

# **Fair Access Protocol (FAP)**

## **2021/2022**

**Implemented November 2021**

Contents		Page
1.	<a href="#">Introduction</a>	3
2.	<a href="#">Definitions</a>	3
3.	<a href="#">The School Admissions Code (SAC), September 2021: Legislation and the Fair Access Protocol (FAP)</a>	4
4.	<a href="#">Procedures for School Admissions cases</a>	4
5.	<a href="#">Re-integration of pupils who have been permanently excluded by one other educational setting</a>	5
6.	<a href="#">Children with challenging behaviour and those who have been permanently excluded twice</a>	6
7.	<a href="#">The LA's powers of direction</a>	7
8.	<a href="#">Secretary of State's power of direction (academies)</a>	7
	<a href="#">Appendix One – Relevant paragraphs from the School Admissions Code September 2021</a>	8

## 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
- Managed moves
- Suffolk County Council funded school travel
- Chair's actions between IYFAP meetings
- IYFAP Table template

1.	<b>Introduction</b>
	<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 <a href="#">School Admissions Code (SAC), September 2021</a>, paragraph 3.14 states that each LA must have a FAP to ensure that unplaced and vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible.</p> <p>In agreeing a protocol, the LA must ensure that no school – including those with places available – should be asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are placed via the FAP. FAPs must also set out how the needs of children who have been permanently excluded, and children for whom mainstream education is not yet possible will be met. (SAC paragraph 3.16). The SAC sets the context for the FAP.</p> <p>Looked after children (referred to as children in care in Suffolk) and children with an Education, Health and Care (EHC) plan naming the school in question, are not subject to the FAP, as these children must be admitted.</p>
2.	<b>Definitions</b>
	<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 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 SAC, 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 pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment.</p> <p>A child with challenging behaviour may also be disabled as defined in the Equality Act 2010. When considering refusing admission on these grounds, admission authorities must consider their duties under that Act. Admission authorities should also consider the effect of the decision of the <a href="#">Upper Tribunal in C &amp; C v The Governing Body of a School, The Secretary of State for Education (First Interested Party) and The National Autistic Society (Second Interested Party) (SEN) [2018] UKUT 269 (AAC)</a> about the implications of the Equality Act 2010 when a pupil exhibits a tendency to physical abuse of other persons as a consequence of a disability.</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 vulnerable and/or hard to place children, where they are having difficulty in securing a school place in-year.</p> <p><b>Mainstream school:</b> This includes maintained schools (community, voluntary controlled and voluntary aided 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), September 2021: Legislation and the Fair Access Protocol (FAP)</b>
3.1	The FAP must be consulted upon and developed in partnership with all schools in its area. Once the FAP has been agreed by the majority of schools in its area, all admission authorities must participate in it. Participation includes making available a representative who is authorised to participate in discussions, make decisions on placing children via the FAP, and admitting pupils when asked to do so in accordance with the FAP, even when the school is full. LAs must provide admission authorities with reasonable notice and information as to how and when discussions around the placement of children via the FAP will take place. (SAC paragraph 3.15).
3.2	There is no requirement for LAs to co-ordinate in-year applications for schools for which they are not the admission authority. LAs must publish information on their website to explain how in-year applications can be made and how they will be dealt with by the dates set out in the SAC. (SAC paragraph 2.23). Suffolk County Council does not co-ordinate in-year applications for admission to voluntary aided, free schools and academies.
3.3	The mandatory requirements stated in the SAC in relation to in-year admissions and FAPs are shown in Appendix One.
3.4	The Department for Education have provided guidance on Fair Access Protocols at <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001153/Fair_access_protocols.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001153/Fair_access_protocols.pdf</a> .
<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, or a child with an EHC plan naming the school in question, as these children must be admitted. In most cases use of the FAP should be unnecessary for a child previously in care. The Department for Education states that 'We would expect the local authority to

