

# Shropshire Fair Access Protocol for Admission to Schools

## 1.0 Introduction

Fair Access Protocols exist for those children who cannot obtain a place through normal in-year admissions procedures. The Department for Education (DfE) requires all local authorities (LAs) to have a Fair Access Protocol.

This Protocol has been consulted on with head teachers and has been agreed with the majority of schools in Shropshire Council's area. It exists to ensure that access to education is secured for children without a school place, for whom a place at a mainstream school/ alternative provision is appropriate, and to ensure that all schools in an area admit their fair share of children with challenging behaviour or who have been excluded from other schools.

To assist in the smooth operation of the Protocol, panels that include Head Teachers should meet on a regular basis to discuss individual pupils and partnerships. Relevant data should be shared with all schools and academies so that the process is transparent.

## 1.1 Legislation

The latest revision of the School Admissions Code came into force in February 2012 and restates the principles and scope of the Protocol introduced in April 2006. All admission authorities must participate in their local authority's Fair Access Protocol. Where Shropshire's Protocol refers to 'schools' this relates to all state funded schools including academies and free schools.

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 naming the school in question, as these children **must** be admitted.

## **2.0 Operating the Fair Access Protocol**

The aim of this Protocol is to ensure that all unplaced children, but especially the most vulnerable, are offered a place outside the normal admissions round at a suitable school as quickly as possible.

### **2.1. Categories of children to be included in the Protocol**

The following is a list of children of compulsory school age to be included in Fair Access Protocols. Children in criteria a-g are a statutory requirement of the School Admissions Code but those in categories h-n may also have difficulty securing a school place:

<b>Categories of children to be included in the Fair Access Protocol</b>	<b>Level 1</b> Usual In year Admissions Process	<b>Level 2</b> In Year Admission under Fair access-placement by Shropshire Council Admissions or other Team	<b>Level 3</b> In Year Admission for placement by the Fair Access Panel
a. children from the criminal justice system or Pupil Referral units who need to be reintegrated into mainstream education			x
b. children who have been out of education for two months or more		x	
c. children of Gypsies, Roma, travellers, refugees and asylum seekers		x	
d. children who are homeless		x	
e. children with unsupportive family backgrounds for whom a place has not been sought i.e. families working with Children's Social Care or Health professional		x	
f. children who are carers		x	
g. children with special educational needs, disabilities or medical conditions (but without a statement)		x	
h. children whose parents have been unable to find them a place after moving to the area and there is in the opinion of the LA no other reasonable alternative schools.			x
i. children who have to move school because of domestic violence (whether staying in a refuge or with friends/ other relatives).		x	
j. Permanently excluded pupils		x	x
k. Students of Year 11 age or in last term of Year 10 but not permanently excluded.			x
l. Children with challenging behaviour.*		x	x
m. children who arrive in Shropshire having previously accessed alternative provision such as tuition services and do not have a statement			x
n. children in previous level not successfully placed		x	x

\*Children with challenging behaviour in category I above applies when a pupil is subject to intervention involving the Inclusion Services Team such as Pupil Planning meetings to prevent permanent exclusion.

Where children remain unplaced their application may be raised a level to secure a placement.

### **3.0 Fair Access Protocol Arrangements**

Applications for the year of admission i.e. into Reception, Year 3 in Junior Schools, or Year 7 in Secondary Schools are coordinated centrally by the Admission Team in accordance with the agreed criteria set out in the Parent's Guide to Education in Shropshire booklet published annually in September. Generally such children will pose no problems of allocation.

Difficulties may arise when a request is made for a school place mid-term. If a school has places available within its Admission Number for the relevant year group, (with the exception of a child with a Statement of Educational Needs,) a school is expected to admit the pupil. In certain circumstances, where a child was previously excluded or has challenging behaviour\* as defined above, schools with a high proportion of behavioural issues\*\*, the school is not required to admit the pupil, even if there are vacancies, but may refer the case to the LA for consideration under this protocol. The admission of children with a Statement of Special Educational Needs must only be arranged after consultation with the Council's Special Education Needs Service.

