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DERBYSHIRE COUNTY COUNCIL
CABINET MEMBER FOR YOUNG PEOPLE

2 February 2021

Report of the Executive Director for Children's Services

REVISED FAIR ACCESS PROTOCOL FOR PRIMARY SCHOOLS

1. Purpose of Report

To provide an update to the cabinet member of the revised Fair Access Protocol for primary schools and to request approval to implement.

2. Information and Analysis

The Department for Education statutory Guidance 'The School Admissions Code' (2014) requires that each local authority must have a fair access protocol. All schools and academies must participate in their local authority's protocol in order to ensure that unplaced children, who live in the home local authority, especially the most vulnerable, are offered a place at a suitable school in the home local authority as quickly as possible. This includes admitting children to schools that are already full.

The protocol is designed to ensure the admission to school of children and young people living in Derbyshire who find themselves in challenging circumstances and outlines the arrangements to support this. It is not intended to cover the majority of children for whom in-year admissions are a straightforward process and for whom normal admission arrangements apply. The protocol is triggered when a parent of an eligible child has not secured a place under the in-year admissions procedure. Eligibility for placement under the protocol does not remove the right of parents to express a preference for a particular school

through the normal admissions process. Normally children can only be placed through the protocol with parents' agreement.

The current protocol has been in place since the academic year 2015/16 and in order to allocate pupils fairly, has relied on a system of allocating points to schools admitting a pupil under these arrangements and deducting points for permanent exclusion. The process has proven unsatisfactory, too frequently resulting in children being without a school place for extended periods of time, due to schools not agreeing to their nomination.

The chair of the fair access panel raised the issue with primary headteacher colleagues at area heads' meetings in summer 2019, seeking their views on possible options going forward. Feedback was given in the autumn meetings of that year, resulting in agreement for a task and finish group to produce a revised protocol.

The group comprised nine headteachers, two governors and three officers of the council, who met four times to discuss issues and good practice, culminating in the co-production of a revised protocol. The revised protocol was presented to 197 headteachers at the area heads meetings in November 2020, who were asked to respond to the chair of the Fair Access Panel with any concerns or comments by 27 November. All primary heads, including those who did not attend the area heads' meetings, were given access to the protocol and invited to comment. Six responses were received, three of which raised concerns about the requirement to admit within seven days of nomination to take the child; two responses asked that funding for the longer term support of the child be agreed in advance; and one response requested clarification of details about the decision making process. The concerns relating to the admission timescale were around having sufficient time to organise staffing, if required. As permanently excluded pupils are the subject of the concerns, this can be allayed by the fact that there is a period of support from the Inclusion Pathways Team for the initial period of integration, so staffing would not need to be arranged by the school in the first instance.

In relation to a request that funding for longer term support be agreed in advance, this will not be possible, as not all reintegrating children will require longer term support and any request for ongoing support would be based on an assessment of individual need and the demonstration of the school's graduated response to meeting the need. One question related to how the decision to nominate a school would be made by the Fair Access Resolution Panel, if no agreement could be reached by local headteachers and this process is explained in the protocol. The low number of responses raising concerns suggests broad consent to the protocol, with the main revisions, as outlined below:

The revised protocol strengthens the requirement to attend a local meeting to agree the most appropriate school to meet a child's needs, by involving governors at an early stage. In addition, escalation following no agreement to admit a child is to a neutral Fair Access Resolution Panel, whose membership is drawn from headteachers and governors not linked to the particular schools involved in the dispute. Final escalation is also outlined, specifically direction to admit by the Secretary of State.

Since the consultation with headteachers, the Admissions Department has advised that the current School Admissions Code does not accept an Ofsted judgement of Inadequate as grounds for refusal of admission. Therefore, in order to avoid contradiction of the Code, this has also been removed from the revised protocol.

3. Financial Considerations

It is not anticipated that the revised protocol will result in any additional financial pressure. Schools admitting children under fair access arrangements are able to apply for temporary, additional pupils support (TAPS) funding, but in the last year, only two schools requested this supports, at a cost of £5,300.

4. Legal, Human Rights and Equality of Opportunity Considerations

A fair access protocol is a legal requirement as part of the School Admissions Code, to ensure that children and young people without a school place can be allocated a school quickly. The protocol is a protective factor against children missing out on their statutory entitlement to education and this revision of the protocol was prompted by a need to place children more quickly. Prompt allocation of a school place would ensure equality of opportunity to access education.

5. Human Resources Considerations

The implementation of the revised protocol will have no further implications for human resources than those which exist already for the current protocol. There will be a potential implication for headteachers and governors, should use of a fair access resolution panel be necessary, if a school cluster meeting fails to reach agreement about a school place. In such cases, a resolution panel meeting would need to be called, which would require a commitment of time, on occasion, by a small number of headteachers and governors.

