

# Primary Fair Access Protocol 2025 – 2026

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## 1.0. Introduction

- 1.1. The following protocol sets out the current arrangements and particulars of the Primary Fair Access arrangements in Sandwell. In line with the requirements, the protocol has been agreed to by the majority of schools within the borough. It is therefore binding on **ALL** schools regardless of category. The protocol is an organic, working document. It is reviewed and updated annually to ensure that contents reflect statutory guidance and the needs of its community. It will also be amended, subject to JEG approval, should the Inclusion Board agree and make recommendations to ensure the smooth running of the process. The young people who are covered by it are the **collective** responsibility of **all** partners.
- 1.2. As part of the protocol all Primary Schools have agreed that an Independent Chair oversees the running and procedures of all FAP cases to ensure all children are placed fairly and equitably. The Independent Chair will also oversee any Emergency Panels that are required for the placement of a child that has not been placed through the normal process.

## Expectations of Schools / Academies

### Schools and Academies agree to:

- 1.3. Participate and support head teachers by engaging with the procedures and agreements set out within the protocol. The revised School Admissions Code from September 2021 (updated March 2022) states the following:

*"All admission authorities **must** participate in the fair access protocol in order to ensure that unplaced children are allocated a school place quickly."*  
(paragraph 3.11)

All schools and academies therefore agree to take their fair share of pupils who meet Fair Access criteria as described in **Appendix ONE**.

Actively support equality of opportunity, social inclusion and comply with the **School Admissions Code September 2021** (updated March 2022)

Appreciate that the admission of pupils covered by this protocol may be over Published Admission Number (PAN). Before making such decisions, panel members will have due regard to statutory guidance in relation to Infant Class size law.

Contribute to the review of the Fair Access Protocol

- 1.4. DfE advice (Fair Access Protocols: Guidance for school leaders, admission authorities and local authorities, September 2021) states:

*'In the event that the majority of schools in an area can no longer support the principles and approach of the local FAP, (for example if they believe it is not operating fairly or effectively), they may request that is reviewed. The mechanism for invoking a review and the procedure that follows should be agreed during the development of each FAP. The existing FAP will remain binding on all schools in the area until a new one is adopted'.*

To support partners, every attempt will be made to ensure that pupils covered by the protocol are placed fairly and equitably, with no one school (including those with available places), being asked to take more than their fair share of pupils that have been deemed hard to place. Our priority is to prioritise the best interests of the child, for example, in looking at reasonable distance. Following discussion at LC panels, it will be decided at the discretion of the LC members where to place the child. Efforts will be made to place siblings in the same school. Any offer made prior to LC Panels will be provisional until the meeting takes place.

1.5. Up-to-date numbers of pupils admitted via Fair Access will be shared at each meeting.

\*NB: going over PAN for Fair Access cases is permitted under the School Admissions Code in Key Stage 2 but infant class size restrictions still apply for Key Stage 1 unless all schools within a reasonable distance are full.

The Inclusion Management Board will monitor the effectiveness of Fair Access Panels and report directly back to Primary School Head Teachers via Joint Executive Group and Primary Partnership Meetings when appropriate. The Board will have oversight of upcoming issues, data relating to the number of exclusions, Assessment Placements at Primrose Primary, the number of reintegration's and managed moves and have links with the Secondary Fair Access Management board. This information will be shared by the LA representative chairing the meeting. Membership will be reviewed annually.

1.6. Only pupil cases that meet the Fair Access criteria will be discussed at a Fair Access Panel meeting, where School Admissions have been unable to place. Meeting schedules are shared at the beginning of each academic year. Details of the Fair Access criteria can be found in **Appendix ONE**.

**All** schools, including Academies and faith schools are expected to respond to requests to admit a child under Fair Access Protocols within 7 calendar days (DfE, July 2021). The General Introduction to this Protocol provides the DfE advice (July 2021) with regard to refusing an admission under Fair Access arrangements. **Maintained schools:** The governing body of a maintained school can appeal (against a Fair Access allocation) by referring the case to the Schools Adjudicator within 15 calendar days.' **Academies:** should set out reasons for refusal in writing to the local authority within 15 calendar days. The local authority can apply for a

direction from the Secretary of State via the Education Funding Agency who acts on his behalf in these cases.

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.

