

# **In-Year Fair Access Panel (IYFAP) Guidance 2021/2022**

**Implemented November 2021**

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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. The FAP is a separate document and can be found on Suffolk County Council’s website <a href="http://www.suffolk.gov.uk/FAP">www.suffolk.gov.uk/FAP</a>.</p> <p>This In-Year Fair Access Panel (IYFAP) Guidance sets out the principle and procedures to support:</p> <ul style="list-style-type: none"> <li>▪ the delivery of the FAP; and</li> <li>▪ other vulnerable children and young people whose situations fall outside of the FAP.</li> </ul> <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 Plan naming the school in question, are not subject to the FAP and should not be presented at IYFAP, 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 In-Year Fair Access Panel (IYFAP)</b>
3.1	The IYFAP is the mechanism used to operate the FAP which enables the Admissions Team to secure school places for vulnerable and/or hard to place children, where they are having difficulty in securing a school place in-year. In addition, the IYFAP considers the re-integration of permanently excluded children, those returning to a mainstream school from a PRU or AP and managed moves.
3.2	Schools will seek advice, guidance and direct input as required for children through the Inclusion Service, education outreach services, or their own specialist arrangements to reduce the risk of permanent exclusions or the need for managed moves. IYFAP is not to be used for advice in these contexts.
3.3	Three IYFAP meetings are held across Suffolk, on an approximately four-weekly term time basis. The referrer will be expected to present cases at the most relevant IYFAP based on the individual circumstances of the child. Suffolk children attending schools in other counties may be referred to the IYFAP. Children living in other LAs

	and attending Suffolk schools cannot be referred to IYFAP and should be referred to their own LA.
3.4	Children in care are not subject to FAP and should not be presented or discussed at IYFAP. Instead, where required their case should be resolved outside of IYFAP meetings. Brief anonymous updates should be reported at IYFAP meetings under Chair's actions.
3.5	IYFAP includes representatives from the Admissions Team; Attendance Service; Early Help and Social Care; Inclusion Service; Police; Schools; and Suffolk Youth Justice Service. The meetings are chaired and administered by the Inclusion Service.
<b>4.</b>	<b>School Admission Cases</b>
4.1	<p>Admission authorities are required to comply with the SAC. This is part of the school's funding agreement for academies and free schools.</p> <p>Refer to the FAP Section 4 for full procedures relating to School Admissions cases.</p>
<b>5.</b>	<b>The principles and procedures of the IYFAP</b>
5.1	It is essential to the success of IYFAP that Headteachers, academy trusts and governing bodies agree to the principles and procedures and give their fullest support.
5.2	<p>The referrer is responsible for ensuring that a parent knows of the referral to IYFAP and its content. They must ensure that the parent gives their consent for their child to be discussed. Schools must ensure they comply with the General Data Protection Regulation (GDPR) (May 2018).</p> <p>Where a child is not in care but has a social worker, the social worker must be informed that the child's case is being presented.</p> <p>Suffolk County Council's Privacy Notice sets out what information Children's Services collects and uses, and customer's rights regarding their information. This is available at <a href="http://www.suffolk.gov.uk/CYPprivacynotice">www.suffolk.gov.uk/CYPprivacynotice</a>.</p>
5.3	<p>All admission authorities admitting Suffolk children must participate in the FAP. They must ensure that no school – including those with places available – is asked by IYFAP 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.</p> <p>It is therefore essential that each school is represented at every meeting and all admission authorities <b>must</b> participate. Participation includes making available a representative who is authorised to participate in discussions, make decisions on placing children in admissions cases, re-integrations or managed moves when asked to do so in accordance with the FAP, even when the school is full.</p> <p>Local Authorities (LA) <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>IYFAP may advise Suffolk County Council (SCC) as the Local Authority that a pupil should be admitted to a school even when that school is not represented at the IYFAP meeting. However, the legal authority to make the decision lies with SCC. Where necessary, this would allow for directing or seeking a direction to a school in the case of disagreements.</p> <p>Where a school agrees and/or the other schools indicate a school should take a pupil then reasonably SCC will follow that recommendation.</p>
5.4	<p>Having considered any information from IYFAP, SCC decisions will be made fairly, consistently, and transparently in the best interests of the child's educational needs, the considered allocated school and in accordance with the Education Act 1996, Human Rights Act 1998, School Standards and Framework Act 1998, Children Act 2004, Education and Inspections Act 2006, Education and Skills Act 2008, Equality Act 2010, School Admissions Appeals Code 2012, Children and Families Act 2014, SEND Code of Practice 2015, School Admissions Code 2021 and Statutory Guidance relating to Exclusions 2017.</p>
5.5	<p>Where it has been agreed that a child will be considered under the IYFAP, 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).</p>
5.6	<p>The IYFAP table will record all admission cases discussed at IYFAP, re-integrations from PRUs/APs and those following a permanent exclusion, and managed moves. This will be held and up-dated by the SEND Services for CYP within the Inclusion Service.</p> <p>The IYFAP Table (<b>Appendix A</b>) will be re-set at the beginning of each new school year and will carry over a school's data from the previous summer term.</p>
5.7	<p>The protocol will be reviewed by the LA, in conjunction with Headteachers, as and when required, as the protocol is not part of the LA's formal admissions consultation process. This is required in order to assess its effectiveness in ensuring that all unplaced children are being allocated places at all schools or in AP, on an equitable basis and in support of AP commissioning arrangements on an equitable and timely basis.</p>
5.8	<p>The case will be presented by the referrer and a decision will be made.</p>
5.9	<p>Within the terms of this protocol, placement decisions may result in the admission of children above a school's admission number. Schools cannot cite oversubscription as a reason for not admitting a child under the FAP. However, children can only be offered a place in Key Stage 1 when it would not breach Infant Class Size legislation, unless a permitted exception applies in line with the SAC. The SAC requires that those children allocated a place at a school in accordance with a FAP must take precedence over those on a waiting list. (SAC paragraph 2.15).</p>
5.10	<p>Wherever possible, pupils with a religious affiliation should be matched to a suitable school, but this should not override the protocol if the school is unable to take the pupil, or if the pupil identified for the school does not have an affiliation. However, this will not normally give eligibility to SCC funded school travel, unless it is the nearest suitable school with a place available, and is over the statutory walking</p>

