

**TAMESIDE MBC  
PRIMARY MAINTAINED SCHOOLS AND ACADEMIES  
FAIR ACCESS PROTOCOL 2021 - 2022**

**1. BACKGROUND**

- 1.1 Departmental Advice July 2021 advises the purpose of a Fair Access Protocol is to ensure that – outside the normal admissions round – unplaced pupils, especially the most vulnerable, are found and offered a place quickly, so that the length of time any pupil is out of school is kept to the minimum.
- 1.2 The advice note states that every local authority must have a Fair Access Protocol (FAP), agreed with the majority of schools, in which all schools including Academies and Free Schools must participate since it is binding on all schools.
- 1.3 Schools should work together collaboratively, taking into account the needs of the pupil and those of the school. There is no duty to comply with parental preference when allocating places through the FAP but it is expected the views of the parents are taken into account.
- 1.4 The FAP will ensure that no school or academy, including those with available places, is asked to take a disproportionate number of children and young people who have been excluded from other schools or academies or who have challenging behaviour. The School's Fair Access weighted credit total (described in section 3) will determine what constitutes a "disproportionate number of pupils".

**2. MAIN PRINCIPLES**

- 2.1 The FAP will ensure that school places are allocated and offered in an open and fair way. The operation of the FAP is outside the arrangements of co-ordination and will only be used for unplaced children that meet the prescribed categories set out in paragraph 3.17 of the School Admissions Code September 2021 and detailed in section 3 of this document. It is not intended to cover the majority of pupils for whom in-year transfers are a straightforward procedure.
- 2.2 Admission Authorities must not refuse to admit a pupil thought to be potentially disruptive, or likely to exhibit challenging behaviour, on the grounds that the child or young person is first to be assessed for special educational needs.
- 2.3 Every effort will be made to source relevant educational and professional evidence within a reasonable timescale from receipt of the application. Where there is professional evidence that mainstream education may not be suitable at the present time, the local authority will consult parents and other agencies and seek to provide appropriate provision or support.
- 2.4 Where a governing body does not wish to admit a pupil with challenging behaviour (see 2.5) outside the normal admission round, even though places are available, it must refer the pupil to the Fair Access officer for action under the provisions of paragraph 3.10 of the School Admissions Code 2021 stating the reasons for refusal. This will normally only be appropriate where a school has a particularly high proportion of pupils with challenging behaviour or previously excluded pupils 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.. This provision does not apply to a looked after child, a previously looked after child or a child with an education health and care plan naming the school in question, as these children must be admitted under separate procedures.
- 2.5 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. This behaviour is expected to significantly interfere with the pupil's / other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment. Further guidance is included in Appendix A.

- 2.6 A pupil 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 including when a pupil exhibits a tendency to physical abuse of other persons as a consequence of a disability.
- 2.7 Once it has been agreed that a pupil should attend a named school, that school must be accountable for that pupil. There is a collective responsibility to ensure the safeguarding of all young people and we must work together to protect them and act in their best interests.
- 2.8 The Local Authority (LA) will have the responsibility for identifying a pupil as being 'Fair Access' based upon evidence on the application form and where relevant from the transferring school and other appropriate professionals.

### **3. REFERRAL TO THE FAIR ACCESS PROTOCOL (FAP)**

- 3.1 Referral to the FAP should be seen as the last resort to secure a school place for a child. Where possible, children should be placed in school through the usual in-year admissions process in the first instance.
- 3.2 Where an admission authority refuses an in-year application and it considers that the pupil may fall into a fair access category, the admission authority should notify the local authority of this within 5 school days stating the reasons for referral. A Referral Form is included in Appendix A. Where the LA subsequently decides that a child is to be placed via the FAP, parents will be notified and a school place must be allocated to that child within 20 school days.
- 3.3 The FAP will only be used to place the following groups of pupils who 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:
  - a) children either subject to a Child in Need Plan or a Child Protection Plan or having had a Child in Need Plan or a Child Protection Plan within 12 months at the point of being referred to the FAP (information may be sought from the previous LA)
  - b) children living in a refuge or in other Relevant Accommodation at the point of being referred to the FAP
  - c) children from the criminal justice system
  - d) children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education
  - e) children with special educational needs (but without an education, health and care plan), disabilities or medical conditions
  - f) children who are carers
  - g) children who are homeless
  - h) children in formal kinship care arrangements (as evidenced by either a child arrangements order not relating to either birth parent or a special guardianship order)
  - i) children of, or who are, Gypsies, Roma, Travellers, refugees and asylum seekers
  - j) children who have been refused a school place on the grounds of their challenging behaviour and referred to the FAP in accordance with paragraph 3.10 of the Code
  - k) children for whom a place has not been sought due to exceptional circumstances (the local authority will decide whether a child qualifies to be placed via the FAP on this basis, based on the circumstances of the case)