- 1.7. Decisions made under this protocol are binding on all schools, regardless of status. Although, a head teacher may wish to appeal a decision if s/he feels there are suitable grounds. The process on how to appeal can be found in **Appendix TWO**.
- 1.8. Colleagues are encouraged to contact the local authority's Fair Access Team for advice and support whenever necessary, useful contact information can be found in **Appendix FOUR**.

## 2.0. Roles and Responsibilities

### As a Local Authority, we will:

- 2.1. Discharge the Local Authority's responsibilities with regard to coordinating a review including the majority of schools.
- 2.2. Support schools to meet their obligations as set within the protocol by providing impartial advice.
- 2.3. Act as the advocate for any young person if a school or other partner fails to protect the young person's rights or entitlements.
- 2.4. Support Headteachers to maintain the right to table any other case for discussion **IF** they are able to evidence which of the Fair Access criteria the pupil qualifies under, and they can demonstrate that reasonable measures have been taken to enrol the child.
- 2.5. Provide head teachers with background information (**see 4.1.6**), where available, to enable decision making. (See the Admissions Code September 2021, updated March 2022: paragraph 2.9). All attempts will be made by Local Authority Teams including Fair Access Team, Admissions Team, Children Missing in Education Team and Electively Home Education Team to gather as much background information regarding each pupil prior to circulating the agenda. This will include calls to families, contact with previous schools and contact with any agencies involved with the pupil / family. Lack of information is not a reason for not admitting. However, this is made more difficult if the child attends an out of borough school. As per the School Admissions Code 2021, 2.9 d) *Admission Authorities **must not***

*refuse to admit a child solely because information has not been received from the previous school.*

- 2.6 Appoint an Independent Chair to oversee the running of Fair Access
- 2.7 Count pupils who are looked after as 'inclusions' against a school but will not ordinarily present these cases at a panel meeting. Head teachers understand these pupils cannot be considered under Fair Access protocols unless they also meet one of the Fair Access Criteria stated in **Appendix ONE**

**N.B.** Head Teachers should note allocations can be made in their absence. These decisions remain binding on the chosen school.

### 3.0 Procedures

3.1 The Fair Access Team should be contacted and informed of the pending request for a managed transfer to enable the case to be tabled at the relevant Fair Access Panel at the earliest opportunity. Applications should be forwarded to the Fair Access Team ahead of this meeting. NB: parents should be encouraged to provide **two** school preferences on the form for panel to consider.

3.1.1 The relevant Fair Access Panel will determine the most appropriate education placement for the pupil from the preferences and information provided. Admission to the new school should take place within 7 calendar days of receipt of notification from the Fair Access Team.

### 4.0 Allocating school placements for pupils who meet the Fair Access Criteria.

4.1 Applications are dealt with in the following way:

4.1.1 Fair Access meetings will take place virtually on TEAMS once every 20 school days and it is understood headteachers will attend to ensure no time is wasted in allocating school places. If heads cannot attend, they should notify the team and arrange a replacement to make decisions on their behalf at the meeting.

4.1.2 If a school is not represented at the meeting, the panel of head teacher representatives can still allocate pupils to the school, and they will be informed of these decisions following panel. **Any such decision is still binding.** It is in a school's best interest to send a representative to panel. Head teacher representatives must be prepared to allocate pupils to schools not in attendance.

- 4.1.3 Applications for school places will be added to an agenda which will be circulated electronically to all head teachers and Inclusion Support at least 4 working days prior to the first FAP meeting. This will allow Inclusion Support to provide any information they have on the children if they are known to them and in receipt of funding. Up to date PAN numbers and numbers of pupils already allocated through the FAP process will be shared at the meeting to aid transparency. The Fair Access team reserve the right to add pupils who meet criteria to the agenda of those learning communities whose panels fall later in the schedule i.e. pupils who have been out of school for 4 weeks or more.
- 4.1.4 The agenda will list pupils in priority order according to how long they have been out of education. Children must be placed in order of priority e.g. In order of when their application was received and placed on the agenda in date order. **Please note:** if child number 1 is Year 3, a child further down cannot be placed in this year group unless the first child has already been placed.
- 4.1.5 It is the responsibility of **ALL** Sandwell schools to provide accurate and sufficient up-to-date information regarding known pupils who are coming to panel. Should the information be insufficient, incorrect or out of date the offered school will have the right to challenge the exit school, to confirm the correct procedures have been followed. In such cases, these will also be referred to the Schools Directorate by the Independent Chair.
- 4.1.6 The Admissions Team will demonstrate evidence of contact with schools within a reasonable distance of a pupil's home when placing the pupil onto the agenda due to their being out of education for 20 school days or more. A reasonable distance for KS1 pupils is within 2 miles and for KS2 pupils is within 3 miles.
- 4.1.7 The CME Team will check Local Authority systems to ensure that schools are alerted to any up-to-date information in relation to the safeguarding of pupils. Sensitive information will only be shared with the placing school after the meeting.
- 4.1.8 Children will be placed at a school within a reasonable distance. The family's preferred schools will always remain the starting point for any discussion regarding placement, however there is no duty to comply with parental preference when allocating places through the FAP. Siblings that come to panel will be placed at the same school, where possible.
- 4.1.9 Following allocation if a pupil does not take up the allocated place, it is the responsibility of the headteacher to ensure 3 points of contact are made before completing a CME referral. Head teachers should also notify the Fair