	distance or where the child meets the Extended Rights to low income travel eligibility.
5.11	<p>If a decision is reached at IYFAP but a school refuses to admit a pupil under the terms of the FAP, action will be taken by the LA to (a) instruct or direct, as appropriate, a maintained school to admit the pupil; or (b) to seek a direction from the Secretary of State for an academy through the Educations and Skills Funding Agency. (SAC paragraph 3.29).</p> <p>In these circumstances, where the school place is not secured for the pupil, the LA will take action to ensure education is provided until the pupil has a local school place.</p>
<b>6.</b>	<b>IYFAP and criteria for selection of receiving school</b>
6.1	<p>It is important that all schools are asked to admit a balance of pupils under the protocol. The decision should be mindful but not restricted to the following factors as well as taking account of professional advice from the referring school and appropriate professionals:</p> <ul style="list-style-type: none"> <li>▪ Specific issues in relation to the individual case;</li> <li>▪ Number of placements made by IYFAP to individual schools as reflected in the IYFAP Table;</li> <li>▪ Parental preference;</li> <li>▪ Geographical proximity;</li> <li>▪ Distance factor (measured by statutory walking distance).</li> </ul>
6.2	<p>Decisions will be made taking account of the following:</p> <ul style="list-style-type: none"> <li>▪ Offers from schools to take cases in accordance with the FAP;</li> <li>▪ All parties, including schools that are not represented at IYFAP, are expected to comply with IYFAP procedures and decisions to ensure the process is effective and children are placed quickly;</li> <li>▪ The IYFAP Table will be used if no school agrees to offer a school place.</li> </ul>
6.3	All schools recognise their collective responsibility for all pupils and will work collaboratively to manage pupils with challenging behaviour, involving multi-agency support, accessed where appropriate. All members will work together to secure commitment to the inclusion agenda and to reduce exclusion from schools.
<b>7.</b>	<b>IYFAP Referral Procedures</b>
7.1	<p>For re-integrations and managed move referrals, prior to a child being added to the agenda, a discussion should take place with the parent and consent obtained. This is indicated by the parent's signature on the referral form. The views of the pupil should be sought where appropriate.</p> <p>Careful consideration must be given to information presented to IYFAP and sensitive family information should only be shared at the discretion of the IYFAP Chair.</p>
7.2	The IYFAP Chair will use, as the guide to referrals and presentations, the expectations of the Teachers' Standards Part Two page 14:

