

# 2016 Fair Access Protocol

## 1. Introduction

- 1.1** This Protocol is effective from 01 September 2016. It applies to children and young people of statutory school age resident in the borough of Ealing who have not secured a school place through the in-year admissions arrangements or are ready for re-integration from a pupil referral unit. It does not apply to children already on roll at a school either in Ealing or any other borough.
- 1.2** The Protocol was agreed by [all/the vast majority of] schools in the area and is binding on all admission authorities.
- 1.3** The Protocol:
- recognises the vulnerability and needs of unplaced children, and the duty of the local authority (LA) to ensure educational provision for all children and young people resident in the borough
  - aims to support safeguarding of children and young people by admitting to school as quickly as possible those without a school place
  - must ensure that no school - including those with available places - is asked to take a disproportionate number of children who have been excluded from other schools or who have challenging behaviour
  - promotes an ethos of collective responsibility of all schools to work together effectively as a community to place and support these vulnerable pupils, and for the Ealing community of schools to co-operate and support each other in this process
  - is fair and transparent.
- 1.4** The Protocol sets out the principles and process that Ealing Council and all schools within the borough of Ealing will use when allocating places to children and young people covered by the protocol to a school or academy. The protocol meets the requirement to have such a scheme contained in the School Admissions Code 2012. It covers Community, Voluntary Aided, Foundation, Academy and Free Schools.
- 1.5** The allocation of a place in accordance with this Fair Access Protocol does not override a parent's right of appeal against refusal to offer a place by an admission authority at a school for which they have applied for a place.

## **2. Children and Young People covered by the Fair Access Protocol**

- 2.1 Where a child or young person of statutory school age is unplaced and has not secured a place within 6 weeks and meets the criteria in paragraph 2.2 they will be allocated a place by the Panel under the Fair Access Protocol. The Panel will be chaired by a person nominated by Ealing High School head teachers Group on behalf of maintained, Academies and Free Schools in the borough. The panel will be administered by the Local Authority.
- 2.2 The Protocol covers any child or young person of statutory school age who has difficulty in securing a school place who:
- a. is from the criminal justice system or attending a Pupil Referral Unit who is assessed to be ready for re-integration into mainstream education;
  - b. is a child of a Gypsy, Roma, Traveller, refugee or asylum seeker;
  - c. is homeless;
  - d. has an unsupportive family background for whom a place has not been sought;
  - e. is a young carer;
  - f. has special educational needs, disabilities or medical conditions (but without a statement or education health and social care plan);
  - g. has one permanent exclusion, or 3 or more fixed term exclusions for high schools, or 2 or more fixed term exclusions for primary schools, within the last 2 academic years;
  - h. has been asked to leave an independent school because of a serious breach of that school's behaviour policy;
  - i. has major peer, gang related or family feud problem relevant to the school which represents a serious risk to the health, safety or welfare of students or staff; or
  - j. has not secured a place at a school within 6 weeks of their application being received.

### **3. Limited Right of a governing body to refuse to admit a child with challenging behaviour**

- 3.1 The governing body of any school has a limited right to refuse to admit a child or young person with challenging behaviour where the child or young person has a major peer, gang related or family feud problem relevant to the school which represents a serious risk to the health, safety or welfare of students or staff. This applies to cases referred to a school through FAP to be admitted over number or where a school has a vacancy and the child or young person could be offered that place.
- 3.2 The governing body of a school that meets the criteria in this paragraph has a further limited right to refuse to admit a child or young person with challenging behaviour as defined in 3.7 below, before an offer is made even though a vacancy is available where the school:
- a. has been graded at its latest inspection as Grade 3 or 4 within the last 2 years; and
  - b. the school has above average levels of pupil mobility for the relevant sector for pupils in Year R to Year 11 for the preceding year as recorded on the latest available January pupil census
- If a. does not apply to the relevant sector, then the criterion will be
- c. schools whose mobility is in the upper quartile for the relevant sector for pupils in Year R to Year 11 for the preceding year as recorded on the latest available January pupil census.
- 3.3 Where the relevant admission authority exercises its right under 3.1 or 3.2, it must refer the case to the LA within 5 school days so that the case can be considered at the next Panel. Evidence must be provided to support the referral. The referral must be in writing and must state the criterion of challenging behaviour which applies to the child or young person with evidence from the previous school/agency and the particular reason/s why in the opinion of the admissions authority compliance would prejudice the provision of efficient education or efficient use of resources.
- 3.4 Where an admission authority exercises its right to refuse to admit under paragraph 3.1 or 3.2 it must send a letter to the parent advising them of grounds on which they have refused to admit and that the case has been referred to the Fair Access Panel for consideration. The letter should advise that a further letter will be sent once the decision of panel is known, the parent of their right to appeal against the refusal to admit and provide information on advice available from the Children's Legal Centre.
- 3.5 The Panel, after considering the child's or young person's case, may decide to:
- a. allocate the child to another school or EAP; or
  - b. confirms that the child or young person should be offered a place at the school that has refused to admit.
- 3.6 If no referral is received in the time, an offer letter will be sent by the in-year admissions team on behalf of the admissions authority.

