

# **Fair Access Protocol (FAP)**

## **2019/2020**

**Implemented September 2019**

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## **In-Year Fair Access Panel (IYFAP) Guidance**

There is a separate document which sets out how IYFAP supports the delivery of the Fair Access Protocol (FAP) and other vulnerable pupils who are outside of the FAP. This guidance includes:

- The IYFAP
- The principles and procedures of the IYFAP
- IYFAP and criteria for selection of receiving school
- IYFAP Referral Procedures
- Referrals being brought to IYFAP by Pupil Referral Units (or equivalent Alternative Provision Academies) requesting mainstream schools in relation to pupils who have been previously permanently excluded
- Power of schools and academies to refer pupils to off-site Alternative Provision (AP) to improve their behaviour
- Managed moves
- Suffolk County Council funded school travel
- Chair's actions between IYFAP meetings

1.	<p><b>Introduction</b></p>
	<p>Suffolk’s Fair Access Protocol (FAP) is testament to the excellent and effective partnership work between local schools and the Local Authority (LA) to maximise the life chances and choices for local children. Education should not be in isolation from the wider range of support and services already provided and should be available to meet the needs of all children and families.</p> <p>The School Admissions Code (SAC), December 2014, states that each LA must have a FAP, agreed with the majority of schools in its area to ensure that – outside the normal admissions round - unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible. In agreeing a protocol, the LA must ensure that 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. The protocol must include how the LA will use provision to ensure that the needs of pupils who are not ready for mainstream schooling are met. (SAC, paragraph 3.9). The SAC sets the context for the FAP.</p> <p>Looked after children (referred to as children in care in Suffolk), children previously looked after (children previously in care) and children with an Education, Health and Care Plan naming the school in question, are not subject to the FAP, as these children must be admitted.</p>
2.	<p><b>Definitions</b></p>
	<p><b>Admission authority:</b> Suffolk County Council is responsible for admissions to community and voluntary controlled schools. The governing body or academy trust is responsible for the admissions to foundation, voluntary aided, free schools and academies.</p> <p><b>Admissions register:</b> The law requires all schools including independent schools to have an admission register and, with the exception of schools where all pupils are boarders, an attendance register. All pupils (regardless of their age) must be placed on both registers. The proprietor of a school who fails to comply with these regulations is guilty of an offence and can be fined.</p> <p><b>Challenging behaviour:</b> For the purposes of the FAP, Challenging Behaviour is defined as deep rooted and long-term difficulties manifesting in all settings and requiring significant support. These behaviours would be regular, consistent and well documented. It does not include a child or young person who naturally can display low level behaviour features at school.</p> <p><b>Headteacher:</b> For the purposes of this document this refers to the person responsible for the day to day running of the school. This includes the Headteacher, Head of School and Principal.</p> <p><b>In-Year Fair Access Panel (IYFAP):</b> The Fair Access Protocol is managed through meetings consisting of Suffolk County Council officers, senior managers from schools and other children’s service specialists. The panel considers the needs of individual children and young people without a school place who are hard to place to identify appropriate educational provision.</p> <p><b>Mainstream school:</b> This includes maintained schools (community, voluntary controlled, voluntary aided and foundation schools), academies and free schools.</p>

	<p><b>Parent:</b> For the purposes of education law, section 576 of the Education Act 1996 defines a 'parent' as:</p> <ul style="list-style-type: none"> <li>▪ all natural (biological) parents, whether they are married or not;</li> <li>▪ any person who, although not a natural parent, has parental responsibility for a child or young person (this could be a step-parent, guardian or other relative);</li> <li>▪ any person who, although not a natural parent, has care of a child or young person.</li> </ul> <p>A person has care of a child or young person if they are the person with whom the child lives and who looks after the child, irrespective of what their relationship is with the child.</p>
<b>3.</b>	<b>The School Admissions Code (SAC), December 2014: Legislation and the Fair Access Protocol (FAP)</b>
3.1	There is no requirement for local authorities to co-ordinate in-year applications, but they must provide information in the composite prospectus on how in-year applications can be made and will be dealt with. LAs must, on request, provide information to a parent about the places still available in all schools within its area, and a suitable form for parents to complete when applying for a place for their child at any school for which they are not the admission authority. Any parent can apply for a place for their child at any time to any school outside the normal admissions round. They can do this by applying directly to admission authorities, except where other arrangements are in place locally (for example, the LA co-ordinates all in-year admissions). (SAC paragraph 2.21).
3.2	The operation of FAP is outside the arrangements of co-ordination and is triggered when a parent of an eligible child has not secured a school place under the in-year admission procedures and who does not have a local school place. (SAC paragraph 3.10).
3.3	All admission authorities must participate in the FAP in order to ensure that unplaced children are allocated a school place quickly. There is no duty for LAs or admission authorities to comply with parental preference when allocating places through the FAP. (SAC paragraph 3.11).
3.4	Where a governing body does not wish to admit a child with challenging behaviour outside the normal admissions round, even though places are available, it must refer the case to the LA for action under the FAP. This will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children. The use of this provision will depend on local circumstances and must be described in the LA's FAP. <b>This provision will not apply to a looked after child (child in care), a previously looked after child (a child previously in care) or a child with an Education, Health and Care (EHC) plan naming the school in question, as these children must be admitted. (SAC paragraph 3.12).</b>
3.5	Admission authorities must not refuse to admit a child thought to be potentially disruptive, or likely to exhibit challenging behaviour, on the grounds that the child is first to be assessed for special educational needs. (SAC paragraph 3.13).
3.6	A FAP must not require a school automatically to take another child with challenging behaviour in the place of a child excluded from the school. (SAC paragraph 3.14).

