

**Determined Fair
Access Protocol for
Oxfordshire
2015/16 and
2016/17**

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Introduction

1. The School Admissions Code requires every local authority to have in place a Fair Access Protocol. The Fair Access Protocol for Oxfordshire applies to all state funded mainstream schools¹ in Oxfordshire and is consistent with the requirements set out in paragraphs 3.9 to 3.15 of the Schools Admission Code 2014, the non-statutory guidance published by the Department of Education in November 2012, the Education (Pupil Registration) (England) Regulations 2006 and the School Standards and Framework Act 1998.
2. The Schools Admission Code 2014 requires all admission authorities of state funded mainstream schools to 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 Protocol.
3. The purpose of the Fair Access Protocol is to ensure that outside the normal admissions round unplaced children, especially the most vulnerable, are found and offered a place quickly, so that the amount of time any child is out of school is kept to the minimum.
4. The published guidance from the Department of Education sets out a clear expectation from the Secretary of State that all state funded mainstream schools and local authorities should work together to identify a school place for those children who have had difficulty finding one. This guidance also states that all schools are expected to respond to requests by local authorities to admit a child under fair access protocols within seven calendar days.
5. The process that local authorities and academies need to follow when a request is made to the Secretary of State to direct an academy to admit a named child will mirror, as closely as possible, the timing set out in relation to maintained schools in the School Standards and Framework Act 1998 and the School Admissions Code.
6. When reviewing a request to direct admission to an academy the Education Funding Agency will act on behalf of the Secretary of State to consider whether due process has been followed in applying the provisions of the Fair Access Protocol.

¹ Academies, free schools, studio schools, voluntary aided schools, trust schools, voluntary controlled schools and community schools

Principles

7. The Fair Access Protocol is binding on all state funded mainstream schools in Oxfordshire.
8. The arrangements regarding the admission of students above the published admission number will not apply to Meadowbrook College, Oxfordshire's Pupil Referral Unit.
9. When making placements the Fair Access Panels will take into account any special circumstances, including possible transport costs.
10. There is no duty to comply with parental preference when allocating places through the Protocol but it is expected that the wishes of a child's parents will be taken into account.
11. When seeking to place a child under the Protocol, all schools will be treated in a fair, equitable and consistent manner.
12. The Fair Access Protocol will 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 if a place cannot be made available.
13. An application to the Secretary of State to direct a child's admission to a particular school will only be requested as a last resort.
14. While a child is on roll at a school the school concerned is responsible for the child's educational provision.
15. Any child without a school place is the responsibility of the Local Authority up until the point at which they are taken on roll at a school.
16. There will be an annual review of the Protocol (see Publication and Review).
17. The number of children admitted under the Protocol to each state funded school in Oxfordshire will be published on the Oxfordshire public website. This data will be updated at the beginning of each term.
18. The Fair Access Protocol is not applicable to admissions made through the normal admissions round for primary, junior or secondary schools and cannot be used where this would involve contravening the regulations on the size of infant classes.
19. The Fair Access Protocol will not be used to require a school to automatically admit another child with challenging behaviour in the place of a child excluded from that school.

Children covered by the Protocol

19. The Fair Access Protocol can be used for the placement of children who fall within the following categories:
 - 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;
 - f) children who are carers;
 - g) children with special educational needs, disabilities or medical conditions (but without a statement);
 - h) permanently excluded children, including those whose parents have successfully appealed against exclusion, but where the independent appeal panel has decided that the pupil should not be reinstated;
 - i) children who are at serious risk of permanent exclusion;
 - j) those children whose parents have been unable to find them a place after moving to the area, because of a shortage of places;
 - k) those children who have been refused a place at a school because they are believed by the school concerned to be challenging.

Monitoring of the Protocol

20. The Admissions and Transport Services Manager assisted by the SIOs will monitor placements under the Protocol and the operation of the Fair Access Panels.
21. Each Fair Access Panel will receive a report on in year admissions for the academic year. This report will be prepared by the Admissions Team and will normally be presented by the Admissions and Transport Services Manager. It will include the number of admissions under the Fair Access Protocol. The report will not include the names of children and will be a public document.
22. Once issues have been identified the Admissions and Transport Services Manager will seek to resolve them through contact and negotiation with the relevant school, service or panel. Problems regarding the Protocol will be identified in the annual report to the Schools Adjudicator.

Publication and Review

23. The Fair Access Protocol will be published on the admissions page of the Oxfordshire public website and will form part of the admission arrangements for all state funded schools in Oxfordshire.