	<a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/665520/Teachers_Standards.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/665520/Teachers_Standards.pdf</a> .
7.3	Referrers are expected to fully complete the IYFAP referral form. This should evidence all strategies undertaken to support the pupil, including the advice and guidance received from outside agencies. The impact of these support strategies should be clear. In addition, the attendance certificate and risk assessment should also be attached.
7.4	All referrals will be quality assured and the referrer will be given the opportunity to provide any necessary additional information within a specified timeframe. If this is not received, the referral will not be discussed.
7.5	Wherever possible, a parent's and child's view will be considered, but will not override the FAP if the recommended school is not in a position to admit the child.
<b>8.</b>	<b>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</b>
8.1	The referral form and associated paperwork is completed by the AP provider, and they present to the IYFAP with parental preferences identified.
8.2	The IYFAP allocates the pupil to a mainstream school.
8.3	The child will be placed on the admissions register (see definition) immediately after IYFAP and on the attendance register on the start date agreed with Family Services.
8.4	If the parent declines or the allocated school is aware of reasons unknown to IYFAP that would make the placement inappropriate, the case is referred back to IYFAP.
<b>9.</b>	<b>Managed moves</b>
9.1	Managed moves (managed transfers) are agreed between two schools and the parent. They are not regulated through the FAP under the SAC, and are not the decision of the LA. However, a clear and transparent process is required. These will be facilitated through IYFAP wherever possible.
9.2	A managed move seeks to have a positive impact on the pupil's progress and inclusion in a mainstream setting. Ordinarily, this will be an early intervention for the pupil and should not be at the point of permanent exclusion when referred for a managed move.
9.3	<p>DfE issued guidance (September 2017) titled "Exclusion from maintained schools, academies and pupil referral units in England", provides statutory guidance on factors that a Headteacher should consider before taking the decision to exclude.</p> <p>DfE issued guidance (February 2018) titled "Promoting the Education of Looked After and Previously Looked After Children", gives specific guidance related to this vulnerable group in terms of exclusion.</p> <p>A pupil can also transfer to another school as part of a managed move where this occurs with the consent of the parties involved, including the parents. However, the</p>



	threat of exclusion must never be used to influence parents to remove their child from the school.
9.4	An isolated incident or exceptional circumstance may occur where a managed move may be appropriate to avoid a permanent exclusion. It is likely that an immediate decision will be required and therefore, these cases will not be discussed at IYFAP and will be discussed within the Inclusion Service.
9.5	Pupils cannot be removed from the school roll on disciplinary grounds unless the formal exclusion procedures set out in statute and outlined in the exclusion guidance September 2017 have been adhered to. A pupil can be removed from roll if a managed move has been agreed by all relevant parties and the 6-week period is successfully completed, and the pupil is placed on the roll of the receiving school.
9.6	A managed move can be sought for pupils in the Reception Year to Year 11, who attend a mainstream school, including maintained schools, academies or free schools.
9.7	A managed move is a voluntary agreement based on sound educational principles, the terms and conditions of which should be agreed by the pupil, parent, the home school and the receiving school, and recorded in a managed move agreement. When the child has a social worker they should be involved in the decision making.
9.8	A managed move is not appropriate when:
	a) a parent has made an in-year application for a new school;
	b) a pupil is not on a school roll;
	c) a pupil will not return to the home school if the placement is unsuccessful;
	d) the pupil is current Year 10 in the Spring/Summer term or Year 11 in the Autumn/Spring term. Pupils moving at these times are considered to add unjustified accountability to the receiving school and will only be considered in exceptional circumstances.
9.9	When the following criteria are met a referral can be made to IYFAP within the referral deadlines.
	a) Pupils are at low to medium risk of permanent exclusion.
	b) The pupil and family feel that they would like the opportunity for a fresh start with a different peer group and are committed to supporting the process and the schools.
	c) The school can demonstrate that additional support (internal <b>and</b> external) has been offered to address the peer group issues and that the pupil has engaged with some aspects of this intervention.
	d) There is a shared view (school, family, LA teams) that some of the strategies implemented have not worked in the current school but might work in another setting – there would need to be some evidence presented to justify this.

	e) There is a clear audit of the pupil's strengths and capabilities that can form the core of support for the pupil in a new school, suggesting the viability of a managed move.
9.10	When a school has been identified, the Headteacher of the home school has a responsibility to make the receiving school fully aware of the pupil's difficulties. All of the pupil's records should be made available, including the school's risk management strategies as detailed in the risk assessment.
9.11	The receiving school must be in a position to offer a place to the pupil on completion of a successful managed move.
9.12	When a pupil who has been on the AP waiting list is then considered suitable for a managed move, they are removed from the AP waiting list.
9.13	An initial meeting to include the pupil, family, both schools and a representative from the Inclusion Service will be held and start and review dates will be agreed. The managed move should be reviewed after a minimum of three weeks, with a final review within six weeks of the managed move starting. The receiving school can accept a pupil on roll prior to the end of the managed move period. This is at the discretion of the receiving Headteacher.
9.14	The formal review meetings should be held at the receiving school and include the pupil, family and both schools and in most cases, a representative of Inclusion Service.
9.15	The pupil must remain on roll at the home school for the duration of the managed move period. The referring school maintains the Enrolment Status of 'M' (Main dual-registration). The receiving school has an Enrolment Status of 'S' (Subsidiary dual-registration).
9.16	It is the expectation that the receiving school applies their behaviour policy to the managed move pupil in a consistent and fair way in line with expectations of all existing pupils. The decision to end a managed move should be necessary and proportionate to the offence. For example:
	a) A significant or number of incidents that warrant exclusion under the school's behaviour policy then this would be justified;
	b) the persistence of low-level behaviour is at the same level if not worse than the pupil's behaviour record at the home school prior to the implementation of a managed move;
	c) attendance is in line with persistent absence.
9.17	A final decision should be made by the receiving school at a formal review at the end of the managed move period as to the permanency of the transfer. Either the pupil will transfer on to the roll of the receiving school or will return to the home school. A decision may be made to extend the managed move. A clear deadline needs to be set to determine the success of the managed move – the maximum placement should be nine weeks.

