

# East Sussex Fair Access Protocol 2021

## 1) Introduction

- i. This protocol is designed to ensure fair access to a mainstream school place for vulnerable children of compulsory school age living within the county of East Sussex where they have not been able to secure a school place through the normal in year admissions process.
- ii. Where such children already have a mainstream school place which they can reasonably continue to attend they will not be placed via the Fair Access Protocol (the Protocol).
- iii. Schools should not be expected to admit every child without a school place just because they have a vacancy in the appropriate year group- it is recognised that each school faces different challenges and that children with a history of difficult or dangerous behaviour should not all be concentrated in the same school or cohort.
- iv. Unnecessary school moves can be disruptive and damaging to children's outcomes and all schools and the local authority will work together to develop strategies to discourage school moves where this is reasonable and can be achieved within the framework of the law.
- v. Admission authorities who have chosen to go over PAN to accommodate children who could have been placed in another local school will not be exempt from admitting children via this protocol. If this has happened, it will be assumed that the school in question has planned to accommodate this number and is able to continue to do so for the duration of that cohort's attendance, unless unforeseen circumstances prevent this.
- vi. While every effort (within the boundaries of the law) will be made to identify cases needing to be placed via the protocol, it is accepted that these cases will not always be apparent in advance, and some will only be identified as qualifying to be placed under the protocol once an offer has been made, particularly where these cases have arrived from another local authority area. In these cases, the offer of a place cannot be withdrawn. However, the school will be entitled to retrospective credit for such admissions to enable numbers of Protocol admissions to be monitored.

## 2) Legal Requirement for Fair Access Protocol- School Admissions Code 2021 (the Code):

- i. Every local authority area is required by law to have a Fair Access Protocol and all admission authorities in the area must participate in it.
- ii. The Protocol must only be used to place those children who are not able to be placed via the usual in year admissions process.
- iii. Children who already have a suitable offer of a mainstream school place do not qualify for placement under the Protocol. Only the categories of children listed in section 3) qualify to be placed in this way.
- iv. In year applicants not able to be offered a place at the preferred school must be offered the right to appeal, whether placed under the Protocol or otherwise.

3) Categories (categories c, d and j may be considered as 'challenging' as set out in the Code):

- a. children either subject to a Child in Need Plan or a Child Protection Plan or having had a Child in Need Plan or a Child Protection Plan within 12 months at the point of being referred to the Protocol;
- b. children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol;
- c. children from the criminal justice system;
- d. children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education;
- e. children with special educational needs (but without an Education, Health and Care plan), disabilities or medical conditions;
- f. children who are carers;
- g. children who are homeless;
- h. children in formal kinship care arrangements;
- i. children of, or who are, Gypsies, Roma, Travellers, refugees and asylum seekers;
- j. children who have been refused a school place on the grounds of their 'challenging behaviour' and referred to the Protocol in accordance with paragraph 3.10 of the Code;
- k. children for whom a place has not been sought due to exceptional circumstances;
- l. children who have been out of education for four or more weeks where it can be demonstrated that there are no places available at any school within a reasonable distance of their home. This does not include circumstances where a suitable place has been offered to a child and this has not been accepted; and
- m. previously looked after children for whom the local authority has been unable to promptly secure a school place.

4) Process for placing qualifying children without evidence of 'challenging behaviour':

- i. Children who fall into categories a, b, e, f, g, h and i above will be placed via the normal in year process where there is a space available at a preferred school or one within a reasonable travelling distance. If there is no space available at any school within a reasonable distance, a school will be identified by the Admissions & Transport Service and asked to admit the child over numbers, as described in 4iii.
- ii. Children who fall into category k will have a school identified by the Admissions & Transport Service in conjunction with the Children Missing Education Service, who will notify both the school and the family of the intention to issue a School Attendance Order. This will normally be the last school attended unless this is no longer suitable by reason of distance, age or other exceptional factors, in which case it will be the nearest school suitable to the child's age group at which a place can be made available.
- iii. Children who fall into category l will have a school place identified by the Admissions & Transport Service. In areas served by only one school, this will normally be the school serving the area, unless there is a parental preference for an alternative which could reasonably accommodate the child. In areas

