

London Borough of Bexley

Fair Access Protocol (Secondary) February 2021

Introduction

The original Bexley Secondary Fair Access Protocol (FAP) was established in October 2009. The November 2020 version reflects the latest Fair Access Protocols in school admissions and head teachers agreed recommendations following a review of protocol in 2018.

The protocol operates within the legislation for in year fair access status of pupils and Schools Admissions Code (DfE Department Advice] 28 November 2012, updated 28 February 2014, the School Admissions Code [DfE Statutory Guidance] 19 December 2014, updated 17 September 2015 and School Admissions Appeals Code [DfE Statutory Guidance] 1 February 2012.

All changes to the FAP protocol must be as a result of consultation with school leaders, including the alternative provision (AP) and the local authority (LA), and have secured a majority agreement.

The protocol is signed by all head teachers and the Director of Children's Services for Bexley.

Other key documents which underpin this protocol are:

- Memorandum of Understanding (MOU) between Bexley Local Authority and Horizons Academy (HA) and refocus programme and long-term places HA documentation.
- Exclusion from maintained schools, academies and pupil referral units in England (2017).

The Purpose of the Secondary Fair Access Protocol (Panel) (SFAP)

- The purpose of Fair Access Protocols is to ensure that - outside the normal admissions round unplaced children, especially the most vulnerable, are found and offered a place as quickly as possible within 15 days, so that the amount of time any child is out of school is kept to the minimum. This is why every local authority is required to have in place a Fair Access Protocol, developed in partnership with local schools.
- The School Admissions Code 2014 (in particular, paragraphs 3.8, 3.13, 3.9 to 3.23) gives local authorities and schools, including Academies of all types, the freedom to develop and agree Protocols which best serve the needs of children in their area.
- Neither the Code, nor the Departmental Advice, attempts to prescribe the structure or detailed content of Protocols. It is for participating schools to ensure that the local Protocol works for them but meets current legislation in relation to ensuring that all pupils are given equal rights to placements within mainstream schools. FAP Protocols do not apply to children and young people who have EHC Plans for whom school placements are determined through the SEN Panel.

Principles

The Bexley Fair Access Panel is accepted as the highest decision-making body in the area of fair access. This is unless the Secretary of State is required to intervene when there is a dispute around the placement of a child that a school feels that the FAP did not resolve. In this case the SOS would become the highest decision-making body for this dispute.

- Every local authority must have a Fair Access Protocol, agreed with the majority of its schools, in which all schools (including Academies) must participate since it is binding on all schools. A signed copy will be sent to all schools for reference.
- The majority of schools must be in agreement of the decision made by the fair access panel in order for placements to be allocated in a fair and transparent manner.
- The panel will be mindful of placing children in schools which are facing exceptional circumstances, such as if they are in the “Inadequate” category or a newly established school operating in its first year. However, such schools may reserve the right to opt into the process if they so wish.
- In order for the panel to make appropriate decisions on the best placement for a child, all information relating to this child should be openly sought from the referring service, this should include school reports, behaviour reports, all details surrounding around previous exclusions, child and parent views any other information relevant to the child. The LA will seek information from parents in circumstances such as new to borough/country, EHE etc.
- At each panel meeting SFAP placement data should be shared with the panel alongside school vacancy information. There is no legal obligation for schools to share vacancy information, however within Bexley our primary aim is to work in partnership with schools to place students within a reasonable timeframe to ensure their time out of school is minimised and as well as reduce the caseload from admissions coming to the Fair Access Panel. Creating a child focused solution approach.
- Schools (including Academies) should work together collaboratively, taking into account the needs of the child and those of the school. There is no duty to comply with parental preference when allocating places through the Protocol but it is expected the wishes of the parents are taken into account.
- The panel of Head teachers may choose to send a representative from their school/academy, these representatives will have autonomy to make decisions in order to avoid unnecessary delay in placing a child. Head teachers choosing to opt out of attendance should accept the decision of their representative at the panel.
- When seeking to place a child under a Protocol, all schools should be treated in a fair, equitable and consistent manner.