24. The Protocol will be reviewed annually and the review will involve all schools. The Admissions and Transport Services Manager will be responsible for the undertaking the review, reporting the outcome to schools and councillors and submitting the Protocol for approval to the Local Authority. The next annual review of the Protocol will take place for at least 6 weeks between 1 October 2015 and 31 January of 2016 and the Protocol will then be officially determined by Oxfordshire County Council by no later than 28 February 2016.

Looked after children, previously looked after children, children with an Education Health and Care Plan and children with a Statement of Special Educational Needs naming a school

25. Requests for places for looked after children, previously looked after children, children with an Education Health and Care Plan and children with a Statement of Special Educational Needs naming a school, will not be referred to the Fair Access Panels.
26. In accordance with legal requirements children who have an Education Health and Care Plan² that names the school will be admitted to that school. In addition those children who have a Statement of Special Educational Needs that names a particular school in Part 4 of that Statement will also be admitted to that school.³
27. Similarly children who are looked after⁴ by a local authority within the meaning of section 22 of the Children Act 1989 at the time of their application and previously looked after children will always be admitted.⁵ The term “previously looked after children” refers only to children who were looked after but ceased to be so because they were adopted (or became subject to a child arrangements order⁶ or special guardianship order⁷).
28. Proposals to place children with an Education Health and Care Plan and children with a Statement of Special Educational Needs at a school outside the normal admissions round will be the subject of a formal consultation with the relevant school. Following the consultation if the responsible local authority decides a place is still required it will be made available by the school concerned.
29. Looked after children and previously looked after children will normally be placed promptly through the in year admission arrangements. If this is not

² An Education, Health and Care plan is a plan made by the local authority under Section 37 of the Children and Families Act 2014 specifying the special education provision required for that child.

³ Statements of Special Educational are being superseded by Education, Health and Care plans

⁴ A 'looked after child' is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in Section 22(1) of the Children Act 1989) at the time of making an application to a school.

⁵ This group includes children who were adopted under the Adoption Act 1976 (see section 12 adoption orders) and children who were adopted under the Adoption and Children Act 2002 (see section 46 adoption orders).

⁶ Under the provisions of s.14 of the Children and Families Act 2014, which amend section 8 of the Children Act 1989, residence orders have now been replaced by child arrangements orders.

⁷ Section 14A of the Children Act 1989 defines a 'special guardianship order' as an order appointing one or more individuals to be a child's special guardian (or special guardians).

possible or when a school placement needs to be arranged as an emergency measure a formal consultation will take place with the school concerned.

29. In the case of looked after children for whom Oxfordshire is responsible the social worker responsible for the child will approach the Admissions Team to check the availability of school places and to establish the distance from the child's placement to local schools. The social worker will then contact the Virtual School for advice on the provision available at the schools being considered. After considering the advice received the social worker will complete an application form for a school place and submit the form to the Admissions Team. The Admissions Team will then write to the school to request a place. The school will then respond within 7 days.
30. A direction may be sought if a looked after child, previously looked after child or child with a statement of special educational needs naming the school is refused a place by the requested own admission authority school.
28. Once a place has been offered to a looked after child, or previously looked after child, and the place has been formally accepted (or the child is already on roll) it is open to the school concerned to raise issues such as requests for additional funding at the next available Fair Access Panel. Fair Access Panels are not able to determine alternative school placements for these children.

Fair Access Panels

Membership

29. For secondary schools the Fair Access Protocol will be applied through Fair Access Panels. The areas served by Fair Access Panels will be published annually on the Admissions Page of the Oxfordshire public website. All state funded secondary schools will have a representative on the Fair Access Panel that serves the relevant school's area. In addition each Panel will include a representative from Meadowbrook College, one of the Social Inclusion Officers (SIO) and the Admissions and Transport Services Manager (or his representative).
30. The Chair of each Fair Access Panel will be elected by the representatives of the schools on that Panel, the representative of Meadowbrook College, the Admissions and Transport Services Manager and the SIO for that area. The Chair will normally serve for one academic year. If the Chair is unable to attend a particular Fair Access Panel meeting a temporary Chair will be elected for that meeting by the relevant Panel.
31. The following schools are represented on the North Fair Access Panel:
 - a) Banbury Academy;
 - b) Bicester Community College;
 - c) Blessed George Napier;
 - d) Cooper School;
 - e) Heyford Park Free School;
 - f) North Oxfordshire Academy;

- g) The Warriner School;
- h) Studio School, Banbury.