- 3.7 For the purposes sub-section 3.2, a child or young person with challenging behaviour is one who:
- a. has been permanently excluded (once) in the last two years; or
  - b. in the case of a high school pupil, has had three or more (High School aged pupils) fixed term exclusions within the last 2 years; or
  - c. in the case of a primary aged pupil, has had two or more fixed term exclusions in the last 2 years; or
  - d. has entered the Youth Justice System<sup>1</sup>; or
  - e. has been asked to leave an independent school because of a serious breach of the school's behaviour policy
- 3.8 Admission authorities cannot decline to admit a child under this section where the child is looked after or previously looked after or has a Statement of special educational needs or Education Health and Care Plan naming the school in question. These children must be admitted.
- 3.9 Admission authorities cannot refuse to admit a child or young person thought to be potentially disruptive or likely to exhibit challenging behaviour on the grounds that the children is first to be assessed for special educational needs.

#### **4. Fair Access Procedures in Ealing**

- 4.1 All Ealing schools will share the admission of children and young people who have not secured a place through the in-year scheme or are assessed as ready for re-integration by Ealing Alternative Provision (EAP)). All schools will deal with any case referred through Fair Access as a priority to expedite the child or young person's access to education. A child or young person allocated through the FAP must be prioritised above all other applicants that may be on a school's waiting list. A child or young person must not be refused admission.
- 4.2 Out of borough In-Year applicants both placed and unplaced who are identified pre-offer to meet any of the criteria set out in 3.7 will be referred back by the In-Year Admissions team to the home Local Authority to deal with under their own Fair Access Protocol. In these cases parents will be advised of their right to appeal against this decision.
- 4.3 The panel will cover both primary and high schools. The Panel will be chaired by a person nominated by Ealing's High School Heads Group. The panel will consist of

---

<sup>1</sup> The definition of 'has entered the Youth Justice System' – a young person who has entered the YJS has received or been made subject to:

Caution

Conditional Caution

Referral Orders

Youth Referral Order

Detention and Training Order

two other representatives of High schools selected on rotation by the Chair of the Panel and one primary Head nominated by Ealing Primary School Quadrant Chairs. Advice to the panel will be provided by the local authority. The Authority will also provide an administrator to clerk and minute the meetings.

- 4.4 The Chair of the panel and the primary school head shall serve for one academic year and will be eligible for re-nomination in subsequent years. The two High School representatives shall serve for one term.
- 4.5 The Panel will meet every second week in term time. The time and location of the meeting will be agreed by the Chair. The Authority will provide background information for each child or young person to be considered by the panel. This will be circulated securely the day before the meeting to be read in advance.
- 4.6 Unless there is evidence that the child or young person would be inappropriately placed in a mainstream setting, the Panel will allocate to a particular school. Exceptionally, an assessment placement at EAP will be agreed and the case will then be returned promptly to Panel.
- 4.7 A child or young person will be allocated to schools taking into account the following:
  - a. an equal distribution by number to each school (as far as possible over the course of the year, and recognising new schools will not have all year groups)
  - b. parental and religious preferences
  - c. exceptional social or medical reasons as defined in the main round over-subscription criteria for community schools
  - d. travel time: high school pupils would, normally be expected to have a maximum journey time of 60 minutes, calculated using the TfL journey planner or similar web-based tool if the TfL planner is unavailable
  - e. in the case of a child of primary school age, proximity of the school to their home, and family circumstances
  - f. in the case of a child or young person ready for re-integration from EAP who will be admitted to a school on a trial basis with support, the number of pupils the receiving school has permanently excluded in the previous academic year also.
- 4.8 Panel decisions will be communicated to schools securely electronically by the LA within two days of the Panel. The expectation is that the recommendation of the panel will be accepted by a school and pupils will not be refused admission. An admission date for the child or young person should be set as soon as possible but normally within 10 school days following the Friday of the week of the panel. The offer letter will be sent to the parents within a week of the Panel by the In-Year Admissions Team.
- 4.9 Minutes and an excel spreadsheet recording placements and the criteria will be circulated to all schools.

