



North Lincolnshire Schools and Academies' Fair Access Protocol March 2016

A collective agreement for ensuring the prompt admission of
primary and secondary aged children

'All our children'

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This document has been produced with the support, advice and guidance of the Education Inclusion Partnership. The partnership is a stakeholder group involving professional representatives from: primary and secondary schools/academies; pupil referral unit, a local governing body; colleges and the local authority.

1.0 Introduction

- 1.1 North Lincolnshire's fair access protocol meets the requirements of the School Admission Code 2014, to ensure that access to education is secured quickly for all children who have no school place (are unregistered), and to help ensure that all schools and academies in their area admit their fair share of vulnerable children or children with challenging behaviour.
- 1.2 North Lincolnshire already has in place a Fair Access and Inclusion Partnership. The Inclusion Partnership is a mechanism that enables schools and academies to work collaboratively regarding inclusion issues. This forum will be used to discuss and resolve any fair access cases, brought to the panel by schools or the local authority.
- 1.3 The fair access protocol applies to both primary and secondary schools. It describes the circumstances in which it will be applied and sets out how decisions about admissions of vulnerable and hard to place pupils will be agreed. The Fair Access and Inclusion Partnership's key focus is on secondary aged children. However, where primary aged pupils are to be discussed, representatives from the relevant schools will be invited.
- 1.4 The protocol will be used when a pupil has not secured a school place under the locally agreed in-year admission procedures. The aim is to secure a place at a suitable school as quickly as possible and although 30 school days is the maximum stated in the protocol, all agencies will endeavour to resolve matters much sooner.
- 1.5 Once it has been agreed that a child or a young person should attend a named school, that school must be accountable for that person. Every pupil will be made an offer for an educational place.
- 1.6 Undersubscribed schools must not be required to admit a greater proportion of those children referred to a Fair Access Panel, particularly those schools with a recent history of challenging behaviour greater than that of other schools.
- 1.7 There must be a balance between finding a place quickly, when the place might be in an undersubscribed school or one facing challenging circumstances, and finding a school place that is appropriate for the child.
- 1.8 The fair access protocol allows a pupil's individual needs to be considered alongside schools' particular circumstances. This includes consideration of factors such as: is the pupil ready for mainstream schooling and, if so, which mainstream school will be best able to meet their needs.

2 DfE Requirements of the Fair Access Protocol

- 2.2. The School Admissions Code (Dec 2014) states that each local authority **must*** have a Fair Access Protocol, agreed with the majority of schools in its area to ensure that – outside the normal admissions round - unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible.¹
- 2.3. In agreeing a protocol, the local authority **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.¹
- 2.4. The protocol **must** include how the local authority will use provision to ensure that the needs of pupils who are not ready for mainstream schooling are met.¹
- 2.5. The operation of a Fair Access Protocols is outside the arrangements of co-ordination and is triggered when a parent of an eligible child has not secured a school place under in-year admission procedures¹.
- 2.6. All admission authorities **must** participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly. There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol¹.
- 2.7. Admission authorities **must not** refuse to admit children in the normal admissions round on the basis of their poor behaviour elsewhere. 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.¹
- 2.8. How the fair access protocol operates and how decisions are reached about where best to place pupil is a matter for local determination².

3 Principles of the Protocol

- 3.1 The operation of the Fair Access Protocol is outside the arrangements of co-ordination and is triggered when a parent of an eligible child has not secured a place under in-year admission procedures. The expectation is that pupils will be allocated a school place in accordance with normal in-year admission procedures, rather than through the Protocol. Schools agree to admit children promptly (as per the legal requirements of the admissions code) to avoid any unnecessary loss of education and to promote safeguarding.