\*\* Schools will be considered to have a high proportion of behavioural issues if their fixed-term exclusion percentage (in terms of NOR) places them in the top 2 of Shropshire secondary schools or the top 5 of Shropshire primary schools in the previous academic year.

#### **Principles**

The following principles will need to be applied across every school:

- all schools will be required to participate and be fully committed to the protocol;
- pupils who apply for a school place under local admission arrangements will continue to be admitted by schools up to the admission number, with the exception only of pupils with Statements of Special Educational Needs issued by Shropshire Council whose admission will be dealt with by the Special Education Needs Service.
- schools should not insist on an appeal being heard before admitting a child under this protocol and would be expected to respond immediately to requests for admission so that the admission of a pupil is not delayed;
- schools cannot cite oversubscription when asked to admit a pupil under the protocol;
- where the school is identified by the LA or Fair Access Panel as the one which would best meet the needs of a child's circumstances and the school refuses to admit the child, the appropriate powers of direction to admit the pupil will apply.
- Where a school is directed to accept a pupil, there will be no additional funding other than through the normal funding arrangements for pupils counted on roll on the previous October's School Census.

- Pupils who fall within this protocol will have priority over any pupils on a waiting list or awaiting an admission appeal, regardless of the school being over-subscribed.

The Fair Access Protocol is not a means for admission authorities to avoid their legal responsibilities to meet parental preference. Therefore, where a parent requests a school place and the school has a vacancy in the relevant year group there is no need for the application to be referred under the Fair Access Protocol unless the requirements set out in para 2.1 apply.

If the school is oversubscribed in the relevant year group, a decision must be made whether or not to admit above the admission number. If the request for admission is to be refused, the applicant must be informed (by the admission authority) of their right to appeal and the applicant should be referred to the Admissions Team, who will provide information about alternative places available. Consideration will also be given as to whether a placement is required through the Fair Access Protocol.

There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Policy. The parents of a child refused admission under the Protocol, still has a right of appeal to an independent admission appeal panel.

When a child has not been placed but referred to the local authority, consideration will be given to placement under level 2 of the Fair Access Protocol (if Level 3 does not automatically apply). Due to the rural nature of Shropshire Council's area, it may be appropriate to secure a place at the catchment school, particularly if any of the following apply:

- The child is resident in the catchment area and there is a place for another sibling in the family in a different year group at the same school;
- It would be unreasonable for the pupil to travel if he or she were required to attend another school and/or the LA considers that the cost of transporting the pupil to another school would be unreasonably high;
- The child is Looked After and residing in Shropshire;
- The school can provide the best match for subjects already being studied by pupils in their GCSE years i.e Years 10 and 11
- Where the LA is satisfied that there are medical circumstances which make it essential for a child to attend a particular school;

**Level 1:** Standard In-Year Admissions Procedure

**Level 2:** In Year Admission Procedure under Fair Access (Refer to local authority)

**Level 3:** In Year Admission Procedure under Fair Access (Refer to Panel)

For children considered under level 1 usual In Year Admission procedures apply. For children considered under level 2 the Local Authority will request a school place demonstrating fair and equitable share. The appropriate team, usually the Admissions Team, with the Team Manager or Business Support Manager will determine the placement, taking account of the circumstances of the individual pupil bearing in mind concerns from schools about admission and seeking to protect any one school from a disproportionate number of placements of children with challenging behaviour. In deciding a placement every effort will be made to ensure that transport arrangements, which may be the responsibility of parents, are reasonable and cost effective.

### **3.1 Fair Access Panel**

Children considered under level 3 will be referred to the Fair Access Panel for the determination of a school place with a supported planned integration if necessary. The panel will take account of the circumstances of the individual pupil, as well as which school will be best able to meet their needs, bearing in mind concerns from schools about admission and seeking to protect any one school from a disproportionate number of placements of children with challenging behaviour. Consideration will also be given to specific factors such as whether a school is in special measures. In deciding a placement, every effort will be made to ensure that transport arrangements, which may be the responsibility of parents, are reasonable and cost effective. If the panel agree the pupil is not ready for admission to mainstream school, alternative provision may be offered to parents.