6. Health Considerations

Research carried out by the University of Exeter research found evidence of a two-way relationship between child and adolescent mental illness and exclusion from school. The research found that exclusion could trigger long-term psychiatric illness, exacerbating existing mental health issues (Children's Services Network Policy Briefing, 2017). Parker et al, 2016 found that: 'Exclusion could also radically affect a child's social and emotional world in the abrupt ending of friendships and trusting relationships with teachers, and in the experience of rejection from school reinforcing a negative self-image'.

Prompt placement in an alternative school, where a child's sense of belonging and which provided the opportunity to form new friendships and relationship is an important mitigating factor against the risk of long term mental health issues as a result of permanent exclusion from school.

7. Transport Considerations

There may be transport considerations where a child cannot be placed in their normal area school. However, the protocol requests that transport be taken into consideration when allocating a school place. In any event children and young people may be entitled to transport assistance under the Local Authority's Home to School Transport policy.

8. Social Value Considerations

The opportunity for children to gain cultural capital, inspected under the Ofsted Inspection Framework introduced in September 2019, is provided when children are in school. The aim of the revised protocol to ensure that all children, especially the most vulnerable are offered a school in their locality quickly, is consistent with the inspection of schools' curriculum intent in the Ofsted framework, to:

'...give all learners, particularly the most disadvantaged and those with special educational needs and/or disabilities (SEND) or high needs, the knowledge and cultural capital they need to succeed in life.'

9. Prevention of Crime and Disorder Considerations (if applicable).

The article 'Pinball Kids' (RSA, March 2020) reported that most UK prisoners were excluded from school, with 63 % having experienced a fixed term exclusion and 42% having been permanently excluded.

Furthermore, a permanent exclusion is estimated to cost £370,000 per young person in lifetime education, benefits, healthcare and criminal justice costs.

These findings underpin the importance of a prompt start at a new school for children, particularly in the primary phase of education, who have been excluded from school, or who are without a school place due to other challenging circumstances. The revised Fair Access Protocol aims to address this issue.

10. Background Papers

Revised Fair Access Protocol for primary schools as attached in Appendix 1.

11. Key Decision?

No

12. Is it necessary to waive the call-in period? No

13. Executive Director's Recommendation

To consider the updated information provided in this report and to approve the adoption and implementation of the revised Fair Access Protocol for primary schools.

Jane Parfremment
Executive Director for Children's Services

Appendix 1

CONTROLLED

Derbyshire County Council Fair Access Protocol for primary schools

Purpose

'The School Admissions Code' requires that each local authority must have a fair access protocol. All schools and academies must participate in their local authority's protocol in order to ensure that unplaced children, who live in the home local authority, especially the most vulnerable, are offered a place at a suitable school in the home local authority as quickly as possible. This includes admitting children to schools that are already full.

The protocol is designed to ensure the admission to school of children and young people living in Derbyshire who find themselves in challenging circumstances and outlines the arrangements to support this. It is not intended to cover the majority of children for whom in-year admissions are a straightforward process and for whom normal admission arrangements apply. The protocol is triggered when a parent of an eligible child has not secured a place under the in-year admissions procedure. Eligibility for placement under the protocol does not remove the right of parents to express a preference for a particular school through the normal admissions process. Normally children can only be placed through the protocol with parents' agreement.

Exceptions

Children with an education, health and care plan (EHCP)

Children with EHCPs are not covered by this protocol, as their needs are considered separately through their plans, in accordance with the 'Special educational needs code of practice'.

Schools must not delay in admitting children with special educational needs but without EHCPs and children with disabilities or medical conditions. Where there is a prior need for particular support, or for reasonable adjustments, the school should involve the appropriate support services to ensure that such children are placed quickly.

Looked after children

Looked after children are not covered by this protocol, as these children must be admitted through in-year processes.

Principles

The fair access protocol:

- is fair and transparent
- takes into account the needs of the child and the needs of the school
- reduces the time that children spend out of school
- recognises the success of proactive work being undertaken cooperatively by schools to prevent exclusion and to support children e.g. managed moves
- ensures that no schools, including those with available places, are asked to take a disproportionate number of children who have been excluded from other schools, or who have challenging behaviour.

In order for the protocol to be successful:

- all schools will take part, even if they are responsible for their own admissions
- schools cannot cite over-subscription if they are asked to admit a child under the protocol
- fair access children will be given priority for admission over any others awaiting an appeal for admission
- schools must treat all requests for the admission of a fair access child as a matter of urgency
- schools cannot insist on an appeal hearing before admitting a child under this protocol
- the local authority should take account of any genuine concerns about the admission, for example, a previous serious breakdown in the relationship between the school and the family, or a strong aversion to or desire for the religious ethos of a school
- parents' and carers' views will be considered, and geographical factors will be taken into consideration, but these will not necessarily override the protocol

- consideration will be given to a child's religious affiliation when considering a suitable school but this will not override the protocol
- there is no duty for the local authority or admission authorities to comply with parental preference when allocating places through the protocol
- the protocol is binding on schools in the Derbyshire County Council area.