	aim to secure a school place particularly promptly for a previously looked after child and for admission authorities to cooperate with this.’ 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.
4.2	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 <a href="#">SAC paragraphs 1.9 and 2.28</a> give clear direction about what must not be taken into consideration when determining an application.
4.3	<p>Where an admission authority receives an in-year application and it does not wish to admit the child because it has good reason to believe that the child may display challenging behaviour, as defined in the definitions section of this FAP, it may refuse admission and refer to the Admissions Team.</p> <p>An admission authority should only rely on the provision in paragraph 3.10 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.</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 3.10 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	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.
4.6	Where it has been agreed that a child will be considered under the FAP, a school place <b>must</b> be allocated for that child within 20 school days. Once they have been allocated a school place via the FAP, arrangements should be made for the child to start at the school as soon as possible. (SAC paragraph 3.21).
<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 child who has been permanently excluded once 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	<p>A new school for a previously permanently excluded pupil will be identified by the IYFAP taking account of any of the following:</p> <ul style="list-style-type: none"> <li>a) offers from schools to take cases in line with the FAP;</li> <li>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;</li> <li>c) consulting the IYFAP weighting table.</li> </ul>
<b>6.</b>	<b>Children with challenging behaviour and those who have been permanently excluded twice</b>
6.1	Admission authorities must not refuse to admit a child on behavioural grounds in the normal admission round or at any point in the normal year of entry, except for where paragraph 3.8 applies. (SAC paragraph 3.9).
6.2	<p>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 the following children:</p> <ul style="list-style-type: none"> <li>a) children who were below compulsory school age at the time of exclusion;</li> <li>b) children who have been re-instated following a permanent exclusion (or would have been had it been practicable to do so);</li> <li>c) children whose permanent exclusion has been considered by a review panel, and the review panel has decided to quash a decision not to reinstate them following the exclusion; and</li> <li>d) children with EHC plans naming the school. (SAC paragraph 3.8).</li> </ul>
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>

	<b>Please note:</b> The provision in the SAC paragraph 3.10 cannot be used to refuse admission 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 (SAC paragraph 3.12). 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).
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.
<b>7.</b>	<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 3.23).
7.2	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 3.24).
7.3	If the case is referred to the Schools Adjudicator, the Schools Adjudicator may either uphold the direction, determine that another maintained school must admit the child or decide not to issue a direction. The Adjudicator's decision is binding. The Schools 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 3.25).
<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 3.29).

## Appendix One

### Relevant paragraphs from the School Admissions Code September 2021

#### In-year admissions

2.23	<p>A parent can apply for a place for their child at any school, at any time. Local authorities are not required to co-ordinate in-year applications<sup>60</sup> for schools for which they are not the admission authority. They may, however, co-ordinate in-year applications for any or all own admission authority schools in their area, with the agreement of the relevant admission authorities. In 2021, local authorities <b>must</b> publish information on their website by <b>31 October 2021</b> to explain how in-year applications can be made and how they will be dealt with from 1 November 2021 until 31 August 2022. <b>In all subsequent years</b>, local authorities <b>must</b> publish information on their website by <b>31 August</b> at the latest each year to explain how in-year applications can be made and how they will be dealt with from 1 September onwards in that year. This includes setting out which schools they will co-ordinate the applications for and which schools will manage their own in-year admissions. They <b>must</b> also set out contact details for any admission authority that manages its own in-year admissions.</p> <p><sup>60</sup> An application is an in-year application if it is for the admission of a child to a relevant age group, but it is submitted on or after the first day of the first term of the admission year, or if it is for the admission of a child to an age group other than a relevant age group.</p>
2.24	<p>To enable local authorities to do this, <b>in 2021</b> own admission authority schools <b>must</b> inform the local authority by <b>1 October</b> whether they intend to be part of the local authority's in-year co-ordination scheme for the period to 31 August 2022 (where this is offered). <b>In all subsequent years</b>, own admission authorities <b>must</b> inform the local authority by <b>1 August</b> at the latest each year whether they intend to be part of the local authority's in-year co-ordination scheme for the following 1 September to 31 August (where this is offered) or whether they will be managing their own in-year admissions. By the same date, for schools that intend to be part of the local authority's in-year co-ordination for the following academic year, they <b>must</b> also provide the local authority with all the information that the local authority is required to publish on its website, including application forms.</p>
2.25	<p>Local authorities <b>must</b> provide a suitable application form (and a supplementary information form where necessary) for parents to complete when applying for a place for their child at a school for which they co-ordinate in-year admissions. Where a local authority receives an in-year application for a school which manages its own in-year admissions, it <b>must</b> promptly forward the application to the relevant admission authority, which <b>must</b> process it in accordance with its own in-year admission arrangements.</p>
2.26	<p>In 2021, own admission authorities and governing bodies <b>must</b> set out on the school's website by <b>31 October 2021</b> how in-year applications will be dealt with from the 1 November 2021 until 31 August 2022. <b>In all subsequent years</b>, they <b>must</b> set out by <b>31 August</b> at the latest each year, on the school's website how in-year applications will be dealt with from the <b>1 September</b> until the following <b>31 August</b>. They <b>must</b> set out how parents can apply for a school place, and, where they manage their own in-year admissions, provide a suitable application form for parents to complete (and a supplementary information form where necessary), and set out when parents will be notified of the outcome of their application and details about the right to appeal. If the admission authority is to be a part of the local authority's in-year co-ordination scheme,</p>