Access Team. **Head Teachers are respectfully reminded of their safeguarding duties once an allocation to their school has been made.** If any child falls under the remit of CME (Children Missing Education), i.e. Not on A School Roll, the CME team (falling within the Schools Attendance Support Service) will take responsibility for the safeguarding of these children. The team will ensure that regular visits are made to the family and work packs (suitable to the child's age) are distributed, until such time that the child is on roll and attending school. Responsibility will then pass to that school.

- 4.1.10 Panel members reserve the right to allocate a school over the prescribed 'reasonable distance' if, no other reasonable offer is available.
- 4.1.11 Travel assistance can be awarded for such cases according to the LA Travel assistance policy.
- 4.1.12 The Independent Chair will challenge, on behalf of head teachers, any school who does not actively engage with the expectations set out within this protocol.

## **5.0 Emergency Panels**

- 5.1.1 Emergency Panels within each learning community will meet when a child cannot be placed via the usual Fair Access Process.
- 5.1.2 In this case the closest 5 schools will be consulted (from the home address if this may cross LC boundaries), along with any additional schools that might be parental preference. KS1 = 2 MILES KS2 = 3 MILES – Schools with vacancies.
- 5.1.3 Emergency panel will consist of 3 Head Teachers from the learning community, the schools that have been consulted will not be invited to the meeting. This must consist of at least a quorate of 2 schools with all Learning Communities involved being represented. For details on Emergency Panel members please see **Appendix THREE**
- 5.1.4 When the schools consulted are from two learning communities, 3 Head Teachers from each learning community will be asked to attend.
- 5.1.5 Emergency panel can take the following into account: numbers of children taken by each considered school through the FA Process, existing numbers of children within year group/ school, numbers of children with special educational needs within the year group (**see Appendix SIX**)
- 5.1.6 Emergency Panels will convene before the next panel meeting.

- 5.1.7 IF, an Emergency Panel fail to agree on a decision or agree that a sensible decision cannot be made, the case will be referred to the Joint Executive Group (JEG) for a final decision. This decision will be binding on all.

## 6.0 Following FAP Meetings

- 6.1 Following receipt of the Learning Community/Panel's decision in Admissions, offer letters are sent to the parent/carer by the Fair Access Team within 3 working days. Copies of the application forms will also be shared electronically within 3 working days following a panel meeting.
- 6.1.1 Once offer letter has been sent out, an update will be made to the relevant system including Pupil Tracking to reflect the allocation and this will then be added to Inclusion figures for the school. The case will remain open until such time that the school confirms a date the pupil was admitted.
- 6.1.2 If a decision is made to place a pupil in a head teacher's absence, an email will be sent out informing them of the allocation. It is expected the head teacher will then admit the pupil within 7 calendar days as detailed above. A copy of the application form will be sent across to the school electronically.
- 6.1.3 The local authority 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 local authority **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.
- 6.1.4 Before deciding to give a direction, the local authority **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 local authority decides to direct, it **must** inform the governing body and head teacher 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 local authority. The local authority **must not** make a direction until the 15 days have passed and the case has not been referred.
- 6.1.5 Where a local authority considers that an Academy will best meet the needs of any child, it can ask the Academy to admit that child but has no power to direct it to do so. The local authority and the Academy will usually come to an agreement, but if the Academy refuses to admit the child, the local authority 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 Schools Adjudicator in reaching a decision.

