



## Secondary Phase Mid-Year Admissions Fair Access Protocol 2022/23 (Draft)

### Background

- 1.1. The School Admissions Code (2021) <sup>1</sup>sets out the mandatory requirements regarding the admissions process. The Code is clear that all local authorities and admissions authorities are required to have a Fair Access Protocol and that all schools and academies must participate in their local authority's protocol to ensure that all children and young people, especially those that are deemed as 'vulnerable or hard to place' are offered a place at a suitable school as quickly as possible. This includes admitting children above published admission number to schools that are already full.
- 1.2. The protocol makes it clear that local authorities must ensure that no school –including those with places available- is asked to take a disproportionate number of children and young people who have been excluded from other schools, or who have challenging behaviour, under the Fair Access Protocol.
- 1.3. This protocol has been devised in accordance with relevant provisions of the School Admissions Code (2021) and Fair Access Protocols: advice for school leaders, admission authorities and school leaders (August 2021) <sup>2</sup>

### 2. Aims of the Protocol

- 2.1. This protocol is designed to:
  - a. ensure that all schools within Walsall admit children and young people, including those who are deemed as 'unplaced and vulnerable and those who are having difficulty securing a school place' on a fair and transparent basis in accordance with the requirements of the School Admissions Code (2021);
  - b. acknowledge the need for vulnerable young people who are seeking a school place to be dealt with quickly and empathetically.
  - c. to ensure that these young people are placed in a 'suitable and sustainable education' provision to minimise the time that these pupils spend out of education provision.
  - d. to be fair and transparent, and have the confidence of all schools in Walsall.
  - e. ensure that all Walsall schools and academies admit a fair and equitable share of pupils within the geographical and logistical constraints of the Borough.

### 3.0. Main Principles of Walsall's Fair Access Protocol

- 3.1 This protocol will apply to all mainstream secondary schools and academies in Walsall.
- 3.2 The protocol should not be used to circumvent the mid-year year admissions process.

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<sup>1</sup> Schools Admissions Code, May 2021, [www.gov.uk](http://www.gov.uk)

<sup>2</sup> Fair Access Protocols: advice for school leaders, admission authorities and school leaders (August 2021) [www.gov.uk](http://www.gov.uk)



- 3.3 Schools will exceed their published admission number where necessary in order to admit pupils under the protocol.
- 3.4 Pupils identified for placement under the Fair Access Protocol will be given priority over those on waiting lists for the same school;
- 3.5. Whilst acknowledging that there is no requirement to comply with parental preference when placing a child under the Fair Access Protocol the Panel will recognise that parental preference is an indicator of potential placement sustainability and will try to take this into account wherever possible.
- 3.6. The allocation of pupils should be equitable, with no one school or Academy being required to take a disproportionate number of children who have been excluded from other schools, or who have challenging behaviour;
- 3.7. Pupils will be placed at the most appropriate school to meet their needs providing that this is not to the detriment of the receiving school. It must be an equitable distribution.
- 3.8. Placement of a child with challenging behaviour must not be unduly delayed due to a lack of SEN assessment data as per paragraph 3.13 of the School Admissions Code (2021)
- 3.9 Grammar schools will admit a pupil through the Fair Access Protocol if a pupil has/had a KS2 standardised score of 108 to 120. There will be no further testing of pupils before admittance in line with all Walsall Secondary Schools. However, further assessment can be undertaken prior to admission in the event that the young person does not have any previous assessment history. The Fair Access Protocol should not be used a means of circumventing Grammar school entrance requirements.

#### **4.0. Secondary Phase Mid-Year Admissions**

- 4.1. The majority of pupils should be admitted to Walsall Schools via the Secondary Mid-Year Admissions Process. This process is not co-ordinated by the Local Authority's Admissions and Appeals team but all Schools and Academies **must** act in accordance with the provision of the School Admissions Code 2021.

#### **5. Criteria to be used to identify pupils to be placed under the Fair Access Protocol**

- 5.1. The Fair Access Protocol does not apply to children who are in the care of a local authority, or children with an Education, Health and Care Plan (EHCP), as these children must be admitted in accordance with relevant admissions process. Any consideration of a school move for a child that is in the care of the Local Authority must be preceded by a Personal Education Plan (PEP) review and any consideration of a school move for a child with an EHCP plan must be preceded by an EHCP review.