32. The following schools are represented on the West Fair Access Panel:

- a) Bartholomew School;
- b) Burford School;
- c) Carterton Community College;
- d) Chipping Norton School;
- e) Henry Box School;
- f) The Marlborough School;
- g) Wood Green School.

33. The following schools are represented on the Central Fair Access Panel:

- a) Cheney School;
- b) Gosford Hill School
- c) Matthew Arnold School;
- d) Oxford Spires Academy;
- e) The Cherwell School;
- f) The Oxford Academy;
- g) St Gregory the Great VA Catholic Secondary School;
- h) Wheatley Park School.

34. The following schools are represented on the South Fair Access Panel:

- a) Didcot Girls' School;
- b) Chiltern Edge School;
- c) Faringdon Community College;
- d) Fitzharrys School;
- e) Gillotts School;
- f) Icknield Community College;
- g) John Mason School;
- h) King Alfred's School;
- i) Langtree School;
- j) Larkmead School;
- k) Lord Williams' School;
- l) Wallingford School;
- m) St Birinus (Boys) School;
- n) University Technical College, Didcot.

35. If a Fair Access Panel is established for a group of primary schools the Admissions and Transport Services Manager and the SIO, or their representatives, will be members of that panel.

36. All school representatives, including those from own admission authority schools, will be empowered to make decisions at the Panel meetings and offer provisional places.

Fair Access arrangements for schools currently not covered by a Fair Access Panel

37. In any area not covered by a Fair Access Panel, and for all primary schools, the functions of the Fair Access Panel will be undertaken by the SIO for the area and the Admissions and Transport Services Manager.

Establishing a Fair Access Panel covering a primary partnership

38. Where a primary partnership would like to set up a Fair Access Panel to cover the primary schools in its area the Chair should apply in writing to the Admissions and Transport Services Manager before the end of Term 4 of the 2014/15 academic year.
39. Any primary partnership that establishes a Fair Access Panel will need to follow this Protocol.
40. The SIO for the area and the Admissions and Transport Services Manager will be members of any Fair Access Panel established by a primary partnership.
41. Servicing a Fair Access Panel established by a primary partnership will be the responsibility of that partnership rather than the LA.

Referrals to Fair Access Panels

42. Referrals for consideration under the Protocol can be made by any state funded schools in Oxfordshire or by the Admissions Team.
43. No referrals can be made by parents.
44. In any academic year normally no more than 1 child per year group will be admitted above the Published Admission Number of a primary, infants', or junior school through the Protocol.
45. With regard to secondary schools in any academic year those schools with fewer than 900 pupils on roll would not normally be expected to admit more than 2 above the Published Admission Number in each year group through the Protocol. Those secondary schools with 900 or more pupils on roll may be expected to admit, in any academic year, up to 3 above the Published Admission Number in each year group through the Protocol. These figures are meant to be a guide to good practice and are not meant to be slavishly followed irrespective of circumstance.
46. The flow chart at Appendix 1 shows the referral process.

Dates of Meetings

47. Fair Access Panel (FAP) meetings will be set by each Panel at the beginning of the academic year with the programme of dates being published on the intranet by the Admissions Team.

48. If dates are changed during the year the Admissions Team will be informed by the SIO concerned and the published programme will be amended.

Information to be provided prior to a meeting of the Fair Access Panel

49. Fair Access Panel referral forms should be sent to the relevant Social Inclusion Officer (SIO) following meetings/conversations within schools. The referral form is shown as Appendix 2.
50. There is no requirement to complete a referral form for those children who are without a school place unless no admission application form has been received.
51. All members of the Panel will be sent case details and an agenda prior to the meeting of the Fair Access Panel.
52. Prior to the Fair Access Panel meeting any school recommending a planned transfer will ask the parent to specify alternative school preferences (these will be treated as advisory and will not be binding on the Panel)
53. Any referral from the Admissions Team, from Meadowbrook College or from the SIO should normally be made with information on the parent's expressed preference of school/schools.

Transport Costs

50. Possible placements that depend upon the provision of free transport will need to be cleared with the Admissions and Transport Services Manager prior to a referral being considered at the relevant Fair Access Panel.
51. Where there has been no prior agreement to transport cost, these costs may, at the discretion of the Admissions and Transport Services Manager, be charged to the Fair Access Panel.
52. No additional expenditure on taxi transport will be accepted without prior agreement by the Admissions and Transport Services Manager.