- l) children who have been out of education for 4 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. (\*The reasonable distance will be the statutory walking distance between home and school that the Government thinks a child should be able to walk: two miles for children under eight years of age. Three miles for pupils aged 8–16 years.)
- m) previously looked after children for whom the local authority has been unable to promptly secure a school place (In most cases, use of the FAP should be unnecessary for a previously looked after child. The LA is expected to secure a school place promptly for such children and for admission authorities to cooperate with this. The LA will consider use of their general powers of direction or will ask the Secretary of State to consider issuing a direction [as set out in paragraphs 3.26 to 3.29 of the Code] where a school place for a previously looked after child cannot be agreed with an admission authority promptly).

#### **4. REFERRAL TO THE FAIR ACCESS PROTOCOL**

- 4.1 Once an application is identified as one which meets the Fair Access criteria the Fair Access Officer will nominate two further possible schools for consideration taking the following factors into account:
  - the circumstances of the pupil,
  - their location,
  - year group
  - class numbers
  - school fair access credits
  - fair access reason
  - parental preference
  - previous fair access pupils
  - other relevant information provided with the application
- 4.2 The parent is informed that their application is being sent to the two newly nominated schools for consideration under the FAP. The parent is notified of the 20 school days target.
- 4.3 The two nominated schools will be asked if they can offer a place or provide reasons within 5 school days if they are unable to offer. If both schools can offer a place, the Fair Access Officer will allocate the nearest school to the pupil's home address. The responses from the nominated schools will be considered alongside the original school's refusal at the In Year Fair Access Panel (IFAP).

#### **5. IN-YEAR FAIR ACCESS PANEL (IFAP)**

- 5.1 The IFAP will consider the original refusal and the two nominated school refusals. The panel will allocate one of the three schools.
- 5.2 IFAP – The panel will consist of three Head Teachers. The Fair Access Officer will invite Head Teachers to attend the panel on a rota basis. The panel will decide if the allocation should be awarded to the original school in light of the objection raised or if one of the alternative schools should be identified instead. The IFAP will be conducted virtually using Teams and Emails or if necessary face to face.
- 5.3 There will be regular panel meetings (at least once a month and more often if needed to comply with statutory timescales) to ensure pupils are placed in a timely fashion. The process is summarised as follows:
  - School refuses a place and refers application to Fair Access protocol

- Parent is informed and the 20 day target is set
- FA Officer nominates 2 additional schools and seeks an offer from one of them
- If no offer is received, the 3 school refusals are considered at an IFAP meeting
- The IFAP allocates one of the 3 schools
- Pupil is admitted to the relevant school and FA Officer awards a credit to the school

5.4 The allocated school will be expected to admit the pupil. Pupils should be put on role in a timely fashion and within 15 school days of the offer letter being sent out. The school will inform the Fair Access Officer of the start date of the pupil.

5.5 In all cases the Fair Access Officer informs the parents of the school allocations and if relevant their statutory right of appeal to an independent appeal panel. The Fair Access officer will also update the Fair Access records to ensure there is equity of placement.

5.6 **Fair Access Credits** - Schools are awarded one fair access credit for each pupil allocated under the protocol. The number of credits a school has accrued during the current and previous 2 terms will be taken into account when pupils are allocated to schools. Fair Access credits will be awarded once a start date has been confirmed by the school and has notified the Fair Access Officer of the date. Should a pupil not be subsequently admitted onto an allocated school role the credit will be removed.