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The following data will be made available to the panel at each meeting:

- number of children that have been admitted to each Secondary School under the Fair Access Protocol per year group. The Local Authority is working to develop a new FAP credit sheet for the 2022.23 Academic Year which will enable the FAP Panel and each relevant school to see the names of all children that have been placed at that school including date of allocation and date of admission of all children who have been placed at a particular school.
- The FAP credit sheet will start afresh each new academic year and be adjusted to take account of pupils that were previously allocated via FAP but are no longer on roll at a particular school.
- numbers of children allocated to each school from previous academic years will also be included on the FAP credit sheet as a further tool to assist the panel with decision making.
- Latest vacancy information and numbers on roll for each school per year group will also be provided to the Secondary FAP Panel at each meeting. It is intended that this information will serve two purposes:
  - To re-assure FAP panel members that there is no scope for the children to be placed via the mid-year admissions process
  - To support the Secondary FAP panel with decision as the panel may decide to pro-rata FAP allocations in relation the size of the school
- number of children with EHCPs in each year group (Local Authority to provide)
- numbers of permanent and fixed term exclusions from each school during the academic year (Local Authority to provide)
- number and current status of inward and outward managed moves (to be provided by WIP )

Walsall Association of Secondary Head Teachers acknowledge that having an EHCP is not an indication that a child has challenging behaviour. However, the data outlined above will be made available to assist the Panel in understanding the wider context of a particular school and ensuring that no school is being asked to take a disproportionate number of pupils via the Protocol. This will be kept under review.

The following pupils who fall into the following groups will be placed under the Walsall Fair Access Protocol:

- 5.2. Fair Access Protocols may only be used to place the following groups of vulnerable and/or hard to place children, where they are having difficulty in securing a school place in-year, and it can be demonstrated that reasonable measures have been taken to secure a place through the usual in-year admission procedures.

Please note that the revised School Admissions Code 2021 does not permit the inclusion of any locally agreed FAP criteria as was previously the case.



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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; It was noted that whilst this criterion is a mandatory requirement of the Fair Access Protocol. Referrals should only be made under this criterion in the event that a child has difficulty securing a school place.

Admissions Authorities are required to note paragraph 1.27 of the SEN and Disability Code of Practice as follows:

The School Admissions Code of Practice requires children and young people with SEN to be treated fairly. Admissions authorities:

- **must** consider applications from parents of children who have SEN but do not have an EHC plan on the basis of the school's published admissions criteria as part of normal admissions procedures
- **must not** refuse to admit a child who has SEN but does not have an EHC plan because they do not feel able to cater for those needs
- **must not** refuse to admit a child on the grounds that they do not have an EHC plan.

f) children who are carers;

g) children who are homeless;

h) children in formal kinship care arrangement

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 School Admissions Code. WASH have concluded that it is not possible to agree a definitive threshold in respect of this criterion. However, they have identified the following as indicators that a child has a history of challenging behaviour and is eligible for placement via this protocol in accordance with this criterion:

- Comprehensive behaviour log evidencing a pattern of persistent disruptive behaviour and/or fixed term exclusions over a consistent period of time.
- The child has been subject to one of more managed moves



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- The child has been attending alternative provision or there is evidence to indicate that the previous/existing school was/is in the process of exploring options for alternative provision.

Please note that 3.11. of the School Admissions Code advised admission authority should only rely on the provision in paragraph 3.10 in relation to children with challenging behaviour if it has a particularly high proportion of either children with challenging behaviour or previously permanently excluded pupils on roll compared to other local schools and it considers that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources

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

## **6. The Fair Access Panel**

6.1 The remit of the Fair Access Panel is to decide on an appropriate placement for each child.

6.2. Head Teachers and Principals of all Secondary Schools and Academies in Walsall will be eligible to be members of the Fair Access Protocol Panel. The effectiveness of the panel is contingent on the attendance and active participation of all Secondary Head Teachers and Principals in Walsall. Meetings will be held every four weeks and the dates will be agreed in advance for each academic year. In the event that a Head Teacher or Principal cannot attend they will nominate a named representative who can attend and make decisions on their behalf.

6.3. In the event that a school or academy does not engage with the Fair Access Process then the Chair of FAP and the Chair of WASH will contact the relevant Head Teacher or Principal to attempt to resolve the matter. In the event of persistent non-engagement then the matter will be escalated to the Local Authority who will contact the Head Teacher/Principal and if necessary escalate further to the relevant Trust and/or the Department for Education and/or Regional Schools Commissioner.

6.3. The Chair and Vice-Chair will be appointed by Walsall Association of Secondary Head Teachers (WASH). The Chair and Vice-Chair must hold a senior leadership role in a school, academy or academy trust that operates in the Walsall Local Authority area. The Chair will be required to assume the responsibility for a single academic year only and the Vice-Chair will assume the role of Chair for the following academic year. A new Vice-Chair will be appointed by WASH at end of each academic year.