- served by more than one school, this will be one of the local schools, considering parental preference, distance from home to school, sibling attendance, numbers on roll and previous allocations under the Protocol.
- iv. Once a school is identified for a child in any of these categories, the headteacher and/or admission authority will be approached and asked to offer a place within three school days.
  - v. If this timescale cannot be met or the headteacher and/or admission authority judge that the admission would be untenable in the current academic year this must be advised to the Admissions & Transport Service urgently, and certainly within the three school day time limit.
  - vi. If the place is not accepted, the reason for this should be established by the school and the Admissions & Transport Service notified. The place should be kept available until it is confirmed not required (but not beyond the end of the academic year).
- 5) Process for placing qualifying children with evidence of 'challenging behaviour' (in geographical areas where no placement panel exists):
- i. Children who fall into categories c and d above will normally have a key professional who will encourage their parent to apply for a place via the in year route and alert the Admissions & Transport Service.
  - ii. Children who fall into category j (or could be considered to do so) will be identified by the Admissions & Transport Service based on information available from the application and existing records.
  - iii. Schools will be alerted to such applications via SAM and given the option to refuse based on behaviour if they have a place available but do not feel able to accommodate the child, supported by evidence. **This provision does not apply in Reception, Year 7 or year 3 of junior schools.**
  - iv. Schools/admission authorities will notify Admissions & Transport within five school days if they are unable to offer a place to the child, and on what grounds.
  - v. Where this process leaves the child without a suitable mainstream place, or where no mainstream preference has been expressed despite the need for a mainstream place within the next term, the Admissions & Transport Service will identify a school and approach the headteacher and/or admission authority by email and ask them to offer a place within three school days.
  - vi. This will be done using the criteria each partnership selects, based on infant class size, cohort RAG rating (where applicable), home to school distance, number of children already admitted under the Protocol and parental preference. Known safeguarding concerns may override other criteria.
  - vii. If there are safeguarding concerns in respect of this particular child attending the identified school (despite being mainstream appropriate) the headteacher and/or admission authority will alert the Admissions & Transport Service within the three school day period.
  - viii. If no such alert is received within three school days, the offer of a place will be conveyed to the parent and to the school. Contact will be made with the school first, in order to ensure that the school is aware when the parent contacts.
  - ix. If the place is not accepted, the reason for this should be established by the school, and the Admissions & Transport Service should be notified. The

place should be kept available until it is confirmed not required (but not beyond the end of the academic year).

6) Process for placing qualifying children with evidence of 'challenging behaviour' (where placement panel exists):

- i. Children who fall into categories c and d above will normally have a key professional who will encourage their parent to apply for a place via the in year route and alert the Admissions & Transport Service.
- ii. Children who fall into category j (or could be considered to do so) will be identified by the Admissions & Transport Service based on information available from the application and existing records.
- iii. Schools will be alerted to such applications via SAM and given the option to refuse based on behaviour if they have a place available but do not feel able to accommodate the child, supported by evidence. **This provision does not apply in Reception, Year 7 or year 3 of junior schools.**
- iv. Schools/admission authorities will notify Admissions & Transport within five school days if they are unable to offer a place to the child, and on what grounds.
- v. Admissions & Transport will ensure that the child is placed on the agenda for the next panel meeting.
- vi. All schools/admission authorities within the relevant partnership will be represented on the panel.
- vii. All representatives will have the power to make decisions on behalf of the schools/admission authorities they represent.
- viii. Where a school/admission authority is not represented, or the representative does not attend, the decision of the panel will still be binding on them.
- ix. Representatives of at least three schools/admission authorities must be present to form a quorum. Admissions & Transport representatives cannot be included in the three.
- x. The panel will identify a school based on the criteria each partnership selects, based on infant class size, cohort RAG rating (where applicable), home to school distance, number of children already admitted under the Protocol and parental preference. Known safeguarding may override other criteria
- xi. Decisions will normally be unanimous but where a vote is needed, only **mainstream representatives from mainstream schools/academies** will be entitled to vote.
- xii. Decisions will be conveyed to the school via their representative on the panel and will be confirmed by email from the Admissions & Transport Service by the end of the next school day.
- xiii. If there are specific safeguarding concerns in respect of this particular child attending the identified school (of which the panel was not aware) the headteacher and/or admission authority will alert the Admissions & Transport Service within three school days.
- xiv. If no such alert is received within three school days, the offer of a place will be conveyed to the parent and to the school by the Admissions & Transport Service.
- xv. If the place is not accepted, the reason for this should be established by the school, and the Admissions & Transport Service should be notified. The place should be kept available until it is confirmed not required (but not beyond the end of the academic year).

## 7) Exceptions:

**Safeguarding alerts:** where these are evidenced and clearly unique to the case in point, the process will begin again and another school identified. Where the school was a preference, the family will still have the right of appeal so these will need to be carefully evidenced as the parent will have a right to see and challenge this.

**Children currently unable to access mainstream admission:** children who have a mainstream school place but are found to be unable to access the curriculum by reason of their behaviour can be directed to alternative provision, whether on- or off-site. This can be a temporary or permanent arrangement and is outside the scope of the Protocol. Pupils who have been permanently excluded from their mainstream provision will be referred to College Central for on- or off-site provision from day 6 of the permanent exclusion.