* The word **must** [in bold] is used several time within this document. This instruction is made by the DfE and is taken from relevant statutory guidance

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- 3.2 The Admissions Team will be the first point of contact for parents/carers formally seeking a school place for their child.
- 3.3 Where a child is on a school roll and their parent / carer wishes to change their school (for whatever reason other than a move out of the locality / area), it is expected that the family work with the child's current school to address any issues and if this is unsuccessful, that they follow the usual in-year admissions process to secure an alternative school place.
- 3.4 It is recognised that while some children may be vulnerable, it is not always the case that they will be 'hard to place' in a school and will in most cases be offered a school place in accordance with normal in-year admissions arrangement.
- 3.5 In the first instance, the LA will endeavour to find a place using the normal admission process for in-year admissions and, even if a child has one or more of the factors listed in section 4 it does not follow that this must be referred to Fair Access and Inclusion Panel. Therefore, where the LA is able to find a school place for a child using the normal process, a referral to Fair Access and Inclusion Panel would not be appropriate. However, if ultimately an admission has not been agreed, this must then be referred to the Fair Access and Inclusion Panel for resolution.
- 3.6 All schools and academies must agree and participate in the Fair Access Protocol and all admission authorities will be expected to admit children allocated by the panel above their published admissions number if the school is already full. A school's admission criterion does not apply when admitting children via the panel. The panel will be provided with information with regard to over / under subscription levels.
- 3.7 The local authority and schools will do all that they can to minimise in year-transfers within the North Lincolnshire. However, if a school transfer cannot be avoided, the schools associated with the transfer will respond within 5 school days to information requests.
- 3.8 The protocol is effectively a failsafe mechanism for a minority of children where normal procedures for in-year admissions have failed or are not appropriate and the child is considered to be 'hard to place.'
- 3.9 Looked after children, previously looked after children, and those allocated a place at the school in accordance with a Fair Access Protocol, **must** take precedence over those on a waiting list¹.

4 Defining hard to place pupils

- 4.1 The list of children to be included in a Fair Access Protocol is to be agreed with the majority of schools in the area but **must**, as a minimum, include the following children of compulsory school age who have difficulty securing a school place¹:

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- a) Children from the criminal justice system or Pupil Referral Units who need to be reintegrated into mainstream education.
 - b) Children who have been out of education for two months or more.
 - c) Children of Gypsies, Roma, Travellers, refugees and asylum seekers.
 - d) Children who are homeless.
 - e) Children with unsupportive family backgrounds for whom a place has not been sought.
 - g) Children who are carers; and
 - h) Children with special educational needs, disabilities or medical conditions (but without a statement or Education, Health and Care Plan).

4.2 In addition to the above statutory definitions, it is agreed that the following additional categories be incorporated into North Lincolnshire's fair access protocol

- a) Permanently excluded pupils (where other process have not resulted in a suitable placement being found)
- b) Children whose parents have been unable to find them a place after moving to the area, because of a shortage of places within a reasonable distance (defined as statutory walking distance – 2 miles for children under 8 and 3 miles for children aged 8 and over). A referral will normally follow when the admissions team will have tried unsuccessfully to secure a local oversubscribed schools using the provisions within this fair access protocol)
- c) Pupils who have been placed in urgent alternative accommodation (eg women's refuge)
- d) Children who have no school place and have been refused admission by a school on the basis of their challenging behaviour (see detail below)

4.3 The twice permanently excluded rule does not apply to children who were below compulsory school age at the time of the exclusion or children who have been reinstated following a permanent exclusion.

5 Defining and Evidencing Challenging Behaviour

5.1 Where a governing body does not wish to admit a child with serious challenging behaviour outside the normal admissions round, even though places are available, it **must** refer the case to the local authority for action under the Fair Access Protocol[†]. This will often only be appropriate where the following two conditions apply:

- 1) That the governing body can evidence that the child, whose parents are requesting admission, has serious challenging behaviour and

[†] This provision will not apply to a looked after child, a previously looked after child or a child with a statement of special educational needs or Education, Health and Care Plan naming the school in question, as these children **must** be admitted

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- 2) That the governing body can evidence that the school also has a particularly high proportion of children with challenging behaviour or previously excluded children.

5.2 In view of the above, the protocol should define challenging behaviour in order for the request to be evaluated against an agreed criteria. Therefore pupils with challenging behaviour are defined as:

“Pupils who exhibits a serious level of challenge to authority and cause serious disruption to the learning of others, which is characterised by physical / verbal abuse to staff and/or other pupils. Challenging behaviour will be evidenced by behaviour log and records of interventions.”