## **7.0 SEND Needs**

- 7.1 When a child who is an International New Arrival starts at the STEPS centre and has an identifiable SEND need, this process will be followed:

Cases will be referred by STEPS Manager and ECP where there is agreement that a more specialist provision is required.

Referrals to SEND Provision Panel to be sent to Assistant Director: Inclusive Learning Services / SEND Operations Manager for review once the initial assessment / Community Assessment Meeting has been completed.

This pathway should only be used in exceptional circumstances when ALL professionals agree that the mainstream pathway is not suitable to meet the HIGHLY complex needs of the student. Evidence provided by ECP / Health professionals. Diagnostic evidence from home country will be accepted.

Each case will be dealt with on an individual basis. Description of pupils' areas of need are meeting the criteria for Element 3 Band 4 on the SEND Banding Matrix.

Tutoring / Assessment place to be agreed as appropriate. Maintain placement at STEPS until EOTAS or specialist assessment place agreed. Provision Panel to consider if a mainstream place would be suitable if exceptional funding was provided for a maximum of 20 weeks. (Pro-rata Element 4 banding) Schools are to invoice SEN each term.

(Please refer to the SEND Banding document within the SEND Handbook for Educational Providers)

## **8.0 Funding arrangements**

- 8.1 The transfer of funds between schools will be arranged by the Local Authority in matters relating to permanent exclusion. For managed transfers, schools will invoice each other once a date for single registration has been agreed upon. This may need to be revised for schools who have academy status. The amount will be pro-rata for time left in the academic year.
- 8.2 The levy for both School Sponsored Managed Transfers and Permanent Exclusions have been agreed to via formal review of the Fair Access Protocol. The amounts specified cannot be altered or waived by a Local Authority Officer or Learning Community. If a head teacher wishes to dispute the amount owed, they must arrange to table the case for discussion at the next Joint Executive Group meeting. As the protocol belongs to head teachers as a collective, a joint decision must be made when considering any deviation from the current procedures.

- 8.3 Permanent exclusions: The charge to the excluding school is **£7,000**. This will be divided into 2 parts. Upon successful reintegration to a mainstream primary setting (determined by the use of single registration on a register), £6,000 will be transferred to the school. How this money is used to meet the needs of the pupil will be decided upon by the head teacher. This amount will be pro-rata for the amount of time left in the academic year. The remaining £1,000 will be made available to be used to offset costs incurred by the Primrose Centre linked to travel to a pupil's transition to another setting. Staff from the Primrose Centre will be responsible for raising invoices for such costs. In the event a pupil does not attend Primrose, or a parent exercises their right to electively home educate, the excluding school will only be charged £6,000 for the permanent exclusion.
- 8.4 Funding will be released to the exit school once the child is on single registration to support the reintegration back into mainstream education when the pupil takes up their place. Pupils are solely registered with the exit school when the period of dual registration has ceased. This school should refer the case back to their Fair Access Panel for advice if any problems develop during the dual registration period.
- NB: this funding is only available for pupils who were permanently excluded from Sandwell schools. The Fair Access Team will arrange for these funds to be transferred to the exit school (£6,000).
- 8.5 When a pupil is considered ready to return to mainstream education, a carefully planned package of support from The Primrose and Inclusive Learning Services will have been agreed. This is in line with the New Beginnings programme. This can include phased access to full time education at their exit school. Such arrangements may include continued attendance at The Primrose. Any plan will be supported by the Inclusion team.
- 8.6 The Fair Access Team should be contacted and informed of the pending request for a managed transfer to enable the case to be tabled at the relevant Fair Access Panel at the earliest opportunity. Applications should be forwarded to the Fair Access Team ahead of this meeting. NB: parents should be encouraged to provide **three** school preferences on the form for panel to consider.

## Appendix ONE

### Fair Access Criteria

**In line with the School Admissions Code 3.17 the following must be applied before any case is discussed at Fair Access Panel:**

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 process.

#### List 1.0.

- 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.
- 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.
- 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; \*\*
- 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; and
- M. Previously looked after children for whom the local authority has been unable to promptly secure a school place.

*\*Sandwell Primary Head teachers have agreed that pupils with challenging behaviour should be known to external professionals i.e. EP, SAT SEMH, CAMHS*

*\*\*Any cases that are requested to go to FAP under these criteria will be assessed by a Panel on a case by case basis to see if they qualify. The Panel will consist of the School Admissions Team Lead, Independent Chair, Fair Access Officer and a Head Teacher from the Primary inclusion Panel.*