The role of the Fair Access Panel is to consider level 3 cases and those children who have been permanently excluded and due to dispute or non-resolution have not been admitted to a new school. The panels will also monitor the number of Fair Access placements (see appendix 2 for Terms of Reference).

### **4.0 Looked After Children**

This provision will not apply to a looked after child or a previously looked after child as these children **must** be admitted. Due to the individual needs of Looked After Pupils, all admissions to schools for Looked After Children will be carefully managed by Shropshire Council's Head of the Looked after Children Education & Health Team. Where pupils are hard to place the Head of the Looked after Children Education & Health Team will deal directly with the school, meeting when appropriate with key staff, social care and safeguards staff and carers, to ensure placements are made according to need and to support stable care. Top priority is given to Looked after Children, residing within the Local Authority's area, whether or not they live in the defined catchment area for a particular school. There may be social reasons for not placing a child in their catchment area school, but at an out of area school. Any placements should be made as quickly and as smoothly as possible. Powers of direction as specified in the School Admissions Code will apply.

### **5.0 Permanently Excluded Pupils**

Where a permanently excluded pupil is deemed unready for re admission then the LA will consider the need to request an assessment of that child's needs either through TMBSS or i.e. from Child and Adolescent Mental Health Services, (CAMHS), Education Psychology Service (EPS), etc.

- Schools cannot direct parents to remove their children from the school unless a formal permanent exclusion has been made.
- Parents will still have the right to appeal to an Independent Panel, but information will be given to that panel if a more appropriate school has already been identified for the pupil.
- A school will not automatically be required to take another child with challenging behaviour in the place of a child excluded from the school.

**Aims:**

- to ensure the swift and efficient placement of pupils who have been excluded permanently into new provision within given timescales, i.e, by the sixth day of exclusion);
- to ensure no school - including those with available places - is asked to take a disproportionate number of children who have been excluded from other schools, or who have challenging behaviour<sup>1</sup>.
- to implement an open and transparent process for these admissions.

**Process:**

1. The decision to exclude a pupil should only be taken in response to a serious breach or persistent breaches of the school's behaviour policy and where allowing the pupil to remain in school would seriously harm the education or the welfare of the pupil or others in the school.

Where practical the Head teacher should give the pupil an opportunity to present their case before taking the decision to exclude. The head teacher should also take into account any contributory factors e.g. bereavement, mental health issues or bullying and also be able to demonstrate that it has done everything possible to modify the behaviour through the implementation of a range of strategies including the assistance of external professionals.

2. The Head teacher notifies the inclusion Officer within the Education Access Service to discuss the incident and, where appropriate, consider possible alternatives to permanent exclusion.

3. After exhausting all other strategies, if the decision is made to exclude pupil permanently the Head teacher will email through to The Education Access Service a copy of the letter sent to parents to inform them of the permanent exclusion. The headteacher should also make immediate contact with the parent/carer to inform them of and discuss the decision.

4. On receipt of letter the Inclusion Officer in consultation with the Inclusion caseworkers will agree on the appropriate way forward taking into account any relevant circumstances, e.g., it would not be appropriate to place a pupil with another previously excluded pupil from the same school if they have links with each other or with other pupils with whom they socialise in a negative manner.

5. The inclusion clerk contacts parents explaining the next steps and giving them a list of schools which are appropriate and where places have been agreed with the head teacher. This contact makes an offer of a placement at any of the schools with vacancies as agreed between The Inclusion Service and head teacher. (The Local authority has to make an offer to enable pupil to start their new school by the 6<sup>th</sup> day of exclusion from September 2007. Parents do not always wish to take up the offer and may appeal for reinstatement or appeal for a place at a school which is oversubscribed.) Whilst the offer is made regarding a specific school, this protocol cannot override the parents' right to state a preference, and if necessary appeal, for a school of their choice. However, the Appeal Panel will be informed of any other offer made through the protocol which the parent has refused to accept.