Pupils with challenging behaviour will often have received a number of fixed term exclusions and appropriate in-house alternative intervention (or other evidenced) from which it is clear that the child is at serious risk of permanent exclusion. This should be within a period of at least one year preceding the request for a school place.

5.2.1 It is accepted that defining and / or quantifying challenging behaviour is difficult[‡]. Therefore, there may be exceptional cases that do not strictly meet the above criteria. In these circumstances, admissions may still be refused, but the relevant professionals will then be obliged to demonstrate (and substantiate) to the Fair Access and Inclusion Panel, why the pupil should be considered as challenging. Following peer review, the panel may accept that the pupil should be considered as a ‘challenging pupil.’

5.2.2 Within the context of the above paragraphs, it is the responsibility of the school / governing body that is refusing the admission to provide suitable and sufficient written evidence to the panel to substantiate that the child fulfils meet the challenging behaviour criteria.

5.3 **Pupils who should not be considered as Challenging**

5.3.1 Whilst it recognised that admission requests for year 10 and year 11 pupils, may be more problematic because of curriculum and examination incompatibilities, these factors are not, in themselves, reasons for refusing admission.

5.3.2 Whilst it is recognised that those pupils that have English as an additional language may require additional support, it is not accepted that this is a factor, in itself, for refusing admission. The Equalities Act⁵ confirms that it is unlawful for the

[‡] See for example “Dfe Research Report (2012): Pupil behaviour in schools in England Education Standards Analysis and Research Division.” 7

responsible body[§] of a school to discriminate against a pupil or potential pupil on the grounds of a protected characteristic (eg race) in relation to:

- Admissions
- The way it provides education for pupils
- The way it provides pupils access to any benefit, facility or service

5.3.3 The Equalities and Human Rights Commission⁸ states that admission authorities should not discriminate against, or victimise a person:

- In the arrangements that it makes for deciding who is offered admission as a pupil
- As to the terms on which to offer to admit the person as a pupil
- By not admitting the person as a pupil

5.3.4 The above does not prevent the panel discussing ways to support EAL pupils (eg with specialist language staff or resources).

5.4 **Defining Schools with a particularly high proportion of children with challenging behaviour or previously excluded children**

5.4.1 Statutory guidance states that refusing admissions is normally only appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children. In this context, the panel will need to understand how a defined cohort of children with challenging behaviour justifies the refusal of an additional child who may also have challenging behaviour. For example if a school has a cohort of challenging pupils in year 11, this may not be as relevant to a request to admit a year 7 pupils with challenging behaviour.

5.4.2 Challenging behaviour is defined in paragraph 5.1. Schools that identify specific year groups where they would not be able to take a child with challenging behaviour must provide suitable and sufficient evidence to the panel to substantiate their cases.

5.4.3 It is the responsibility of the school refusing the admission, to ensure the information provided to the panel is contemporary, sufficient, relevant, clear and robust. A referral form must be completed and, as a minimum, information regarding the following must be provided regarding the pupils currently on roll who are considered to have challenging behaviour:

- Names of pupils considered to have challenging behaviour (see 5.1)
- Number of pupils who have received a permanent exclusions

§ The “responsible body” is the governing body or the local authority for maintained schools and the proprietor in the case of academies or non-maintained special schools. In practice, any persons acting on behalf of the responsible body – including employees of the school – are liable for their own discriminatory actions, and the responsible body is also liable unless it can show that it has taken all reasonable steps to stop the individual from doing the discriminatory action or from doing anything of that kind.

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- For the last 3 terms, the number of pupils who have received fixed term exclusions, the number of fixed term exclusions sanctioned or equivalent sanctions and the total number of school days lost due to fixed term exclusions
 - The number of early help strategies employed and / or the behaviour frameworks that have been employed
 - Number of pupils in each year group (for context)

5.4.4 As all schools are unique and operated in a different context, therefore the information will be peer reviewed by the panel to determine whether it is agreed that the school has a high proportion of children with challenging behaviour or previously excluded children, and whether this is relevant to the admission of another child.