3.7	The list of children to be included in a FAP is to be agreed with the majority of schools in the area but must, as a minimum, include the following children of compulsory school age who have difficulty securing a school place. (SAC paragraph 3.15):
	a) children from the criminal justice system or Pupil Referral Units who need to be re-integrated into mainstream education;
	b) children who have been out of education for two months or more;
	c) children of Gypsies, Roma, Travellers, refugees and asylum seekers;
	d) children who are homeless;
	e) children with unsupportive family backgrounds for whom a place has not been sought;
	f) children who are carers; and
	g) children with special educational needs, disabilities or medical conditions (but without an EHC plan).
	In addition, Suffolk's FAP includes the following children of compulsory school age who have difficulty in securing a school place:
	h) Children resident at a Women's Refuge;
	i) New arrivals for whom a placement at the nearest suitable school with a place available is considered by the LA to be unreasonable, or not a good use of resources. Such placements are likely to be considered unreasonable in the following circumstances:  The travelling time to and from the nearest suitable school with places would exceed the maximum travel times used by the LA, that is up to 45 minutes for primary aged children and 1 hour 15 minutes for secondary aged pupils. If the cost of school travel to the nearest suitable school with places is more than the age weighted pupil unit (AWPU).  The School Travel policy applies to placements made by the IYFAP. Suffolk's School Travel Policies are available at <a href="http://www.suffolkonboard.com/schooltravel">www.suffolkonboard.com/schooltravel</a> ;
	j) Other children who for exceptional reasons should be considered to be vulnerable. These pupils may have complex needs, contact with previous school may no longer be feasible, or they may not have been educated in a mainstream school when in their previous Authority. Given the nature of an individual case, the Senior Education Officer (Admissions and School Travel) may ask a school to admit a child above its Published Admission Number (PAN) in exceptional circumstances;
	k) Children known to the police or other agencies.
<b>4.</b>	<b>Procedures for School Admission Cases</b>
4.1	The FAP applies to in-year admission applications and not to the normal admission round for a place in the year of entry at a school. It does not include a child in care, a child previously in care, or a child with an EHC plan naming the school in question, as

	<p>these children must be admitted. The majority of children requiring an in-year school place will continue to be admitted to a school under normal in-year admission procedures, rather than through the IYFAP. It is anticipated that a mainstream placement will be the main allocated pathway.</p>
4.2	<p>Admission authorities are required to comply with the SAC as part of the school's funding agreement. When considering an application, an admission authority may only take account of information when it has a direct bearing on decisions about oversubscription criteria. The SAC, paragraphs 1.9 and 2.4 give clear direction about what must not be taken into consideration when determining an application.</p> <p>Some relevant sections in paragraph 1.9 are included below. Paragraph 1.9 states that 'it is for admission authorities to formulate their admission arrangements, but they must not:</p>
	<p>a) place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements;</p>
	<p>g) take account of reports from previous schools about children's past behaviour, attendance, attitude or achievement, or that of any other children in the family;</p>
	<p>m) interview children or parents.</p>
4.3	<p>If an admission authority wishes to refuse an application under paragraph 3.12 of the SAC, the refusal must relate to both the child's challenging behaviour and the high proportion of children with challenging behaviour at the school, as defined in the definitions section of this FAP.</p> <p>An admission authority can only refuse under this paragraph if they have legitimate knowledge of the child. This might be for example, if the child has been at the school previously and displayed challenging behaviour that would have warranted permanent exclusion. For the purposes of this FAP, challenging behaviour does not include low level disruption.</p> <p>Admission authorities should not take account of information from parents which is given in a conversation or phone call, unless it's related to the oversubscription criteria.</p> <p>Information on the pupil which has been obtained at IYFAP cannot be used as a valid reason to refuse an application.</p>
4.4	<p>Where an admission authority which is not the LA refuses an application for a pupil on the grounds of challenging behaviour as set out in paragraph 3.12 of the SAC, the Admissions Team will ensure that the school/s that refuse to admit completes the referral and presents the information at the relevant IYFAP.</p> <p>If the pupil does not have a local school place the Admissions Team will contact the parent to see if they wish to pursue a place through IYFAP and to request their permission. The IYFAP referral form will need to be completed by the school refusing the application. The school/s will need to present the case at the relevant IYFAP.</p>
4.5	<p>As part of assessing the suitability of a placement for a pupil, where practicable, account must be taken of any genuine concerns about the admission. Schools must not take account of reports from previous schools about a child's past behaviour, attendance, attitude or achievement, or that of any other children in the family. Background checks and information learned from interviews or meetings, whether</p>