5. Issues specific to each sector

### **Infant Class Size Regulations**

- 5.1 Regulation 5 of The School Admissions (Infant Class Sizes) Regulations (2012) provides for exceptions to the limit of 30 pupils per qualified teacher in limited circumstances. One of the exceptions applies to children who moved into the area outside the normal admissions round, that is at the time when the majority of the pupils in the age group were admitted to the school and for whom there is no other available school place within a reasonable distance.

### **Year 11 students**

- 5.2 Young people in Year 11 will be provided with the option to attend specific Year 11 provision in a local college commissioned by the Authority, though they retain their right to express a preference for an Ealing High School and appeal against a decision by an admission authority to refuse to offer a place. Year 11 students who cannot be offered an in-year place will be placed in provision commissioned by *the* EAP where they have challenging behaviour warranting this level of support. Parents retain their right of appeal against a decision to refuse to admit to a school by an admission authority.

## **6. Resolving differences of opinion**

- 6.1 The purpose of this protocol is to ensure that children and young people who are vulnerable are placed in provision as quickly as possible and that there is a fair and transparent decision making process led by schools recognising their collective responsibility to children resident in the borough. Where a school refuses to admit a student, the evidence will be reviewed by the Panel. Following the panel's review and confirmation of the allocated school, if a school still refuses to take a student then the Director of Children's Services (or a senior officer nominated for this purpose) will review the case with the Chair of the Panel and the school prior to consideration of a direction. However, in the case of a community school it cannot refuse to admit a pupil if requested by its own admissions authority.
- 6.2 As a last resort, the LA may direct the admission authority for any maintained school in its area for which the Local Authority is not the admissions authority to admit a child even when the school is full if a child has been refused entry to or has been permanently excluded from every suitable school in a reasonable distance. If the LA is minded to direct, then before doing so it will consult the relevant parties, and then notify the Governing Body and Head teacher of any decision to direct. The direction may only be issued after 15 days have passed from service of its notice and the case has not been referred by the Governing Body to the Schools Adjudicator. The governing body of a maintained school may appeal a local authority's decision to direct the admission of a child in accordance with a locally agreed protocol by referring to the Schools Adjudicator within the 15 day period and informing the LA. The Adjudicator then determines which school is to be required to admit the child and the decision is binding.
- 6.3 Should an Academy refuse to admit a child or young person in accordance with the protocol, the local authority may refer the matter to the Secretary of State for consideration who may subsequently make a direction.

## **7. Students not ready for mainstream schooling**

7.1 Where a school, parent or LA considers an unplaced child or young person for whom an application for a place at a school has been made, may not be ready for mainstream school the case will be dealt with by the In-Year Admissions Team. Where possible eg parents will be assisted in making a medical referral by liaising with the consultant and ensuring the case is considered by EAP Placement Panel, or is referred to the Fair Access Panel.

7.2 A child or young person is considered not ready for mainstream school include any who:

- a. has four or more fixed term exclusions within the last two academic years
- b. is placed in EAP who consider the child or young person is not ready for re-integration into mainstream schooling
- c. is unable to attend school for medical reasons and has a letter from a consultant confirming the reasons s/he is unable to attend school
- d. has a behaviour record which indicates that s/he currently poses a serious risk to the health, safety or welfare of staff and students in any mainstream school.

## **8. Monitoring and Review**

8.1 An end of year report will be circulated to all schools. Each panel will receive information on the number of cases considered and the allocation of children and young people to schools through each criteria and data on cases refused admission by a school.

8.2 The operation of the protocol shall be reviewed annually in the summer term.