	it <b>must</b> provide information on where parents can find details of the relevant scheme. An admission authority, governing body or local authority <b>must</b> provide a hard copy of the information about in-year applications on request for those who do not have access to the internet.
2.27	Local authorities <b>must</b> , on request, provide information to prospective parents about the places still available in all schools within their area. To enable them to do this, the admission authorities for all schools in the area <b>must</b> provide the local authority with details of the number of places available at their schools whenever this information is requested, to assist a parent seeking a school place. Such details should be provided no later than two school days following receipt of a request from the local authority.
2.28	<p>With the exception of designated grammar schools, all maintained schools, and academies, including schools designated with a religious character, that have places available <b>must</b> offer a place to every child who has applied for one, without condition or the use of any oversubscription criteria, unless admitting the child would prejudice the efficient provision of education or use of resources. For example, admission authorities <b>must not</b> refuse to admit a child solely because:</p> <ul style="list-style-type: none"> <li>a) they have applied later than other applicants;</li> <li>b) they are not of the faith of the school in the case of a school designated with a religious character;</li> <li>c) they have followed a different curriculum at their previous school; or</li> <li>d) information has not been received from their previous school.</li> </ul>
2.29	<p>Where an admission authority is dealing with multiple in-year admissions and do not have sufficient places for every child who has applied for one, they <b>must</b> allocate places on the basis of the oversubscription criteria in their determined admission arrangements<sup>61</sup> only. If a waiting list is maintained, it <b>must</b> be maintained in line with paragraph 2.15.</p> <p><sup>61</sup> The determined admission arrangements that relate to the admission of pupils in the relevant school year.</p>
2.30	<p>Parents <b>must not</b> be refused the opportunity to make an application or be told that they can only be placed on a waiting list rather than make a formal application. Upon receipt of an in-year application, the admission authority, or the local authority if it is co-ordinating the admissions authority's in-year admissions, should aim to notify the parents of the outcome of their application in writing within 10 school days, but they <b>must</b> be notified in writing within 15 school days<sup>62</sup>. Where an application is refused, the admission authority <b>must</b> also set out the reason for refusal and information about the right to appeal in accordance with paragraph 2.32. Where an admission authority manages its own in-year admissions, it <b>must</b> also notify the local authority of every application and its outcome as soon as reasonably practicable, but should aim to be within two school days, to allow the local authority to keep up to date figures on the availability of places in the area and to ensure they are aware of any children who may not have a school place.</p> <p><sup>62</sup> This does not apply to grammar schools which must, instead, notify a parent in writing within 15 school days of their in-year application of either the date for the assessment of ability or the reason for refusal with information about the right of appeal (where the admission authority chooses not to assess the child's ability because admitting an additional child would prejudice the provision of efficient education or efficient use of resources).</p>

2.31	Where an applicant is offered a school place following an in-year application, and the offer is accepted, arrangements should be made for the child to start school as soon as possible, particularly where the child is out of school.
------	---

## Children who have been permanently excluded twice or display challenging behaviour

3.8	<p>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<sup>75</sup>. The twice excluded rule does not apply to the following children:</p> <ul style="list-style-type: none"> <li>a) children who were below compulsory school age at the time of the permanent exclusion;</li> <li>b) children who have been reinstated following a permanent exclusion (or would have been reinstated had it been practicable to do so);</li> <li>c) children whose permanent exclusion has been considered by a</li> <li>d) review panel, and the review panel has decided to quash a decision not to reinstate them following the exclusion; and</li> <li>e) children with Education, Health and Care plans naming the school.</li> </ul> <p><sup>75</sup> Section 87 of the SSFA 1998.</p>
3.9	Admission authorities <b>must not</b> refuse to admit a child on behavioural grounds in the normal admissions round or at any point in the normal year of entry, except for where paragraph 3.8 applies.
3.10	<p>Where an admission authority receives an in-year application for a year group that is not the normal point of entry and it does not wish to admit the child because it has good reason to believe that the child may display challenging behaviour<sup>76</sup>, it may refuse admission<sup>77</sup> and refer the child to the Fair Access Protocol<sup>78</sup>.</p> <p><sup>76</sup> 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 <b>or</b> 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 pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment.</p> <p><sup>77</sup> A child with challenging behaviour may also be disabled as defined in the Equality Act 2010. When considering refusing admission on these grounds, admission authorities must consider their duties under that Act. Admission authorities should also consider the effect of the decision of the <a href="#">Upper Tribunal in C &amp; C v The Governing Body of a School, The Secretary of State for Education (First Interested Party) and The National Autistic Society (Second Interested Party) (SEN) [2018] UKUT 269 (AAC)</a> about the implications of the Equality Act 2010 when a pupil exhibits a tendency to physical abuse of other persons as a consequence of a disability.</p> <p><sup>78</sup> Paragraph 1.9(g) does not apply where an admission authority takes account of past behaviour as evidence for concerns about challenging behaviour, solely for the purpose of making a decision on whether it would be appropriate to refuse admission on the basis described in paragraph 3.10.</p>

3.11	An admission authority should only rely on the provision in paragraph 3.10 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.
3.12	The provision in paragraph 3.10 cannot be used to refuse admission to looked after children, previously looked after children; and children who have Education, Health and Care Plans naming the school in question.
3.13	Admission authorities <b>must not</b> 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.