**Normal intake year:** The School Admissions Code 2021 is clear that the provision to refuse a place on behavioural grounds does not apply in a year group which is the normal point of entry, unless the child has been permanently excluded twice within the last two years. Places must therefore be offered up to PAN in reception, year 3 (of junior schools) and year 7 whether there are behavioural concerns or not.

**Return from EHE:** where a child has been withdrawn from school to electively home educate, but the parent is unable/unwilling to continue this arrangement, the child will not be placed via the Protocol. If the preferred school is able to offer a place via the in year process they will do so, but in any case it is expected that the previous school will make a place available to the child, unless this is impossible by reason of age of child/class size legislation, or the family has relocated and the journey is no longer practical. In such cases the child will be placed in the nearest school where a place can be made available via the in year process.

**School to school placements (S2S):** these are agreed between schools themselves and fall outside the scope of the Protocol. Advice should be sought from the local authority before making these permanent. An unsuccessful S2S is not in itself a justification for not offering an in year admission if a place is available.

**EHCP:** children who are subject to an Education, Health and Care Plan fall outside the scope of the Protocol as they are legally entitled to a place at the provision named in their plan.

**LAC:** children who are under the care of a local authority fall outside the scope of the Protocol as these children have absolute priority under admissions legislation and must be offered a place at the preferred school.

## 8) Review process:

- i. The Protocol will be reviewed every 5 years and consulted upon through the same means as the local authority's annual admission consultation.
- ii. Should the Protocol prove untenable to the majority of schools/admission authorities in East Sussex, an early review will be triggered. This should be raised through the Primary and Secondary Boards.

- iii. The current Protocol will remain binding on all schools/admission authorities in East Sussex until a new one is agreed.
- iv. Criteria for placement and RAG rating of cohorts can be varied independently of the Protocol review as set out in sections 9) and 10).

9) Rights, Responsibilities and Timescales:

| Responsible Party      | Action   | Timescale   | Next Step   |
|------------------------|--|---|---|
| Admissions & Transport | Identify in year applications which qualify for placement via the Protocol                     | Within two school days  | Advise admission authority/school accordingly   |
| Admissions & Transport | Consider schools' reasons for not accepting Protocol admissions                                | Within five school days   | Identify an alternative placement or advise school will be directed.                  |
| Admissions & Transport | Instigate direction process  | When placement identified but not accepted by relevant school/admission authority         | Secretary of State will become involved if non-compliance with Protocol persists.     |
| CME team               | Respond to children who are out of provision to secure suitable education                      | When a CME notification is received   | Liase with parent, Admissions & Transport and schools and issue SAO if need be.       |
| College Central        | Provide day six provision for permanently excluded children                                    | Day six   | Enrol child by day 6 and provide on- or off-site education.                           |
| College Central        | Identify children likely to be ready for mainstream reintegration in the current academic year | As this becomes apparent.   | Notify ESBAS officer/Admissions & Transport   |
| ESBAS                  | Convene, support and chair placement panels  | Every four-six school weeks.  | Distribute minutes with agreed actions within five school days.                       |
| ESBAS                  | Identify practitioner to work with children suitable for mainstream reintegration              | As soon as notification is received that a child is suitable for mainstream reintegration | Support parent and school with application and reintegration process.                 |
| ESBAS                  | Support child and school with reintegration of 'challenging' children                          | When advised of placement.  | Will offer 10-15 hours reintegration support as standard. Further support negotiable. |

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| Parent | Apply for school place                                   | When place needed                          | Accept decision/appeal if unhappy  |
| Parent | Enrol child in identified school                         | When place offered                         | Support child's attendance, behaviour and education.   |
| School | Accept children where placed in accordance with criteria | When requested by parent/Protocol process. | Enrol child within ten school days. Advise Admissions & Transport/CME if place not accepted. |
| School | Advise if unable to accept child re: safeguarding        | Within three school days                   | Admissions & Transport will consider reasons and re-assess placement if necessary            |

#### 10) Compliance:

The School Admissions Code 2021 is clear that all admission authorities must participate in the locally agreed Fair Access Protocol and East Sussex has a very good record of engagement from admission authorities and schools in its area. However should issues arise the following process will be followed:

- i. Where a school or admission authority fails to engage with the Protocol or to supply a representative to the placement panel (in areas where these exist), the chair of the partnership or the school's representative on the panel will make attempts to engage the headteacher and/or chair of governors.
- ii. Children will continue to be placed at schools whose admission authority/governing body is not engaging with the Protocol.
- iii. If these children are not admitted, further attempts will be made to engage the school with the Protocol, by the representative, the chair of the panel and Admissions & Transport, as appropriate.
- iv. It is expected that issues of compliance will be resolved in this way, however if this is not the case, Admissions & Transport will issue a direction or request this from the Secretary of State and/or funding agency.