## 6. PUPILS FROM THE PUPIL REFERRAL SERVICE (TPRS)

6.1 TPRS will approach the preferred school direct. The Head Teacher will discuss the suitability of the placement with the TPRS.

6.2 Once a placement is agreed the TPRS will work directly with the placement school to prepare the pupil for the return to mainstream. This preparation may include:

- school representative invited to the TPRS to meet the parent and pupil
- regular progress emails shared with the school
- pupil is visited at the PRS by their school form tutor
- pupil attends 'taster' lessons at the allocated school

6.3 School Reviews – At the agreed time the pupil is admitted into the mainstream school on a full or part-time basis as appropriate. The School informs the FA Officer and a credit is awarded to the school. The pupil is dual registered with the SCHOOL as the MAIN and the TPRS as the SUBSIDIARY and will remain dual registered for a maximum of 12 weeks. School review meetings will be held at 4, 8 and 12 weeks. The review meetings will focus on the success criteria as set out in the placement documentation, but may also include any points of agreed action from the interim reviews. Following a successful 12 week school review meeting the TPRS will take the pupil off their role and the pupil will become single registered at the school.

6.4 If at the 12 week school review it is agreed by the Head Teacher and the TPRS that the pupil has not met the success criteria in the dual registration agreement, or any agreed actions from the interim reviews; the placement will be ended. The pupil is removed from the school's role and is single registered at TPRS. A new placement request will be required for any future reintegration placements.

6.5 Should the TPRS encounter problems securing a school placement at a preferred school, a second school should be approached. If the second school refuses a place the TPRS can bring the matter to the IFAP meeting for resolution. The TPRS will allow sufficient time for the schools to consider the requests before referring the matter to the FA Officer. The FA Officer will invite the objecting schools to forward their reasons for refusal to the IFAP. The IFAP will allocate one of the objecting schools.

## 7. ENSURING SUCCESS

- 7.1 In order for the scheme to be successful, schools must adhere to the following points:
- 7.2 **Class Numbers** – all schools should ensure the LA has up to date class numbers. These should be communicated the School Admissions through monthly migration reports and within 2 days on request.
- 7.3 **Appeals** - Fair access pupils will be given priority for admission over any others awaiting an appeal for admission and schools must not insist on an appeal hearing before admitting a pupil under this protocol.
- 7.4 **Religion / Faith** - Wherever possible pupils with a religious affiliation will be matched to a suitable school, but this will not override the Protocol.
- 7.5 **Siblings** - In order to ensure regular school attendance and punctuality, it may be necessary for siblings of pupils placed under the protocol to be allocated a place in the same school under the fair access process, even if there are no places in the relevant year group.
- 7.6 **Looked After Children/Cared For Children (LAC/CFC)** - Admission authorities are required to give highest priority in their admission arrangements to children in care, and Local Authorities may direct other admission authorities for any maintained school to admit a child in their care. Looked after children are not allocated school places under the protocol and are not eligible for FA credits.
- 7.7 **Special Educational Needs (SEN)** - Children with an Education Health and Care Plan are not covered by the protocol and are placed according to the SEN Code of Practice.
- 7.8 **Returning From Elective Home Education due to COVID-19** - During the COVID-19 outbreak, some parents of children who are clinically extremely vulnerable (at very high risk of serious illness from coronavirus) decided to electively home educate their child. Where a parent decides they want their child to return to school and subsequently apply for a school place, applications should be processed in accordance with the local in-year admissions process. Most children should secure a school place this way. For those experiencing difficulties, Local Authorities should be aware that those children with medical conditions qualify to be allocated a school place via the FAP under category (e) above. Other children in this situation may also qualify to be placed via the FAP under category (l) above.