Considering cases

53. The Fair Access Panel will consider previous admissions, group dynamics and transport implications before deciding a placement. A report will be provided by the Admissions Team showing the number of children admitted to schools covered by the relevant Fair Access Panel. The report will be compiled on a termly basis.
54. The SIO will inform the family of the outcome of the meeting and co-ordinate the admission arrangements.
55. Fair Access Panels will ensure that where a child is without a school place, or there is an agreed need to transfer a child to another school, that a placement is agreed at the meeting at which the case is considered. Decisions on referrals will only be postponed to a later meeting when exceptional

circumstances apply.

56. Fair Access Panels may consider whether additional support can be made available from the Panel's resources for pupils who are not transferring schools.
57. If a Panel is unable to make a decision on the most suitable placement for a child who is without a school place the Admissions and Transport Services Manager will name a school after taking into account the recorded comments of the Panel, any expressed preferences of the parent concerned, the available data on admissions over the academic year and the number of children admitted to each school under the Protocol.
58. Non-attendance at one or more meetings of the relevant Fair Access Panel will not preclude the school/schools concerned from being asked or required to admit a pupil who needs to be placed under the Protocol.

Recording

59. The Social Inclusion Team is responsible for taking the minutes of the Fair Access Panel meetings.
60. The SIO will keep a register of those considered for a move (whether the move is agreed or not) and of those admitted and those leaving schools under the Fair Access Protocol in the area covered by the relevant Fair Access Panel. All SIOs will provide this data to the Admissions and Transport Services Manager for inclusion in the Local Authority Report to the Schools Adjudicator and for publication on the Oxfordshire County Council public website.
61. The numbers admitted to each school under the Protocol will be published on the Admissions Page of the Oxfordshire County Council public website. This data will be updated every term.

Offers

62. The Minuting Secretary will pass the decisions regarding placements to the Admissions Team.
63. The Admissions Team then write to the relevant schools to confirm the agreement to offer a place under the Fair Access Protocol.
64. Schools will respond within 7 calendar days to confirm agreement to offering a place through the Protocol.
65. The offer of a place will then be sent out by the Admissions Team. The letter offering a place will specify a start date. This start date will generally be 15 working days from the date the letter is sent out.
66. Parents will be asked to confirm or reject acceptance of the place by responding to the Admissions Team rather than directly to the offered school.

67. Parents will have 7 calendar days to respond.
68. It is up to schools to agree an earlier start date with the parents once the parent has responded to the Admissions Team (if the placement has been accepted).

Arrangements for being taken on roll

69. Children referred by schools, for whom there is no admissions application form and who have an existing school place will receive a letter from the Admission Team offering a place or, in the case of own admission authority schools, offering a place on behalf of the Governors/Directors. The letter will specify a start date. This date will normally be 15 working days from the date of the letter. The child will not be taken on roll until the parent has confirmed to the Admissions Team that the place has been accepted. The parent will have 7 calendar days to respond. The offer will lapse if no response has been received after those 7 days.
70. Those children who do not currently have a school place will be taken on roll from the date specified in the letter from the Admission Team offering a place or, in the case of own admission authority schools, offering a place on behalf of the Governors/Directors.
71. When a child is added to the school roll, they will automatically be added to the attendance register.
72. On the day the pupil is expected to arrive at school, the Attendance Register should be marked in the normal way. If a pupil fails to appear and no explanation is provided, then an "N" should be used. This is only a temporary code and therefore should only be used until the reason for absence is confirmed by the parent. If no reason is given by the child's parent the code should be changed to an unauthorised absence.

Refusal to admit a challenging pupil

73. Challenging behaviour will normally be defined as:
 - a) serious criminal behaviour resulting in a conviction or a police caution within the previous two years preceding the request for a school place;
 - b) behaviour resulting in a permanent exclusion within the last two years preceding the request for a school place;
 - c) behaviour resulting in a significant number of fixed term exclusions from which it is clear that the child is at serious risk of permanent exclusion within a period of at least one year preceding the request for a school place.
74. Children with attendance problems, or those for whom English is an additional language, will not, as a result of these problems, be considered "challenging" under the Fair Access Protocol.