6 Local Context and regular In-Year Admissions

6.1 Although the previous Admissions Code removed the duty on Local Authorities to co-ordinate in-year admissions with effect from September 2013, within North Lincolnshire all admission authorities continued to work in partnership. It was agreed that the local authority should continue to co-ordinate in-year admissions and no school would accept 'walk-in' admissions. The fair access protocol confirms that in-year admissions arrangements⁴ will continue to be coordinated by the local authority.

6.2 Co-ordination is the most effective way of ensuring that children out of school are tracked and monitored and placed as quickly as possible. This safeguarding element has been a particular strength of in-year coordination since its introduction and there is a significant risk that young people may slip through the net if admission authorities revert to a system whereby applicants submit individual school applications.

6.3 **Primary Provision:** The primary school provision within North Lincolnshire can be broadly categorised as schools serving:

- Areas of high population densities - such as Scunthorpe (north and south)
- Areas of medium population densities
- Areas of low population densities – characterised by small rural villages with no other local schools nearby

6.4 The main issue regarding admissions relates to the pressure on school places and the number of schools which are oversubscribed. In this regard, it is more likely (but not exclusively) that the fair access protocol will be used to admit children moving into the area into a local school which may be oversubscribed^{**}. This is because no other school within a reasonable distance can be identified.

^{**} This situation was a realistic appraisal at the time of publication

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- 6.5 **Secondary Provision:** There is currently less pressure on school places in the secondary school sector. Over recent years only three secondary schools have been oversubscribed (all in Scunthorpe). In view of this it is anticipated that secondary school fair access cases will more likely to relate to those pupils with challenging behaviour. However, it is anticipated that pupil numbers will be expanding in the secondary sector over the next ten years. Therefore, in the future, places may need to be arranged through the protocol, due to the number oversubscribed secondary schools.

7 Fair access Protocol Procedure

7.1 Children arriving in North Lincolnshire and unable to secure a school place

- 7.1.1 For children who move into North Lincolnshire or within North Lincolnshire (ie a significant distance from their previous home) and the admissions team is unable to offer a school place within a reasonable distance^{††}, the fair access protocol will apply.
- 7.1.2 In this situation, the admissions team will discuss the case with the relevant head teacher from the oversubscribed school(s) within a reasonable distance of the home. A school will then be selected by the admissions team based on the preferences identified on the application form, the distances to those and other schools, the level of over-subscription in each school, previous fair access admissions and the comments of the head teacher on the school's ability to cope with further admissions.
- 7.1.3 If the head teacher (or relevant admissions committee) agrees to the admission, the child will be allocated a place at the school, even though the relevant year group may be full. These admissions will be formally recorded as fair access cases.
- 7.1.4 If the selected school refuses admission, the reasons for refusal will be provided in writing by the school and the case will be referred to the Fair Access and Inclusion Panel for resolution.
- 7.1.5 If such circumstances arise, the admissions team will endeavour that approaches to schools are spread evenly so that no school is expected to take more than its fair share of supernumerary applications.

7.2 Applications for Schools with Places

- 7.2.1 Where an application is made for a school that has a vacancy, the admissions team will process the application form in the normal manner. Thereafter, it is for the receiving school to evaluate the application to determine:

^{††} Defined as statutory walking distance – 2 miles for children under 8 and 3 miles for children aged 8 and over.

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- Firstly whether the pupil meets the fair access criteria in respect of challenging behaviour
 - Secondly whether the school has a significant number of challenging pupils in the relevant year group
 - Thirdly whether they wish to refuse the application and have the matter referred to the Fair Access and Inclusion Panel

7.2.2 If the fair access eligibility is not met, it is expected that the admission will proceed. If the admission is refused the reason(s) need to be stated in writing along with a completed fair access referral form, which will then be referred to the panel for their resolution.

8 Fair Access Panel

8.1 Referred fair access cases will be discussed at the Fair Access and Inclusion Panel^{††}. The panel is locally agreed arrangement which involves schools and academies in North Lincolnshire and is designed to promote inclusion in relation to children and young people who are the responsibility of participating schools or academies. By agreeing to adopt this protocol, it is established that the Fair Access and Inclusion Panel will consider and resolve all fair access cases.