## Fair Access Protocols

3.14	Each local authority <b>must</b> have a Fair Access Protocol to ensure that unplaced and vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible.
3.15	<p>The Protocol <b>must</b> be consulted upon and developed in partnership with all schools in its area. Once the Protocol has been agreed by the majority of schools in its area, all admission authorities <b>must</b> participate in it. Participation includes making available a representative who is authorised to participate in discussions, make decisions on placing children via the Protocol, and admitting pupils when asked to do so in accordance with the Protocol, even when the school is full<sup>79</sup>. Local authorities <b>must</b> provide admission authorities with reasonable notice and information as to how and when discussions around the placement of children via the Protocol will take place.</p> <p><sup>79</sup> Decisions about admitting children under the Protocol can be made by one individual in an admission authority provided that suitable authority has been delegated to that individual. Admission authorities must ensure this process complies with relevant governance requirements.</p>
3.16	No school - including those with places available – should be asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are placed via the Protocol. Fair Access Protocols <b>must</b> also set out how the needs of children who have been permanently excluded, and children for whom mainstream education is not yet possible, will be met.
3.17	<p>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<sup>80</sup>:</p> <ul style="list-style-type: none"> <li>a) children either subject to a Child in Need Plan or a Child Protection Plan<sup>81</sup> 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;</li> <li>b) children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol;</li> <li>c) children from the criminal justice system;</li> </ul>

	<ul style="list-style-type: none"> <li>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;</li> <li>e) children with special educational needs (but without an Education, Health and Care plan), disabilities or medical conditions;</li> <li>f) children who are carers;</li> <li>g) children who are homeless;</li> <li>h) children in formal kinship care arrangements<sup>82</sup>;</li> <li>i) children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers;</li> <li>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 this Code;</li> <li>k) children for whom a place has not been sought due to exceptional circumstances<sup>83</sup>;</li> <li>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</li> <li>m) previously looked after children for whom the local authority has been unable to promptly secure a school place<sup>84</sup>.</li> </ul> <p><sup>80</sup> For example, where an application has been made to at least one school and this has been refused, or the local authority has confirmed that there are no places available at any school within a reasonable distance.</p> <p><sup>81</sup> Child in Need Plans and Child Protection Plans are plans of help and protection to address safeguarding and welfare needs, where a child has been assessed by the local authority as being a child in need under Section 17 of the Children Act 1989 and/or as suffering or likely to suffer significant hardship under Section 47 of the Children Act 1989. See also statutory guidance Working Together to Safeguard Children (2018) (pages 35 and 48-49).</p> <p><sup>82</sup> As evidenced by either a child arrangements order not relating to either birth parent or a special guardianship order.</p> <p><sup>83</sup> It is for the local authority to decide whether a child qualifies to be placed via the Protocol on this basis, based on the circumstances of the case.</p> <p><sup>84</sup> In most cases use of the Fair Access Protocol should be unnecessary for a previously looked after child. We would expect the local authority to aim to secure a school place particularly promptly for a previously looked after child and for admission authorities to cooperate with this. The local authority may consider swift use of their general powers of direction (under paragraphs 3.26-3.28) or asking the Secretary of State to consider a direction (under paragraph 3.29) to be the most suitable course of action if a school place for a previously looked after child cannot be agreed with an admission authority promptly.</p>
3.18	<p>Eligibility for the Fair Access Protocol does not limit a parent's right to make an in-year application to any school for their child. Admission authorities <b>must</b> process these applications in accordance with their usual in-year admission procedures (as set out in paragraphs 2.23-2.31). They <b>must not</b> refuse to admit such children on the basis that they may be eligible to be placed via the Fair Access Protocol. The parent will continue</p>

	to have the right of appeal for any place they have been refused, even if the child has been offered a school place via the Fair Access Protocol.
3.19	There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol, but parents' views should be taken into account.
3.20	Fair Access Protocols should seek to place a child in a school that is appropriate to any particular needs they may have. The Fair Access Protocol <b>must not</b> require a school automatically to admit a child via the Fair Access Protocol, in place of a child permanently excluded from the school.
3.21	Where it has been agreed that a child will be considered under the Fair Access Protocol, a school place <b>must</b> be allocated for that child within 20 school days. Once they have been allocated a school place via the Fair Access Protocol, arrangements should be made for the child to start at the school as soon as possible.
3.22	In the event that the majority of schools in an area can no longer support the principles and approach of their local Fair Access Protocol, they should initiate a review with the local authority. There should be a clear process for how such a review can be initiated within each Fair Access Protocol. The existing Fair Access Protocol will remain binding on all schools in the local area until the point at which a new one is adopted.