75. In exceptional circumstances where a governing body receives a request for a place outside the normal admissions round and does not wish to admit the child with challenging behaviour, the case must be referred to the Admissions Team for action under the Fair Access Protocol. This will normally only be appropriate where the school can provide evidence that it has a particularly high proportion of children with challenging behaviour or previously excluded children. The evidence presented must be accepted by a majority of school and local authority representatives at the Fair Access Panel. Where the Fair Access Panel accepts that the child should not be admitted to a school under this provision it will arrange an alternative placement which will normally be in another mainstream school. However, no other school will be offered through the Protocol if the child concerned does not live within Oxfordshire.
76. The parent of a child who has applied for a school place and a place has been refused on grounds of the 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.
77. If the school concerned lies within an area that does not operate a Fair Access Panel that role will be fulfilled by the Admissions and Transport Services Manager and the relevant SIO for that area.
78. Paragraph 3.12 of the School Admissions Code 2012 makes it clear that governing bodies cannot refuse to admit looked after children, previously looked after children and children with a statement of special educational needs naming the relevant school and then refer their cases for consideration under the Fair Access Protocol. Children falling within these groups must be admitted.

Alternative provision

79. In Key Stage 3 temporary places are available on courses operated by Meadowbrook College. In Key Stage 4 a number of permanent places can be made available at Meadowbrook College.
80. Appendix 3 sets out the details of how places are allocated on courses operated at Meadowbrook College

Directions

The process for requesting that the Secretary of State direct an Academy to admit a child

81. Requesting the Secretary of State to direct an Academy to admit a child will only occur where a local resolution cannot be found.
82. If the Secretary of State is asked to direct an Academy to admit a child the request will be made by the Admissions and Transport Services Manager on behalf of the Local Authority. The Local Authority and the relevant Academy will be responsible for documenting the case for and against admission.

83. The Education Funding Agency will act on behalf of the Secretary of State in considering whether due process has been followed in applying the provisions of the Fair Access Protocol.
84. In requesting a direction from the Secretary of State, the Local Authority will need to provide evidence that the provisions of the Fair Access Protocol have been applied in a fair and appropriate manner. The Local Authority must also set out the Academy's reasons for refusal and the Local Authority's response.
85. The Local Authority will use the template shown as Appendix 4 when writing to the Education Funding Agency.
86. On receipt of a request to direct, the Education Funding Agency can be expected to inform the Academy that it has received a request for a direction. The non-statutory guidance states that in these circumstances the Education Funding Agency will write to the relevant Academy to ask for any evidence that has been supplied that shows the process has not been properly applied. The Education Funding Agency can be expected to give Academy 7 calendar days to respond.
87. Where the Secretary of State is asked to consider a direction, the non-statutory guidance makes it clear that he can be expected to make a decision on the basis of the papers provided, taking into account:
 - Whether the local Fair Access Protocol has been applied appropriately
 - The arguments of the Academy and the Local Authority, whether the Local Authority has considered the arguments for refusal and why it still considers the Academy to be the appropriate place for the child.
 - Whether the Academy has been asked to accept a disproportionate number of children under the Fair Access Protocol compared to other local schools.
88. A flow chart regarding directions is attached as Appendix 5.

The process for directing a maintained school for which the Local Authority is not the admission authority when the school concerned refuses to accept a child

89. Directing a maintained school to admit a child following a decision made under the Protocol will only occur where a local resolution cannot be found.
90. Initially a letter will be sent from the Admissions Team stating that a place needs to be made available following a decision under the Protocol. Any maintained school approached in this way must respond to the Local Authority within 7 calendar days.

91. If the child concerned has been refused entry to, or permanently excluded from, every appropriate school within a suitable distance the Admissions and Transport Services Manager will then write to the school to inform the Governors and Head of the intention to direct admission.
92. The Governing body may appeal by referring the case to the Schools Adjudicator. The Governors have 15 calendar days within which to refer the case
93. If the Schools Adjudicator does not uphold the direction the Adjudicator may direct admission to an alternative school.
94. If the Schools Adjudicator upholds the direction the child must be admitted to the school. The school will then need to agree a start date with the child's parents.
95. A flow chart regarding directions is attached as Appendix 5.

Queries

96. Queries regarding the operation of the Protocol should be directed to the Admissions and Transport Services Manager at:

Admissions and Transport Services Manager
School Organisation and Planning
County Hall
New Road
Oxford OX1 1ND
Email: neil.darlington@oxfordshire.gov.uk

97. The non-statutory guidance on Fair Access Protocols can be obtained at:
<http://dfe.gov.uk/aboutdfe/advice/f00217650/fair-access-protocols-advice>