6.4. The role of the Chair and Vice-Chair are pivotal to the success of the panel. The responsibilities of these roles will include overseeing the quality of the referral information, liaising with the School Admissions and Appeals Team, negotiating with Head Teachers and acting as a



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mediator, where required, in order to ensure that the decisions of the Panel are implemented in an effective and timely manner.

- 6.5. The following Local Authority representatives will be required to attend ALL Fair Access Panel meetings. If the designated representative cannot attend then another appropriately briefed representative **MUST** attend in their absence:
- Child Safeguarding Coordinator
  - Admissions and Education Sufficiency Manager
  - School Admissions Inclusions coordinator
  - Representative from the SEND Team
  - Representative from the Elective Home Education Team
  - Admissions Panels Coordinator
- 6.6. Representatives from other Local Authority services and external can be invited to attend Fair Access Panel meetings as deemed appropriate by the Chair of the Panel;
- 6.7. The Fair Access Panel will meet every four weeks basis during term time. The meeting schedule for the next academic year will be agreed at the end of the previous academic year. The Panel or the Local Authority may identify the need for additional meetings but these will not take place without the consent of the Chair and the presence of either the Chair/Vice-Chair.
- 6.8. Placement decisions will be made by majority view of the Head Teacher representatives that are in attendance at the relevant meeting.
- 6.9. The Local Authority may make recommendations to the panel as to placement decisions but individual officers do not have voting rights.

## 7. Procedures

- 7.1 Parents of children referred for placement under the Fair Access Protocol will not be invited to attend Fair Access Panel meetings. Parents will be informed about the FAP referral process and asked about their preference for a school place for their child. However, parents will be advised that FAP do not have to place a child in accordance with parental preference.
- 7.2 Referrals are to be submitted to the Admissions Panel Co-ordinator a minimum of five days prior to the meeting, who will collate referrals and prepare the agenda for each meeting;
- 7.3. The Panel Co-Ordinator will make all referrals paperwork available to the Panel Members a minimum of three school days prior to the meeting.
- 7.4. In preparation for each panel meeting, the School Admissions and Appeals Team will collate the following in relation to each child that has been referred to FAP:
- all **available** safeguarding information, subject to appropriate consent
  - all **available** attainment/attendance/behaviour data, subject to appropriate consent



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The LA will also measure the distance from the child's home address to all schools within a reasonable distance.

The School Admissions and Appeals team will do all it can reasonably be expected to obtain this information, including contacting previous schools, other Local Authorities and agencies where appropriate and will provide evidence of this to the FAP panel. Where the School Admissions and Appeals team are having difficulties obtain this information then this will be escalated via senior management at the relevant school or LA.

However, in accordance with provisions of revised School Admissions Code 2021 the Panel FAP cannot delay or defer making a decision about a placement solely because additional information is not available and schools will be expected to undertake due diligence and relevant checks when admitting children to their school.

- 7.5. Please note that when a school makes a referral into the FAP panel then the referring school must also provide details of all relevant safeguarding, attainment and behavioural information in setting out the reasons for the referral.

It was agreed that an information sharing agreement will be devised and implemented by the Local Authority in the 2022/23 academic year order to ensure that the FAP information sharing process is robust, transparent and compliant with the provisions of the following:

- Keeping Children Safe in Education (September 2020)
- Generation Data Protection Regulation (2018)
- School Admissions Code (2021)
- SEND Code of Practice 2015

- 7.6. In each case the panel will review the referral and decide upon the most appropriate placement to meet the child's needs. In reaching a decision the panel will consider the circumstances of the pupil and the context of the school, taking account of the following factors:

- the distance and ease of travel from home to school;
- the fairness of any placement and proportion of hard to place pupils in each schools as reflected in the information presented to each placement panel
- the parents or carers preferred choice(s)of school and reasons for this.
- genuine concerns from the local authority or referring school about admission.
- other reasonable considerations.

- 7.7. There should, as far as possible be an equitable distribution of fair access pupils across all schools within the geographical and logistical constraints of the borough. Where it is necessary to place a child at a school that has already received a number of Fair Access Pupils, this must be done in agreement with the Head teacher of the receiving school



- 7.8 The Local Authority will circulate the minutes of meetings and updated FAP credit sheet to all head teachers within two school days of each Fair Access Panel meeting. The Local Authority will also write to all schools confirming any decisions that were taken in relation to their school within three school days of the date of the meeting.
- 7.9 The Local Authority will write to parents and carers informing them of the panel's decision within two school days of the meeting.
- 7.10 Receiving schools should arrange to admit children placed with them as soon as possible and no longer than eight school days of the date of receipt of the letter from the Fair Access Panel meeting and within ten school days of the date of the panel meeting.
- 7.11 For the purposes of this protocol, a child is deemed to be a pupil at the school from the expected first date of attendance and must be listed in both the admissions and the attendance register within ten school days date unless in exceptional circumstances the relevant school refuses to admit the student. In these circumstances please refer to the process outlined below in section 8.0 below.