- 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.
- An application to direct from the Secretary of State (SoS) should only be requested as a last resort.
- The SoS will base the decision having regard to whether due process, in line with the locally agreed provisions in the Fair Access Protocol as well as along with national agreed legislation, has been applied appropriately.
- 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 for as long as it is within nationally agreed legislation. An annual check will occur to ensure all schools are in agreement.

Decision Making

The DfE document says 'there is no duty to comply with parental preference when allocating places through the protocol but it is expected the wishes of the parents are taken into account.'

1. The panel should make every effort to consider the parents /carers wishes. Where a parent makes a request for a particular school not to be offered, the panel will give due regard to the reasons why the parent feels it would not be appropriate to offer a place to the child at that school as part of their decision making. The panel may not agree with the parental preference and will set out reasons for the decision taken either-to support or reject the request.
2. However, no child will be placed in a school/Academy that has been judged by Ofsted in the last six months to be Inadequate following a Section 5 inspection or Section 8 monitoring visit/one-day visit.
 - The panel will consider all information available and the child's individual circumstances to make an informed decision as to what school would best meet the child's needs.
 - Schools should not cite oversubscription as a reason for not admitting a child under SFAP. However, schools may be required to admit over numbers in line with a fair allocation of children.
 - Although parental preference will be considered, it should not override the principle that ALL schools must admit their fair share of children with behaviour that challenges.
 - The panel must be mindful of previous SFAP placements to ensure that the allocation of children is equitable and fair across all schools.

- In the case of children being presented to SFAP who have been out of school due to a sudden move within the current academic year. The panel will ask the previous home school within Bexley to place back on roll as this school will still hold all of the records for the child and will aid a smooth transition back in local education.
- In the case of a child who has previously been declared as EHE. The panel will ask the previous home school within Bexley to place back on roll as this school will still hold all of the records for the child and we aid a smooth transition back into local education.
- A child will not be placed at a school/Academy that they have been permanently excluded from in the past.
- A child will not be placed at a school/Academy where there has been a previous unsuccessful managed move or reintegration.

Timing

- 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 Fair Access Protocol and work within the stated timeframes of the next expected FAP meeting.
- Permanently excluded children should be allocated to the receiving school at a panel meeting following a period of at least a month whilst placed at Horizons Academy enabling a long enough period of assessment to take place and a thorough presentation of the student to the panel. They will then be added to the FAP monitoring register held by the local authority.
- Permanently excluded children will be referred to FAP for a school place to be named at the first panel following the date of exclusion (adherence to timescales around the submission of paperwork in advance of the meeting would still apply).
- For children where violence or threatening behaviour has arisen, the school and AP should jointly complete a risk assessment and management plan as part of the reintegration. Where a parent refuses an AP place, the risk assessments should be undertaken by the school with assistance from the LA in helping to obtain relevant information from statutory services.
- All schools, including Academies, are expected to respond to requests by local authorities to admit a child under Fair Access Protocols within 7 working days.
- Before deciding to issue a direction to a School/Academy, a local authority must consult the Headteacher, governing body of the school, the parent, 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 head teacher / principal of the school.

- The governing body of a maintained school can appeal by referring the case to the Schools Adjudicator within 15 calendar days. Similarly, it is expected that an Academy/School will agree a starting date for the child or set out its reasons for refusal in writing to the local authority within 15 school working days.
- If an Academy/School has not agreed a start date for the child within 15 working days, the Local Authority can apply for a direction from the SOS via the Education, Skills and Funding Agency who acts on the SOS behalf in these cases.
- When a child is deemed to have grammar school potential, the identified grammar school should test the child within 5 school days of the Fair Access Panel. Fair Access Panel Chair is empowered to take Chair's action between meetings.