Circumstances in which the fair access protocol can be used

The protocol will be used for those pupils who are considered to be ready for mainstream schooling. For those pupils who are not yet ready, the local authority will make interim arrangements for them to be educated, short-term, either at a support centre, or by the local authority's education support services, who will prepare them for a return to school. However, a school will be nominated at an early stage, using the protocol, in order to facilitate reintegration at the appropriate time.

In the vast majority of cases, children requiring a school place will continue to be admitted in accordance with the usual admission arrangements, rather than through the protocol. The protocol is triggered when a parent of an eligible child has not secured a place under the in-year admissions procedure, or the child has been permanently excluded from school.

Where a school does not wish to admit a child with challenging behaviour outside of the normal admissions round, even though there are places available, it can refer the case to the local authority for action under the fair access protocol. This will normally be appropriate only where the school:

- has already admitted one child in the academic year who has been previously excluded
- can evidence that they have an unusually high proportion of children with challenging behaviour.

The protocol covers the following categories of children:

- A. permanently excluded children (including pupils at support centres and in other local authority education arrangements)
- B. children from the criminal justice system
- C. children for whom it has been identified that they would benefit from a managed move
- D. children moving into Derbyshire having received 'out of school' packages in their previous authority
- E. traveller children*

- F. homeless children
- G. children whose parents have been unable to find them a school place after moving into the area, because of a shortage of places, and there are no places available within the distance travelled to the normal area school and beyond 5 miles measured by the nearest available route*
- H. children of refugees and asylum seekers
- I. children for whom a place has not been sought
- J. children in refuges*
- K. children who have been out of education for two months or more
- L. children who are carers
- M. children with special educational needs or with disabilities or medical conditions (but without an EHCP)
- N. children of UK service personnel and other Crown servants

* In these categories, where the normal area/local school is a Derbyshire school, children will be placed at the normal/local area school. In the case of a shared normal area then the placement will be at the nearest school to the child's home address, unless it is deemed an inappropriate placement by the fair access panel.

Process

1. Other than for managed moves (see managed move protocol for details of arrangements) the fair access panel will determine whether a child is identified as being eligible for placement under the fair access protocol, based upon information received from the referring agency, which demonstrates that they meet one of the above criteria (A – N).
2. Once a child has been defined as eligible the fair access panel will initiate the protocol and either, according to the agreed criteria, contact the normal/local area school or alert the lead agency to arrange a cluster meeting of up to the 10 nearest Derbyshire schools to the child's home address.
3. A letter of invitation to the meeting will be addressed to the headteacher and copied to the chair of governors.
4. Summary 'profile on a page' information about the child to be placed and confirmation of support available will be circulated at the meeting.
5. The protocol obliges all invited schools to attend the meeting, where attendees will be responsible for agreeing a placement for the child.
6. If the cluster meeting fails to agree a school place, the chair of the fair access panel will take the reasons presented to the fair access resolution panel, whose decision will be based on a majority vote and will be binding. This panel will include neutral headteacher and governor representation.
7. Once a school has been nominated, arrangements should be made to admit the child to school within seven calendar days of the nomination.

Escalation process

Should a nominated school refuse to admit a child, escalation will be pursued, culminating in a direction to admit by the director of children's services, the Secretary of State for Education, or the Education Funding Agency, depending on the school's governance arrangements, as follows:

Type of school	Escalation route
Voluntary aided and Foundation	The local authority, in consultation with the governing body, which may refer to the school adjudicator within 15 days.
Academies	The Education Funding Agency / Secretary of State for Education
Maintained	Director of children's services, who may refer to the Secretary of State for Education, if not resolved.

Funding and additional support

Support from the Inclusion pathways team for reintegration of children who have been permanently excluded will be available for a period of up to two Derbyshire terms. Where additional support for successful transition is needed, the receiving school can apply for one Derbyshire term (6 weeks) of temporary additional pupil support (TAPS) funding to support the transition period. The receiving school should submit a clear plan with costings to the TAPS panel aimed at supporting the child/young person's social, emotional and mental health needs throughout their transition. For subsequent TAPS funding, the school will be required to follow the usual procedure, demonstrating how they have supported the child/young person. TAPS can be accessed by application to a weekly local authority panel (term time only).

Monitoring

The fair access protocol will be monitored by the Derbyshire admissions forum and reported on annually as part of the local authority's report on admissions. Numbers of children admitted through this process will be monitored by the fair access panel.

Schools will be responsible for confirming with the local authority that children have been admitted within seven calendar days of the admission date.

Recognition of a fair access admission will be given by a letter of acknowledgement to the receiving school.