## 8. LOCAL AUTHORITY INSTRUCTION

- 8.1 If a Fair Access Panel does not make an offer of a school place, the Local Authority will 'instruct' a school or academy to admit the young person taking into consideration the number of young people already accepted by each school under the Protocol and the accessibility of the school or academy for the young person. Consideration can also be given to any other personal circumstances of the young person. The allocated school or academy may not always be within the area within which the young person lives.
- 8.2 If a school or academy refuses to adhere to an instruction from the Local Authority, they must put their reasons in writing within 5 school days. The Local Authority will then decide whether or not to issue a direction (community schools) or refer the matter to the Education Funding Agency acting on behalf of the Secretary of State (all other schools and academies) using the processes outlined in the School Admissions Code 2014.

## **9. MONITORING AND EVALUATION**

- 9.1 Implementation of the Protocol will be monitored by the Tameside School Admissions Team. The Protocol will be reviewed in the summer term of each academic year so that any amendments can be agreed and implemented from the start of the following academic year.

## APPENDIX A

### FAIR ACCESS REFERRAL FORM

Use this form to give your reasons for referring a pupil to the Fair Access Protocol. Referral to the FAP should be a last resort and all schools have a collective responsibility of helping the most vulnerable by admitting their fair share of FA pupils. This includes supporting children who have been permanently excluded and those who display challenging behaviour.

Return the form to School Admissions within **5 school days** from receipt of the application in order to comply with statutory timescales: [schooladmissions@tameside.gov.uk](mailto:schooladmissions@tameside.gov.uk)

<b>School Name</b>	
<b>Pupil Name</b>	<b>Year Group</b>
<b>Please state the Fair Access category you consider this application to meet (see list overleaf):</b>	
<p>If this referral is because you have good reason to believe that the pupil may display challenging behaviour you may only make this referral to the FAP if:</p> <ul style="list-style-type: none"><li>➤ <b>your school has a particularly high proportion of pupils with challenging behaviour or previously excluded pupils on roll in comparison to other schools; and</b></li><li>➤ <b>you believe that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resource</b></li></ul> <p>Please note that DfE Guidance advises that 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.</p> <p>We would expect this behaviour to significantly interfere with the pupil's or other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment. The following reasons on their own should not be grounds for considering that a child may display challenging behaviour:</p> <ul style="list-style-type: none"><li>• poor attendance elsewhere;</li><li>• a defined number of suspensions, without consideration of the grounds on which they were made;</li><li>• special educational needs; or</li><li>• having a disability.</li></ul>	

**Fair Access Criteria:**

- a) children either subject to a Child in Need Plan or a Child Protection Plan or having had a Child in Need Plan or a Child Protection Plan within 12 months at the point of being referred to the FAP (information may be sought from the previous LA)
- b) children living in a refuge or in other Relevant Accommodation at the point of being referred to the FAP
- c) children from the criminal justice system
- d) children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education
- e) children with special educational needs (but without an education, health and care plan), disabilities or medical conditions
- f) children who are carers
- g) children who are homeless
- h) children in formal kinship care arrangements (as evidenced by either a child arrangements order not relating to either birth parent or a special guardianship order)
- i) children of, or who are, Gypsies, Roma, Travellers, refugees and asylum seekers
- j) children who have been refused a school place on the grounds of their challenging behaviour and referred to the FAP in accordance with paragraph 3.10 of the Code
- k) children for whom a place has not been sought due to exceptional circumstances (the local authority will decide whether a child qualifies to be placed via the FAP on this basis, based on the circumstances of the case)
- l) children who have been out of education for 4 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. (\*The reasonable distance will be the statutory walking distance between home and school that the Government thinks a child should be able to walk: two miles for children under eight years of age. Three miles for pupils aged 8–16 years.)
- m) previously looked after children for whom the local authority has been unable to promptly secure a school place (In most cases, use of the FAP should be unnecessary for a previously looked after child. The LA is expected to secure a school place promptly for such children and for admission authorities to cooperate with this. The LA will consider use of their general powers of direction or will ask the Secretary of State to consider issuing a direction [as set out in paragraphs 3.26 to 3.29 of the Code] where a school place for a previously looked after child cannot be agreed with an admission authority promptly).

**Referral to the Fair Access Protocol:**

Explain your reasons below for refusing a place to this pupil. (If applicable, please also include information to support your grounds for a referral under the “Challenging Behaviour” clause).