8.2 The Fair Access and Inclusion Panel comprises of all secondary schools and academies in North Lincolnshire and has an independent chair. It is intended that a separate Panel be established for primary school cases.

8.3 In order to discuss and resolve fair access cases the following people (or representatives) should attend the meeting :

- Head teacher / principal or representative from the school(s) refusing the application
- Head Teacher / Principals for neighbouring schools(s) who are may be identified as being suitable for admitting the pupil
- Representatives from the local authority.

8.4 Relevant head teacher (or representatives) should attend to be able to give their reasons. If representatives do not attend the case will be decided by the panel in their absence on the basis of any submitted papers.

8.5 The panel will identify the school that should admit the child, or alternative provision if appropriate, and decisions apply to all schools. The panel will make the decision normally on the same day as to which school will be nominated to receive each pupil. In reaching a decision on the placement of the child, the Panel will consider the balance of circumstances of the pupil and the circumstances of the school, taking into account the following factors:

^{††} At the time of publication, the panel had only recently been convened. Overtime, it is expected that the panel may wish refined the way the it works and develop, for example terms of reference. This work may be undertaken through the majority agreement of the panel.

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- The distance and ease of travel from home to school;
 - The fairness of any placement and proportion of hard to place pupils that have been allocated by previous panels
 - The school that is the parent/carer's preferred choice; ie. the religious affiliation of the pupil (where possible)
 - Genuine concerns about the admission, e.g. a previous serious breakdown in relationship between the school and the family, or a strong aversion to, or desire for, the religious ethos of the school.
 - Parents/Carers and children's views but they will not override the decision of the Panel if the preferred school is unable to take the pupil
 - Where schools reach a limit in any year group – whether to provide a placement in alternative provision until a place becomes available or to exceed the limit
 - Whether good quality alternative provision provides a more suitable solution
 - Whether to assist with transport assistance, normally limited to provision for attending schools beyond walking distance
 - Where appropriate, what support for transition could be provided
 - Any doubts about a pupil's suitability for mainstream education and whether a opportunity for further assessment should be considered
- 8.6 There is no longer a duty to comply with parental preference when allocating a school place through the fair access protocol.
- 8.7 A school cannot cite oversubscription as a reason for not admitting a hard to place pupils where that school is the nominated by the panel.
- 8.8 Schools must work together and support each other in ensuring a fair distribution of hard to place pupils across all schools. All schools must have effective integration processes in place.
- 8.9 All schools will be expected to admit pupils who have been assigned to their school under the process.
- 8.10 All schools, including academies, are expected to respond to request to admit a child under fair access within seven school days.
- 8.11 Once a child has been allocated by the panel, the child should be admitted within one week. The school must notify School Admissions of the admission date in each case.
- 8.12 If a maintained school or academy is identified as the one to admit a pupil and refuses to do so the matter will be referred to, in the first instance, the Assistant Director (Prevention and Commissioning) . If, after consulting with the school and the parent, the LA decides to direct the school to admit the pupil, it must inform the governing body and headteacher of the school. Any further objection will be referred to the Schools Adjudicator or to the Secretary of State, as appropriate.

9 Making a Referral and Information⁵⁵

- 9.1 In order for a young person to be referred for consideration at the Fair Access and Inclusion Panel meeting, the agreed referral form must be completed. This is a comprehensive document and must be completed to enable the panel to make an appropriate decision regarding the student.
- 9.2 Referral forms must be submitted to the Admissions Team by 1pm on the Friday of the week preceding the panel meeting. Papers received after the deadline will not normally be accepted and will be allocated to the next scheduled panel meeting. However exceptions may be made if it is considered to be in the child's best interests.
- 9.3 Upon receipt, the referral form will be subject to a quality assurance check to ensure that all necessary information/assessments/additional evidence is provided. If additional information is required, this information will be requested for receipt by 1pm Monday or the case will normally be deferred to the next scheduled meeting. Referral forms and supporting information will be circulated to the school/academy's nominated representatives prior to the scheduled meeting for members to consider and prepare for discussion according to the agreed timetable
- 9.4 The local authority will provide information about:
- Availability of school places and travel implication
 - Where available, comparison data on attendance, exclusions, SEN, fixed term exclusions and permanent exclusions.
 - Latest validated number of in-year transfers (joiners and leavers)
 - Summary of recent fair access admissions
- 9.2 The refusing school should:
- Complete the Fair Access and Inclusion Referral Form. If it is a North Lincolnshire School, it is agreed that the pupil's current school will help with this process – See section 5 also
 - Provide any additional information (ie from meeting / telephone calls with the parent or child's previous school)
 - Notify the admissions team who will explain the fair access process to parents.