#### 11) Resources:

School Admissions Code 2021: [School Admissions Code 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

DfE FAP guidance: [Fair access protocols: advice for local authorities and school admission authorities \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)

East Sussex County Council in year admission arrangements: [Applying during the school year – East Sussex County Council](#)

#### 12) Terms and Definitions/glossary

**Admissions & Transport:** the team within East Sussex County Council which is responsible for co-ordinating admissions and assessing entitlement to home to school transport and free school meals.

**‘Challenging behaviour’:** this is defined in the School Admissions Code 2021 as ‘For the purposes of this Code, behaviour can be described as challenging where it would be unlikely to be responsive to the usual range of interventions to help prevent and address pupil misbehaviour or it is of such severity, frequency, or duration that it is beyond the normal range that schools can tolerate. We would expect this behaviour to significantly interfere with the pupil’s/other pupil’s education or jeopardise the right of staff and pupils to a safe and orderly environment’. While it is recognised that the Admissions Code uses the term ‘Challenging Behaviour’, this is not in line with East Sussex’s Therapeutic Thinking approach to behaviour. Where this document refers to ‘Challenging Behaviour’, this refers to what we would call difficult or dangerous behaviour. **Where this behaviour results from a disability, this will be factored into the decision-making process.**

**CME:** child missing education. This is a child without a school place available, or whose whereabouts are unknown to the current school, not a child who has a school place but is refusing to access it (or whose parents are refusing on their behalf). East Sussex County Council has a CME team responsible for tracing these children and ensuring their return to education.

**Cohort:** a given year group in a given school.

**Criteria for placement:** each partnership selects its own criteria for placement, based on infant class size (where applicable), cohort RAG rating, home to school distance, number of children already admitted under the Protocol and parental preference. Specific safeguarding concerns will always override all criteria. These criteria can be reviewed as necessary.

**Direction:** where an admission authority refuses to accept a child placed under the Protocol despite no safeguarding concerns having been raised and/or accepted, Admissions & Transport will request a direction from the Secretary of State and/or the funding agency.

**EHE:** elective home education. There is an agreement in place within East Sussex that where a family withdraws a child from a local school to home educate, that school will offer the child a place should the home education discontinue or be found inappropriate by TLP.

**ESBAS:** East Sussex County Council’s Education Support, Behaviour and Attendance Service. Other providers of support are available but ESBAS will offer support with placements via this protocol.

**Exceptional circumstances:** In the context of refusing children with ‘challenging behaviour’ for in year admission this either needs to be a red year group or a safeguarding issue specific to this allocation (ie an issue that would not present if this child attended another local mainstream school) in the context of a protocol placement or SAO this can only be a safeguarding issue specific to this allocation.

**In year admission:** admission of a student outside the normal timescale for admitting children at the beginning of term 1 of the intake year. This does not include staggered starts for reception admissions if these places were allocated via the annual admissions exercise.

**PAN:** planned admission number. This is the number of children each school expects to admit in its annual intake each year. Where the admission authority decides to admit above PAN in its intake year, schools and admission authorities will still be expected to admit children under the Protocol, returning from EHE or children for whom there is no space

available within a reasonable travelling distance, unless this is impossible by reason of class size legislation.

**Placement panel:** some partnerships in larger, urban areas have adopted panels to place children with 'challenging behaviour' (usually those who have been permanently excluded). Membership of these is limited to representatives of mainstream schools/admission authorities, representatives of college central, and local authority representatives. Decisions are made by a quorum of at least three school representatives.

**RAG rating:** each school is asked to rate every cohort in their school as red, amber or green based on the level of challenge/need in that year group, *not places available*. This is to enable panels/Admissions & Transport to estimate the likely difficulties each school would face in admitting an additional child with 'challenging behaviour'. RAG ratings can be altered up to three times in an academic year to reflect possible changes in the circumstances of the cohort (e.g. previously red year group may have settled, previously amber/green year group may have experienced trauma). Where a school has mixed age teaching, RAG rating will still need to reflect the cohort rather than the class.

**Relevant Accommodation** (as used in category b): A safe place to stay for victims and their children fleeing domestic abuse. This can include, but is not limited to, refuges, specialist safe accommodation, sanctuary schemes and second stage accommodation

**SAM:** school access module- this is the electronic interface between schools and Admissions & Transport. If this is unavailable for whatever reason then other secure means of communication may be used.

**SAO:** school attendance order. This is an order naming a school at which a child who is currently out of education must be enrolled within a given timescale. If a school is named in the order, they must make a place available, and the parent must enrol their child or make suitable alternative provision for their child's education within the timescale in the order.

**TLP:** the team within East Sussex County Council responsible for Teaching and Learning Provision for children who are unable to attend school for health reasons. This team is also responsible for monitoring EHE provision.