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<sup>1</sup> challenging behaviour will normally be defined as serious criminal breakdown resulting in a conviction or a police caution; behaviour resulting in a permanent exclusion or behaviour resulting in a significant number of fixed term exclusions from which it is clear that the pupil is at serious risk of permanent exclusion

6. Letter copied to the Inclusion Caseworker who makes a home visit within 3 days to discuss next placement with parent. Parent accepts school offered or states a preference for an alternative school. The Inclusion Officer may also contact parent to discuss pupil's needs.

7. If parent states a preference for another school, the inclusion caseworker approaches the preferred school and arranges meeting within a maximum of five working days from the exclusion and if possible and requested will accompany parent to the meeting. Transport will normally only be offered to the next nearest school and will be subject to normal distance criteria.

8. Ideally the pupil should begin their new school on or before 6<sup>th</sup> day of exclusion. However there may sometimes be a delay in order to ensure the appropriate placement of pupils according to their specific needs.

9. Schools should try and avoid excluding pupils in Yr. 11 unless an extremely serious offence has been committed. If the pupil cannot continue at their existing school, an alternative programme should be sought, bearing in mind that there can be flexibility within local arrangements for examination entries. Given the pressure on schools with regards to examination results and league tables, the following arrangements could be considered when negotiating a transfer of a Year 11 pupil:

10. The pupil could remain registered at their original school and be recorded as Educated off site. Examinations would be taken at the new school, but results for these pupils would be retained by the original school and reflected in their submission to the DFE. This can be easily achieved through existing mechanisms for transferred candidacy

In the event of dispute/non resolution the issue may be referred to the Fair Access Panel.

## **6.0 Powers of Direction**

### **6.1 General**

(For Academies – see 6.2)

- A local authority has the power<sup>63</sup> to direct the admission authority for any maintained school in its area to admit a child even when the school is full.
- The local authority can only make such a direction in respect of a child in the local authority's area who has been refused entry to, or has been permanently excluded from, every suitable school within a reasonable distance.
- The local authority must choose a school that is a reasonable distance from the child's home and from which the child is not permanently excluded.
- It must not choose a school that would have to take measures to avoid breaking the rules on infant class sizes if those measures would prejudice the provision of efficient education or the efficient use of resources.
- Before deciding to give a direction, the local authority must consult the governing body of the school, the parent of the child and the child if they are over compulsory school age.
- If, following consultation, the local authority decides to direct, it must inform the governing body and 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.
- 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.

## 6.2 Academies

- Where a local authority or Fair Access Panel considers that an Academy will best meet the needs of any child, the local authority can ask the Academy to admit that child but has not power to direct it to do so.
- The local authority and the Academy will usually come to an agreement, but if the Academy refuses to admit the child, the local authority can ask the Secretary of State to intervene.
- The Secretary of State has the power under the Academy's Funding Agreement to direct the Academy to admit a child and can seek advice from the Adjudicator in reaching a decision.