SEE APPENDIX ONE: Local authority powers of direction

Students covered by this Protocol

- The list of children to be included in a Fair Access Protocol is to be agreed with the majority of schools in the area but must, as a minimum, include the following children of compulsory school age who have difficulty securing a school place:
 - children from the criminal justice system or Pupil Referral Units who need to be reintegrated into mainstream education;
 - children who have been out of education for two months or more;
 - children of Gypsies, Roma, Travellers, refugees and asylum seekers;
 - children who are homeless;
 - children with unsupportive family backgrounds for whom a place has not been sought;
 - children who are carers and
 - children with special educational needs, disabilities or medical conditions (but without a statement or Education, Health and Care Plan).
- The Fair Access Panel will not consider the placement of any child who, at the time of referral to the Panel, is engaged in an appeal for a place at a secondary school and for whom the appeal process has not concluded.
- Students with EHCPs or statements are not covered by this protocol as their needs must be considered separately under the SEND Code of Practice.

LONDON BOROUGH OF BEXLEY

FAIR ACCESS PROTOCOL (SECONDARY)

PROTOCOL FOR THE ADMISSION OF HARD TO PLACE CHILDREN PROCEDURES

1. General

Once a pupil has been identified as hard to place, requests for admission through the protocol may come from a number of different sources e.g. Horizons Academy or the children's social care. To ensure that the same school is not approached by different services areas the School Admissions Service will be responsible for co-ordinating admissions through the protocol. The process will be as follows:

- The person responsible for seeking re-admission of a hard to place pupil will contact the School Admission Service to notify them of the need for a placement under the Fair Access Protocol.
- The person responsible for seeking re-admission of a hard to place pupil will also obtain from the previous school or Horizons Academy, detailed information about the child to be admitted under the protocol, which should include the name and contact details of a member of staff at the previous school or provider who can respond knowledgeably to further enquiries about the child. All information needs to be made available to the Head Teachers' SFAP panel and then onto the receiving school.
- The Head Teachers' SFAP Panel will make decisions on a case-by-case basis at their regular meetings and the School Admissions Team will be informed of their decisions.
- The local authority will notify, in writing, the School expected to admit the child and the parents of the child of the decision made at Fair Access Panel meetings. The local authority will notify, in writing, the school expected to admit the child and the parents of the child of the decision made at Fair Access Panel meetings within three working days.
- The Head Teachers/Principals of all schools, including Academies, are expected to respond to requests by local authorities to admit a child under Fair Access Protocols within seven working days.
- The receiving school is expected to agree a starting date for the child or set out its reasons for refusal in writing to the local authority within 15 term schools days in line with schools term dates and holidays scheduled.
- Children from the criminal justice system or pupil referral units who need to be reintegrated into mainstream education.

Permanently Excluded Pupils

- Bexley permanently excluded pupils are referred to New Horizons, which makes provision from the 6th day after the decision to exclude, although these pupils must remain on the roll of their mainstream school until the review period has expired.
 - The school must make available the pupil's file to Horizons Academy by the 6th day following exclusion and complete the Horizons Academy referral form at the point of exclusion to ensure appropriate information is passed over in a timely manner in advance of the pupil starting their placement. The excluding school must also make a referral to Family Wellbeing Service at the same point as their referral to Horizons Academy.
 - Horizons Academy will assess learning/behaviour needs and put in place specific programmes to address them during the fourteen-week placement whilst, at the same time, raising the pupil through the next FAP following 1 month after admission to Horizons, for identification of a new school placement.
- a) Reintegration will be the expected route for the vast majority of children and young people in Years 7-10 who have been permanently excluded. Permanently excluded pupils will remain at Horizons Academy for a maximum of fourteen weeks in almost all instances in Key Stages 1-3, however transfer to the new school may be suitable at any stage of the fourteen-week programme.
- b) Where referral paperwork states that the pupil would benefit from assessment through the Education and Health Care Plan process, the excluding school will be contacted to initiate this process immediately in partnership with current provision as well as following up on any application already in the system. Educational Psychology reports should be provided or initiated by the excluding school in partnership with current provision.
- When Horizons Academy is seeking re-integration into mainstream a Re-integration Plan will be agreed with the receiving school, including in-school support. This is a collaborative agreement which involves all parties agreeing the package of support in advance of reintegration through the review and reintegration meetings. All support is bespoke and involves joint decision-making between Horizons Academy Outreach Team and the new school.
 - The period of re-integration will be followed by review meetings at weeks 1,3 6,9 and 12.
 - The period of re-integration will normally be regarded as a supported period. The pupil will be registered, solely as any other pupil who is Hard to Place as single roll to the school identified through the FAP process. Any return to Horizons academy will be considered through the normal route, Horizons fortnightly referral panel and any discussions

regarding extension in school reintegration support may be discussed with the Horizons Academy Head of school.