	these are face to face conversations or through telephone calls, must not form part of the decision making process, (SAC, paragraph 1.9). An admissions authority is only able to take account of information it has considered above legitimately.
4.6	Following a decision made at IYFAP, where a placement is agreed the child must be added to the school's admissions register (see definition) immediately. The arrangements for the child to attend the school or AP must be acted upon with a sense of urgency and an agreed start date secured within 10 school days of the agreement. The child will only be placed on the attendance register from the agreed start date or the 10th school day. Where there is no engagement from the parents of the child and a start date is not agreed the child will remain on the school's admissions register. The child will also remain on the attendance register and the school must refer to its Attendance Policy for further action.
<b>5.</b>	<b>Re-integration of pupils who have been permanently excluded by one other educational setting</b>
5.1	During the first five days of the exclusion the school is required to use the 'E' Coding. From Day 6, the responsibility falls to the LA to provide education and schools should use an appropriate attendance code, such as Code B (Education Off-site) or Code D (Dual registration).
5.2	Pupils in receipt of LA provision to comply with Day 6 requirements will be presented at IYFAP after the Governors' Disciplinary Committee meeting of the school has met to determine whether to uphold the exclusion or direct reinstatement to the school. The LA will then determine the longer-term education pathway for those children whose permanent exclusion is upheld.
5.3	A parent of a once permanently excluded pupil is able to make an application for a mainstream school place. Should they do so, this application must be processed in the normal way and information from the previous school cannot be taken into consideration.
5.4	The school who has permanently excluded the pupil must complete the IYFAP referral form and completed risk assessment. The Family Services team will then present the case at IYFAP.
5.5	A new school for a previously permanently excluded pupil will be identified by the IYFAP taking account of any of the following:
	a) offers from schools to take cases in line with the FAP;
	b) considering the individual needs of the child to determine if a local school place should be offered or if there are exceptional reasons for a child to be placed at a school further away. This should take into consideration the availability and cost of Suffolk County Council funded school travel to ensure the efficient use of resources at the time of placement;
	c) consulting the IYFAP weighting table.
<b>6.</b>	<b>Children with challenging behaviour and those who have been permanently excluded twice</b>
6.1	Admission authorities cannot refuse to admit children in the normal admission round on the basis of their poor behaviour elsewhere. (SAC paragraph 3.8).

6.2	Where a child has been permanently excluded from two or more schools, there is no need for an admission authority to comply with parental preference for a period of two years from the last exclusion. The twice excluded rule does not apply to children who were below compulsory school age at the time of exclusion, children who have been re-instated following a permanent exclusion or would have been had it been practicable to do so and children with EHC plans. (SAC paragraph 3.8).
6.3	<p>Where a governing body does not wish to admit a child with challenging behaviour outside the normal admission round, even though places are available, it must refer the case to the Admissions Team for action under the FAP.</p> <p>If the pupil does not have a local school place the Admissions Team will contact the parent to see if they wish to pursue a place through IYFAP and request their permission. The IYFAP referral form will need to be completed by the school refusing the application. The school representative will then present the case at the relevant IYFAP meeting.</p> <p><b>Please note:</b> This will not apply to a child in care, or a child who was previously in care or a child with an EHC plan naming the school in question, as these children must be admitted. Admission authorities must not refuse to admit a child thought to be potentially disruptive, or likely to exhibit challenging behaviour, on the grounds that the child is first to be assessed for an EHC plan. (SAC paragraph 3.12).</p>
6.4	The governing body of a community or voluntary controlled school, whilst not the admission authority for the school, may still under the terms of Suffolk's FAP refer a case to the LA for action under the FAP.
7.	<b>The LA's powers of direction</b>
7.1	A LA 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 LA 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 LA 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. (SAC paragraph 3.16).
7.2	<p>Before deciding to give a direction, the LA 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 LA decides to direct, it must inform the governing body and headteacher 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 LA. The LA must not make a direction until the 15 days have passed and the case has not been referred. (SAC paragraph 3.17).</p> <p>The Department for Education have provided a flowchart to clarify the procedure. This can be found on their website  <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275581/directions_flow_chart.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/275581/directions_flow_chart.pdf</a>.</p>

7.3	If the case is referred to the Office of the Schools 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. (SAC paragraph 3.18).
<b>8.</b>	<b>Secretary of State’s power of direction (academies)</b>
8.1	Where the LA considers that an academy will best meet the needs of any child, it will ask the academy to admit that child but has no power to direct it to do so. The LA and the academy concerned will usually come to an agreement, but if the academy refuses to admit the child, the LA 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. (SAC paragraph 3.22).