## **Contact**

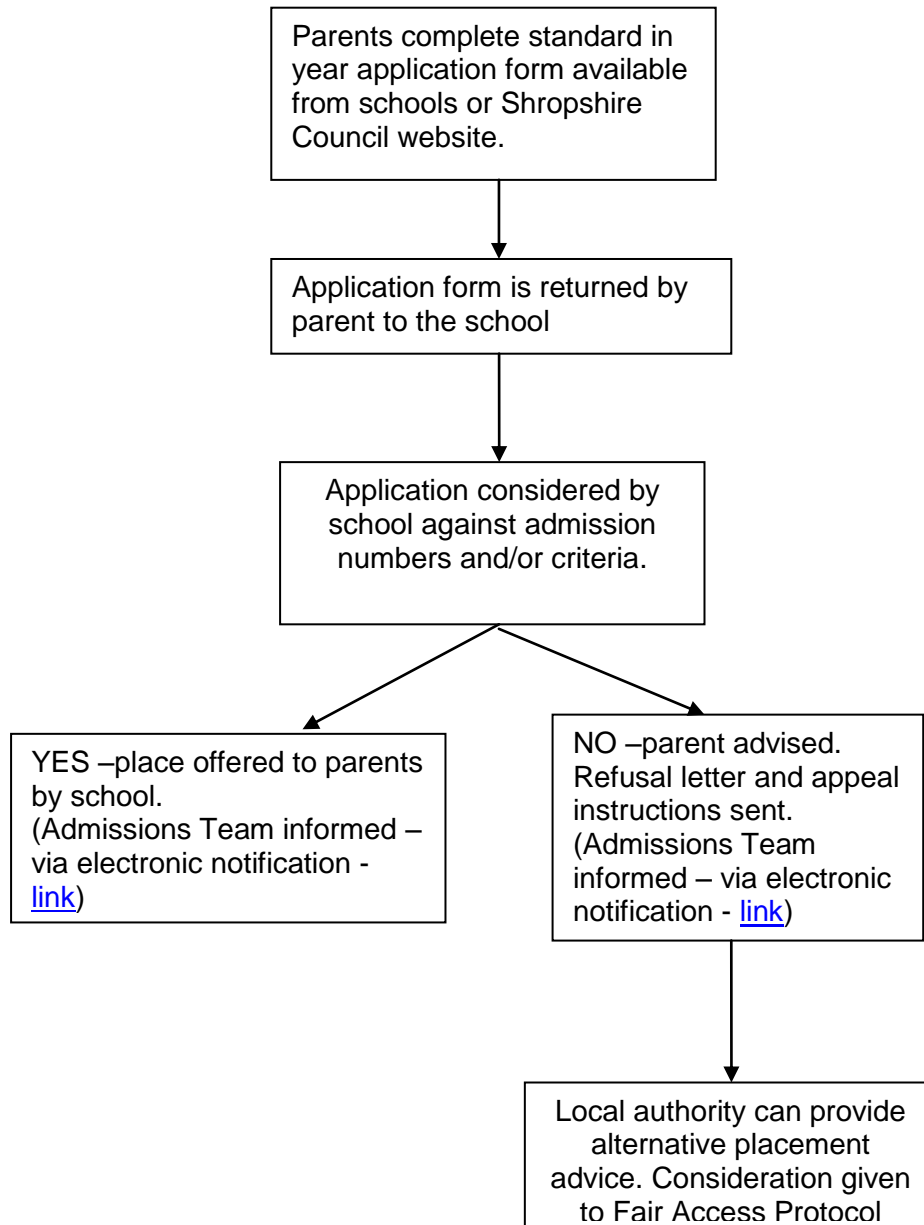
Queries regarding the operation of the Protocol should be directed to the Admissions Team or appropriate manager



**Appendix 1**  
**In Year Admission Process**

**From September 2013, Shropshire Council will no longer be responsible for co-ordinating in-year admissions - mid-term applications will be made directly to schools.**

**Process**



Written notification to parent of refusal and right to appeal is the responsibility of own admission authority schools post-September 2013.

Aided and foundation schools are responsible for writing to parents. So are academies and free schools although the Admissions Team will do this on their behalf if they have bought into the Admissions SLA.

## **Appendix 2**

### **Terms of Reference for Shropshire Council Fair Access Panels for**

Note: These terms of reference are part of the Shropshire Fair Access Protocol for admission to schools.

#### **1. Role of the LA**

1.1. To ensure full time provision for permanently excluded pupils and Level 3 pupils as in the Shropshire Fair Access Protocol

- permanently excluded pupils (from day six of a permanent exclusion)
- Pupils under Section 2.1 (Fair Access Protocol) and subsequent guidance.

1.2 To provide a fair and equitable and open method of allocation of schools for these vulnerable pupils, that is as simple and transparent as possible

1.3 To reduce the amount of time such pupils spend without a school place and to enable the pupil to engage with the next placement as soon as possible.

1.4 To take into account the Special Educational Needs Code of Practice and the Shropshire Education Needs Framework where these are appropriate.

1.5 To take informed and realistic decisions about where pupils should be placed

#### **2. Remit of the Fair Access Panel**

2.1 To receive information about such pupils in 1.1. above and potential receiving schools and make a judgment to:

2.1.1 Allocate a place in a mainstream school; or

2.1.2 Refer to the area alternative provision service i.e TMBSS:

#### **3. Structure and Process**

3.1. The Panel forms an integral part of the Re-integration Process. Information is gathered from the appropriate sources and is considered as soon as possible.