- The excluding school will pass the remainder of the 'age-weighted pupil unit' (AWPU) for that financial year to the LA.
- The Admission Officer will notify Horizons Academy of the decision of the Governors Disciplinary Panel. The pupil will remain on the mainstream school roll until this date, but will transfer to the roll of Horizons Academy during subsequent processes, including Independent Review Panels, First Tier Tribunals and any County Court processes until they are dual roll with the reintegrating school which is identified through the FAP process within the first weeks of the placement. New Horizons will during this time provide an intervention programme over a fourteen week period and coordinate assessments, reports and recommendations to support the reintegration package.

Pupils in Youth Custody

- The Youth Offending Service (YOS) will arrange an initial sentence planning meeting at the Secure Training Centre/Youth Offending Institution with the pupil, the YOS Worker and a range of relevant professionals. These meetings must take place within 10 working days of the pupil entering youth custody. Parents and carers should also be encouraged to attend. Further review meetings will be held at the one month stage and not less than three monthly (depending on the length of the sentence).
- The sentence planning meetings must ensure that the views of education colleagues from the home area are represented. Relevant education staff from the secure establishment should also contribute. All young people within the secure estate and parents or the person in charge of the establishment have a right to request an EHC needs assessment from the home local authority and the YOS will ensure these rights are explained.
- The sentence planning meetings will identify any issues relating to the provision of education following release from custody. It is important that appropriate educational provision has been identified before the resettlement review meeting, which should take place to ensure that all arrangements are proceeding to plan to access or return to educational provision on release at the final review meeting.
- The following principles have been established to determine educational provision following release:
 - Pupils in secure accommodation should not be taken off roll
 - If the pupil has been removed from the roll and it is considered to be appropriate for the pupil to be re-admitted, the previous school will be approached by the YOS Education Worker.

- If a place is available, the pupil will be re-admitted with appropriate support.
- If a place is not available, school place will be identified through the FAP and appropriate reintegration support will be offered by the YOS.

Other Pupils

For all other pupils who are not hard to place, the expectation is that an application for a school place will be submitted in the normal way and the normal admission procedures will apply.

The Fair Access protocol does not replace the normal arrangements for in year admissions as follows:

- an in year admission applies directly to the academy/school;
- the academy/school will follow their normal admissions process, either confirming a place or advising the parent/carers that their application has not been successful;
- if the pupil is unsuccessful in securing a place, parents/carers will notify the School Admissions Service to deal with the matter as quickly as possible, whereby the application will be sent to relevant schools/academies who will respond within 7 working days with a yes / no decision;
- if there is no admission appeal with any school/academy and the pupil has not been assigned a school, the case is presented to FAP the Local Authority for consideration;
- if there is not a successful outcome at FAP, the Local Authority will proceed with the direction process (see Appendix I);
- where a child moving into the area is hard to place due to a history of behavioural issues and pattern of exclusions resulting in long periods of time out of education, consideration should be given to identifying a school and securing support through Horizons Academy Outreach Team or accessing a refocus programme placement as a means of assessing the child appropriately before reintegrating back to mainstream with support. However, this does not mean that a new school place is on hold and a place must be identified following the first month on role at Horizons to the next FAP in order that there are clear reintegration plans from the outset. No pupil should be refused a school place based on potential risk or possible future behaviours.

Decision Making Process to allocate a school place via Fair Access Panel





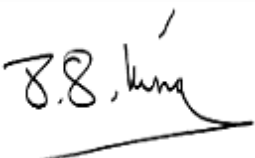
- Consideration will also be given to the number of placements through the Fair Access Protocol that a school/Academy has already accepted during a 12-month period.
- Where the panel is unable to make a decision regarding placement in a school / academy, the Local Authority will start the process of direction. Refer to Appendix 1.