## **8.0 Difficulties or Delays in Securing Admission.**

- 8.1 It is expected that all parties will act with a sense of urgency to ensure that a child is placed under the Fair Access Protocol. All schools are expected to respond to requests to admit within seven calendar days. Any difficulties or delays in securing Admission will be brought to the attention of the FAP Chair as a matter of urgency. The LA will attempt to resolve the situation via dialogue between the FAP Chair, the respective school and parents/carers if appropriate.
- 8.2 In the event that the matter cannot be resolved at this stage then a representative from the respective school or trust will be required to attend a FAP meeting in order to set out their reasons for refusal. If required, the LA will also write to the Chair of the Governing Body and where appropriate, the Chair of the Trust, to advise that the school is being required to attend the FAP panel meeting. The FAP panel will need to take a decision as to whether to accept the school's case and agree to place the student at another school or whether to escalate the matter to the Assistant Director of Access and Achievement for a decision about the most appropriate course of action.
- 8.3 Options will include a 'Direction to Admit' in the case of maintained schools or referral to the Secretary of State in the case of Academies. If an Academy has not agreed a start date for a child within 15 calendar days then Local Authority can apply for a Direction to the Secretary of State. The Local Authority will make a decision about the course of action to be followed within 2 school days of the FAP panel meeting. Meeting. Appendix A sets out the 'Rules Governing Direction'.
- 8.3 Any decisions will be actioned by the Local Authority as matter of urgency so as to minimise any further disruption to the respective child's education.

## **9.0 Consultation and Review of Walsall's Primary Fair Access Protocol**



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- 9.1. In accordance the School Admissions Code (2021) s.3.22 and with Fair Access Protocols<sup>3</sup> (Guidance for school leaders, admission authorities and local authorities (August 2021) the Local Authority **must** consult and develop its Fair Access Protocols in partnership with ALL schools its area. The Local Authority is also required to keep its Fair Access protocol under review to ensure it remains fit for purpose and that all schools are consulted on any changes. In response to this requirement, Walsall Local Authority will ensure that the Secondary Fair Access Protocol is reviewed on annual basis in preparation for each new academic year.
- 9.2. In the event that the majority of schools can no longer support the principles and approach of the local FAP (for example, if they believe it is not operating fairly or effectively), they may request that it is reviewed. The mechanism for invoking a review and the procedure that follows should be agreed during the development of each FAP. The existing FAP will remain binding on all schools in the area until a new one is adopted.
- 9.3. Any request to review Walsall's Primary or Secondary Fair Access Protocol should be made to the Local Authority via the relevant Head Teacher Association. PNS in the case of the Primary Fair Access Protocol and WASH in the case of the Secondary Fair Access Protocol. The Local Authority will then work with the relevant Head Teacher Association to agree the terms and timescale for any review. However, queries or concerns about Walsall's Primary or Secondary Fair Protocols can be raised with Walsall Local Authority at any time by emailing [childrenmissingeducation@walsall.gov.uk](mailto:childrenmissingeducation@walsall.gov.uk)

## Appendix A: Rules Governing Direction

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<sup>3</sup> School Admissions Code 2021

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1001050/School\\_admissions\\_code\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001050/School_admissions_code_2021.pdf)

Fair Access Protocol 2021 (Guidance)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1012993/FAP\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1012993/FAP_Guidance.pdf)



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In accordance with the provision of the School Admissions Code 2014<sup>4</sup> (3.16 -3.18 and 3.22) Local Authorities have the power to direct the governing bodies of maintained school to admit a child **even** when their school is full and in the case of Academies to refer the matter to the Secretary of State.

## **Local Authority Powers of Direction (general)**

*A local authority has the power 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.*

*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.*

## **Secretary of State's Power of Direction (Academies)**

*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 to intervene. The Secretary of State 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 decision.*

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<sup>4</sup> School Admissions Code 2014, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/389388/School\\_Admissions\\_Code\\_2014\\_-\\_19\\_Dec.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/389388/School_Admissions_Code_2014_-_19_Dec.pdf)