their area. Any instructions will only be made after careful consideration of the child's individual circumstances and in partnership with the Chair of all Panels affected. This recognises that our geographical boundaries
can result in a child having to travel unreasonable distances.

Note 4

The online mid-year admission application form now contains specific questions in respect of IYFA. The protocol seeks to ensure that access to education is secured quickly for children who have no school place but for whom a place at a mainstream school or alternative provision is appropriate.

Questions within the application form include:

a) Has the child had more than 15 day's absence from school? (1)
b) Has the child had a permanent exclusion? (7)
c) Has the child had a fixed term exclusion from any school? (3 points for under 15 days,
   7 points for over 15 days)
d) Has the child received Managed Move from any school? (5)

e) Has there been any other involvement with social care or other public agencies? (3)
f) Is the child home educated? (7)
g) Has the child been out of school more than two months? (7)
h) Is the child currently attending a PRS or has the child previously attended a PRS?(7)

Confirmation of the presence of any difficulties ascertained through the admission questions will be investigated by the admissions team to confirm the accuracy of information provided through contact with the previous school.

An email will be sent to the previous school requesting further information to inform a decision about whether the application should be considered under general admission or the IYFA protocol. There will be a requirement on the previous school to respond within 7 working days.

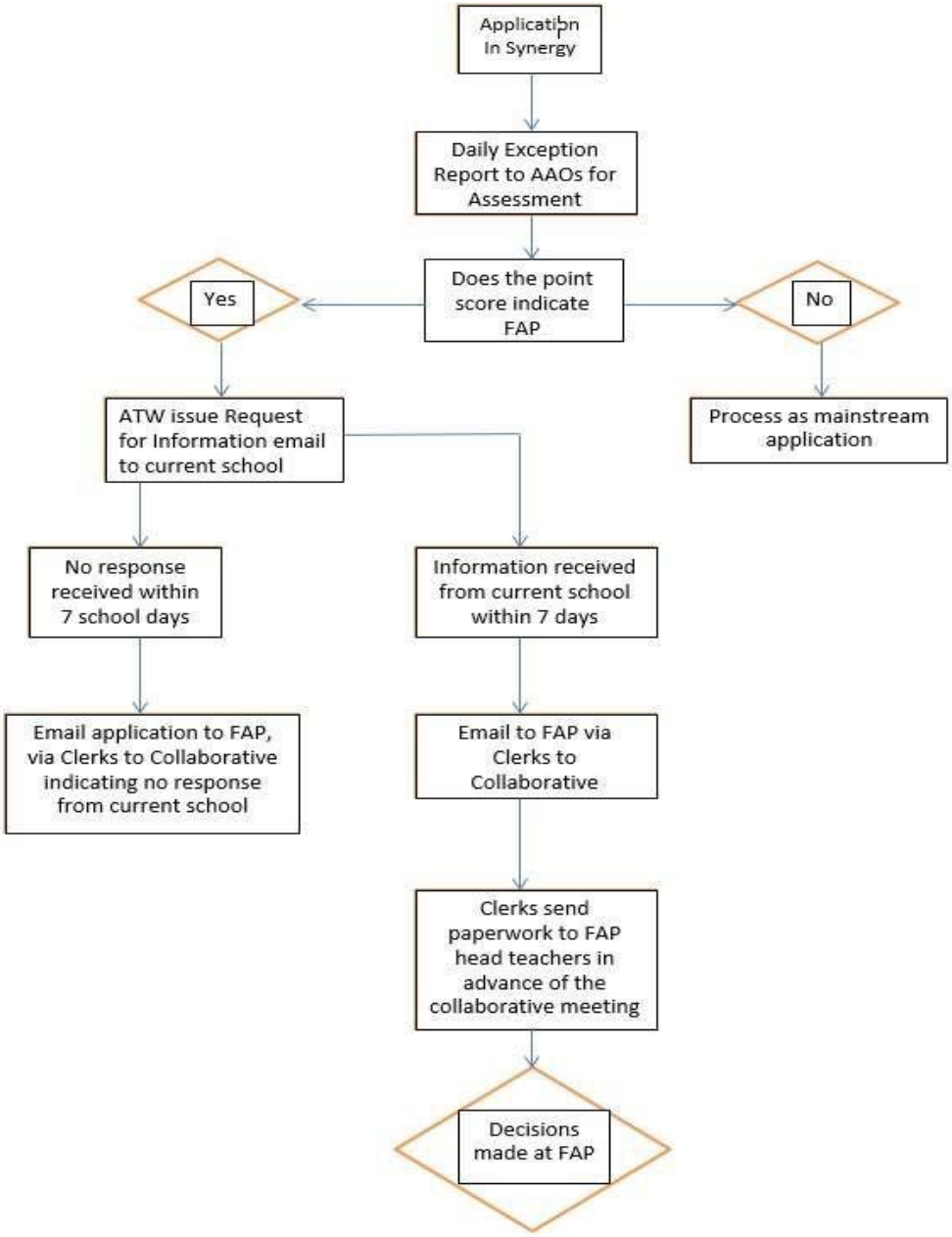
Once confirmation has been received a decision will be made using a point based system. The points allocated for each positive response to the questions above are illustrated by the figures within the brackets. The threshold for applications to be considered by the FAP is 7 points or more.

Admissions will send all supporting evidence to the Collaborative Clerks for the secondary FAP via secure email who will compile the agenda for the FAP and circulate to all members in advance of the meeting. For primary schools this information will be forwarded direct to the schools, within the identified geographical area. This again will be done via secure email.

Applications identified under the protocol will be considered by the Fair Access Panel (FAP) who will decide to offer a place at either the requested or alternative school.

For secondary schools the collaborative clerk will collate a record of decisions and return this to the admissions team within 5 days of the meeting. For primary schools, this record will be made by the Local Authority representative attending the meeting. Following receipt of the record of decision and confirmation that there is no dispute in the decision made the admissions team will allocate to the school indicated and inform parents via letter with a copy also being sent to the allocated school for information.

Appendix 1 – Flow chart

Annex 1

Fair Access Protocol Flowchart (FAP)