10 Managed Moves

⁵⁵ Through majority agreement, the panel may modify how this process work in order to improve the quality if information provided. Any changes wil eb documented and a revised referral process will be distributed.

A managed move is normally an agreement between two schools, a child and his parents, which is brokered by the panel. It allows a child at risk of permanent exclusion to transfer to another school. This and will normally be triggered by a school making a direct referral to the Fair Access and Inclusion Panel. The Panel will consider the merits of the proposed managed. The Panel will also determine which school should accept the pupil being moved. Consideration will be given to the needs of the child and to the circumstances pertaining in the year group of the receiving school. Over time the Panel will track all managed move decisions to ensure some measure of equity between all participating schools receiving pupils via the managed moves process. When a pupil is moved via this process additional support to the pupil in the new school will be provided for the first six weeks in order to ensure a smooth transfer.

11 Transport

- 11.1 The home to school transport policy confirms pupil's entitlement to transport. Where a panel identifies a particular school for a child, (including via the managed moves process) this will be deemed as their nearest available school. If this exceeds the walking distance criteria, they will be eligible for transport. The panel must factor in transport costs when making their decisions. For example allocating a child a school which means they must be transported by taxi will incur significant costs.

12 The Protocol should establish the education provision a child will receive whilst discussions to identify a school place are taking place

- 12.1 If a referral is made to the fair access and inclusion panel, the school which the child is registered at, will be responsible for ongoing education and support.
- 12.2 Education provision for other children will include Day 6 provision and alternative provision. Where a child has been out of school for 20 days, provision will be sought by the LA.

13 Pupil Voice

- 13.1 The DfE's statutory guidance "Listening to and involving children and young people"⁶ refers to the general principles of the United Nations Conventions on the Rights of the Child (UNCRC), - articles 2, 3, 6 and, in particular, article 12 which states the following:
- "Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

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- For this purpose, the child shall, in particular, be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

13.2 In view of the above every effort should be made to allow to pupil’s views to be understood (for clarity, it should be noted that parents or pupils will not be invited to the Fair Access and Inclusion Panel)

14 School Admission Appeals

14.1 The allocation of a place in accordance with a Fair Access Protocol does not override a parent’s right to appeal against refusal of a place at any school for which they have applied. If an application has been refused despite there being places available, the governing body **must** present their case for refusal, demonstrating how admission of the child would prejudice the provision of efficient education or efficient use of resources. When considering such an appeal, in addition to considering the appellant’s arguments for their child to be admitted, the panel **must** take account of the requirements set out in the local authority’s Fair Access Protocol. The panel **must** carefully consider whether the presenting officer has clearly proven that admission of the child would be prejudicial to the school or other children³.

14.2 Fair access protocols should not be used as a means to circumvent the normal in-year admissions process. A parent can apply for a place as an in-year admission at any point and is entitled to an appeal when a place is not offered.

14.3 Schools should not refuse to admit a child who has been denied a place by an independent appeal panel, if the Fair Access Panel subsequently identifies that school as the one to admit the child. This could occur if the parental appeal to the independent appeal panel takes place before the Fair Access Panel meets.

14.4 Oversubscribed schools should not refuse to admit a child who has been awarded a place by an independent appeal panel.

14.5 Any parent whose application for a school place has been refused on the grounds of their child’s challenging behaviour will have a right of appeal to an independent admission appeal panel. The appeal process will take place within the timescales set out in the School Admissions Appeal Code.

15 Monitoring and Review

15.1 With the support of schools in providing / validating data, LA will maintain a summary of the scale of in-year admissions on a school by school basis. Fair Access

Protocol is kept simple and regularly reviewed¹⁰. A review of this document will commence one year from the date of its implementation.

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