The role of the social worker attending Fair Access Panel is:

- to listen to and carefully consider the cases that have been brought to Panel and the reasons why they are being presented
- where there is evidence of a safeguarding concern, advise the panel that the school should make a referral to Children's Social Care or Family Wellbeing Service.
- where the identities of children to be presented to panel are known before the meeting, to endeavour to ascertain whether they are known to Children's Social Care so that non-confidential information can be passed to the school accepting the child e.g. the name of the social worker, the team, the named manager and contact details.
- to pass on to the Children's Social Care team any Information about a child, and the family circumstances, where there is an open case or the family are known to the Family Wellbeing Service, and the child had been excluded or is at risk of exclusion.

Signatories to this protocol are listed on the next page (11).

Signatories of the Secondary Fair Access Protocol February 2021:

	Signature: Director of Children's Services London Borough of Bexley	Date:
School	Signature	Date
Beths Grammar School	 Richard Blyghton, Headteacher	29/03/2021
Bexley Grammar School	 Stephen Elphick, Headteacher	15/02/2021
Bexleyheath Academy	 Graeme Napier, Principal	09/03/2021
Blackfen School for Girls	 Matthew Brown, Headteacher	03/03/2021
Chislehurst and Sidcup Grammar School	 Ms J King, Senior Deputy Headteacher	16/03/2021

Cleeve Park School	 Alex O'Donnell, Executive Headteacher	09/03/2021
Haberdashers' Aske's Crayford Academy		
Harris Academy Falconwood	 Luke Anderson, Assistant Principal	29/03/2021
Harris Garrard	 Steve West, Head of Academy	25/04/2021
Horizons Academy	 Beverley Evans, Executive Head Teacher  Martin Travis, Head of School	11/03/2021 11/03/2021
Hurstmere School	 Lynn Bennett, Principal	22/03/2021
King Henry School	 Robert Leith, Headteacher	26/03/2021

St Catherine's Catholic School for Girls	 Ursula Norbert, Interim Headteacher	19/04/2021
St Columba's Catholic Boys' School	 Nigel Fisher, Headteacher	09/03/2021
Townley Grammar School for Girls	 Nevita Pandya, Headteacher	18/03/2021
Trinity Church of England School	 Simon Godden, Principal	29/03/2021
Welling School	 Rob Pett, Headteacher	22/04/2021

This Bexley Fair Access Protocol was adopted on _____

To be reviewed in 12 months _____

APPENDIX 1

Local authority powers of direction (general)

3.16 A local authority has the power⁶⁷ 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 sixth-form that selects by ability unless the child meets the selection requirements, or 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.

3.17 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 head teacher 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.

3.18 If the case is referred to the Adjudicator, the Adjudicator may either uphold the direction or determine that another maintained school must admit the child. The Adjudicator's decision is binding. The 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.

- *67 Sections 96 and 97 of the SSFA 1998.*

Local authority powers of direction (looked after children)

3.19 A local authority also has the power⁶⁸ 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 69.

3.20 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 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.

3.21 If the case is referred to the Adjudicator, the Adjudicator may either uphold the direction or determine that another maintained school in England must admit the child. The Adjudicator's decision is binding. The Adjudicator must not direct an alternative school to admit a child unless the local authority that looks after the child agrees, nor if the child is permanently excluded from that school, nor if the admission of the child would seriously prejudice the provision of efficient education or the efficient use of resources.

Secretary of State's power of direction (Academies)

3.22 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 (SOS) to intervene. The SOS has the power under an Academy's Funding Agreement to direct the Academy to admit a child, and can seek advice from the Adjudicator in reaching a decision⁷⁰.

- *68 Sections 97A-C of the SSFA 1998.*
- *69 Looked after children are excepted pupils outside of the normal admissions round under the School Admissions (Infant Class Sizes) (England) Regulations 2012.*
- *70 Section 25(3A) of the SSFA 1998.*