9.18	Should the receiving school have a concern regarding the managed move pupil that could result in the process being terminated, attempts should be made to call an emergency intervention meeting within 48 hours. The aim of the meeting is to address the concerns and give the pupil a final opportunity to meet the receiving schools' expectations or clarify why the managed move needs to come to an end.
9.19	Should the managed move be unsuccessful, the receiving school will initiate communication within 24 hours of the managed move placement ending and arrange for the pupil to return to their home school. The receiving school will inform the family, home school, social worker if the child has one, and the Inclusion Service.
9.20	An essential feature of a Managed Move Scheme is that it applies to all schools and all designated year groups even when the year group is full. The success of the protocol depends on the agreement of all schools that the appropriate admissions authority will apply the FAP to admit eligible pupils over and above the PAN as an 'exceptional circumstance'.
<b>10.</b>	<b>Suffolk County Council funded school travel</b>
10.1	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> .
<b>11.</b>	<b>Chair's actions between IYFAP meetings</b>
11.1	Only in exceptional circumstances and for cases involving children in care, will the Chair be required to make decisions outside of IYFAP. Where possible these cases should be restricted to pupils from the Suffolk Youth Justice Service (SYJS) and Virtual School cases involving children in care, cases with safeguarding considerations and where required to comply with statutory placement requirements for permanently excluded pupils. Any actions taken need to be reflected in the IYFAP Table, these will be reported at the next IYFAP meeting.
11.2	<p>The Chair of IYFAP will delegate to the Senior Education Officer (Admissions and School Travel) any urgent action required for school admission cases between IYFAP meetings, including to comply with the statutory requirement set out in the SAC, paragraph 3.21.</p> <p>Additionally, parents will be advised to use the legal pathways to access mainstream placements (that is, the in-year application process) where necessary.</p>

## APPENDIX A - IYFAP Table template

Table 1 would be 'behind the scenes' and linked to a shortened version shown as Table 2 which would be shown as a list of all schools.

Numbers shown in both tables are an example

Table 1 - There will be a record in table one for all mainstream schools, by IYFAP Area which will be available at IYFAP meetings. Pupil names will sit behind the numbers in Table 1

School name	Permanent exclusion from school	Permanent exclusion Re-integration into school	Re-integration from AP	School Admission Case on roll	Managed Move Status					
					From school/Home school			To school/Receiving school		
					Successful	Ongoing/ Due to start	Unsuccessful	Successful	Ongoing/ Due to start	Unsuccessful
Year 7					1					1
Year 8	1									
Year 9										
Year 10										
Year 11										
Total	1	0	0	0	1	0	0	0	0	1

Table 2 - This is the summary of all schools in the IYFAP Area which will be available at IYFAP meetings

School Name	Permanent exclusion from school	Permanent exclusion Re-integration into school	Re-integration from AP	School Admission Case	Managed Move Status					
					From school/Home school			To school/Receiving school		
					Successful	Ongoing/ Due to start	Unsuccessful	Successful	Ongoing/ Due to start	Unsuccessful
	1				1					1
									1	
			1			1				
	1									

## Appendix B

### 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.
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## 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>



	<p>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;</p> <p>e) children with special educational needs (but without an Education, Health and Care plan), disabilities or medical conditions;</p> <p>f) children who are carers;</p> <p>g) children who are homeless;</p> <p>h) children in formal kinship care arrangements<sup>82</sup>;</p> <p>i) children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers;</p> <p>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;</p> <p>k) children for whom a place has not been sought due to exceptional circumstances<sup>83</sup>;</p> <p>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</p> <p>m) previously looked after children for whom the local authority has been unable to promptly secure a school place<sup>84</sup>.</p> <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.