3.2 Membership of the Panel will be 3 Headteachers on a rotational basis with attendance and/or information submitted from the following, as deemed appropriate:

- Education Access
- School Admissions
- TMBSS
- Head of Centre PRU representative
- SEN Team
- CAMHS representative
- Educational Psychologist
- Schools' Funding Policy Officer
- Integrated Passenger Transport Services

3.3 The meeting will be chaired by one of the Headteachers who will summarise the discussions in each case and confirm a decision reflecting the view of the Panel.

3.4 Meetings of the panel will be scheduled regularly in term time only. Where there are no pupils to be placed, the meeting will be cancelled.

3.5 The relevant Officer will present facts of the cases to the Panel.

3.6 All appropriate schools will be notified by e-mail, before the Panel meeting, of the pupils being considered. Head teachers are able to present information via email concerning their schools to inform Panel discussions concerning the pupil's next placement.

3.8 Outcomes will be circulated electronically to relevant parties within 2 school days after the panel meeting.

#### **4. Information Protocol**

4.1 In order to make an accurate assessment as to the appropriate placement for a pupil and/ or to make judgements against the criteria in the Shropshire SEN Framework, information may be collected and considered from amongst the following by the potential receiving schools that have been identified by the Admissions Team:

- Number of pupils with statements and reasons for statements (SEN)
- High needs top up budget (shown as percentage of whole school budget)
- Notional SEN Budget
- Eligible for High Needs Contingency Protocol
- Number of challenging pupils placed by the LA
- OFSTED status
- View of the excluding Head Teacher
- Any information and/ or comments submitted by the potential receiving schools themselves, including numbers of permanently excluded pupils for the previous and current academic year.

4.2 In order to make an accurate assessment as to the appropriate placement for a pupil or the need to make judgements against the criteria in the Shropshire Framework the following information can be collected and considered about the pupil:

- EHAF (Early Help Assessment Framework) as appropriate
- Pupil Profile
- Attendance Record (Excluding School)
- PSP, IEP, PEP, Incident List (Excluding School)
- Reports from any relevant agencies.
- Exclusions paperwork
- Views of Pupil and clear Parental Preference
- Transport implications
- Exit Statement from excluding school

The Access Officer and Admissions Team will collate this information.

In deciding a mainstream school place, panels will take into consideration:

- Parental Preference, *parents are able to notify panel in writing of their school preference*
- Pupil Profile
- Distance
- All current approaches being made under Fair Access (levels 2 &3)
- Equitable Share. Equitable share for each school is calculated by the local authority's Education Access Service who maintain a running total based on exclusions from schools and excluded pupils admitted to schools.

In the interest of equity, the following factors will be taken into consideration, but will not prevent the placement of a child:

- Admissions Numbers
- Indicated Admission Numbers
- Accommodation levels at schools

Governing bodies of schools must implement any decision made by the panel in relation to the admission of these pupils, in accordance with the statutory School Admissions Code and in line with the agreed timescales.

4.5 Schools deemed inadequate under Ofsted and where behaviour problems are a significant issue, will not be considered as possible receiving schools.

## **5. Escalation Procedures**

5.1 If a school fails to respond, or refuses to admit a pupil within 7 days of being asked to take a pupil under the Fair Access Protocol the case will be escalated in accordance with the School Admissions Code.

## **6. Powers of Direction**

6.1 The Schools Admission Code 2012 summarises the powers of direction given to Local Authorities under s96 & 97 of the Education Act 1998, and the differing requirements in relation to admissions to Academies.

## **7. Funding for Receiving School**

Where pupils have been permanently excluded, receiving schools will receive:

- The remainder of the AWPU funding calculate pro-rata

## **8. Monitoring of Effectiveness of the Fair Access Panel**

8.1 A termly and yearly audit will be made of all the decisions taken by the Fair Access Panel to monitor consistency and effectiveness which will be included in the LA report to The Schools Adjudicator yearly. In addition reports will be made to Primary & Secondary CPGs and Headteachers' briefings.