

# **Leicestershire Children and Young People's Service**

# **Fair Access Protocol**

**March 2014**

(Ratified by Cabinet 5 March 2014)

# CHILDREN AND YOUNG PEOPLE'S SERVICE

## FAIR ACCESS PROTOTOL

### VERSION: FINAL MARCH 2014

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## 1. Introduction

- 1.1. The purpose of the Fair Access Protocol is to ensure that vulnerable children and young people are found a school place quickly and fairly, so that the amount of time any child is out of school is kept to the minimum. The protocol also makes sure that all schools and academies admit their fair share of vulnerable children. Every local authority is required to have in place a Fair Access Protocol, developed through consultation with local schools and academies.
- 1.2. The protocol needs to be agreed with a majority of schools and is then binding on all schools in the area<sup>1</sup>.
- 1.3. The statutory basis for the protocol is the Fair Access guidance included in the National School Admissions Code<sup>2</sup>.

## 2. Fair Access Applies To:

- 2.1. Leicestershire's Fair Access Protocol will include the following children of compulsory school age who have difficulty securing a school place<sup>3</sup>:
  - 2.1.1. Children from the criminal justice system or Pupil Referral Units who need to be reintegrated into mainstream education;
  - 2.1.2. Children who have been out of education for two months or more;
  - 2.1.3. Children of Gypsies, Roma, Travellers, refugees and asylum seekers;
  - 2.1.4. Children who are homeless;
  - 2.1.5. Children with unsupportive family backgrounds for whom a place has not been sought;
  - 2.1.6. Children who are carers;
  - 2.1.7. Children with special educational needs, disabilities or medical conditions (but without a statement);
- 2.2. Looked after children and children with statements are further groups of children for whom special arrangements apply, as indicated below.
- 2.3. Schools not wishing to admit a particular child with behaviour difficulties<sup>4</sup> may ask the local authority to consider the case under this protocol<sup>5</sup>. The local

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<sup>1</sup> Ibid section 3.9

<sup>2</sup> <http://www.education.gov.uk/aboutdfe/statutory/g00213254/school-admissions-code-2012>

<sup>3</sup> This list of groups is as suggested as the minimum scope of Protocols in the statutory admissions code (section 3.15).

<sup>4</sup> This does not include children looked after, previously looked after, or a child with a statement of special educational needs naming the school in question.

<sup>5</sup> National Schools Admissions Code, section 3.12

authority will invoke fair access if the school can demonstrate that:

- 2.3.1. The pupil has a well documented recent history of challenging behaviour, and either,
- 2.3.2. The school is currently judged to require special measures and pupil behaviour is a key issue, or
- 2.3.3. The school has already admitted two or more students under Fair Access in the particular year group for which a place is sought in the last 12 months.

### 3. Principles

- 3.1. The local authority must have a Fair Access Protocol, in which all schools (including Academies) must participate since it is binding on the admission authorities for all schools and academies<sup>6</sup>. In Leicestershire, Behaviour Partnerships will operate the protocol on a day to day basis for secondary aged pupils.
- 3.2. Schools (including Academies) should work together collaboratively, taking into account the needs of the child and those of the school / academy. There is no duty to comply with parental preference when allocating places through the Protocol but it is expected the wishes of the parents and young people are taken into account and that all pupils will be on a school roll.
- 3.3. When seeking to place a child under the Protocol, all schools and academies should be treated in a fair, equitable and consistent manner. No school should be asked to take a disproportionate number of children who have been excluded from other schools.<sup>7</sup> This does not apply to Children in Care or Children with statements, for whom separate admission arrangements apply<sup>8</sup>.
- 3.4. Secondary Behaviour Partnerships will use a combination of pooled and devolved resources to provide alternative programmes and in-school support to meet the needs of all vulnerable and challenging children, including those not ready for mainstream education<sup>9</sup>. Primary schools will use combination of pooled and delegated funding to make the same provision.
- 3.5. The Fair Access Protocol 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<sup>10</sup>.
- 3.6. Undue delays in admission, particularly of Children in Care, will be referred to

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<sup>6</sup> The term “Academies” in this document refers to all types of Academy schools, i.e. including Academy converters, sponsored Academies, and all types of Free Schools, including University Technical Colleges and Studio Schools, with the exception of Special Schools and alternative providers

<sup>7</sup> Ibid section 3.9

<sup>8</sup> Sections 3.8, 3.12 and 3.13 of the National Admissions Code describe the arrangements for Children with Statements. Sections 3.12 and 3.19 describe the arrangements for Children in Care.

<sup>9</sup> The Lead Schools Agreement sets out the detail of this arrangement.

the Adjudicator (LA Schools) or Secretary of State (Academies). An application to direct from the Secretary of State should only be requested as a last resort.<sup>11</sup>

- 3.7. Schools must admit children and young people promptly, and arrange short term educational support themselves, pending longer term support agreed via the partnership.<sup>12</sup> Where an undue delay to an in-year admission engages Fair Access procedures, the partnership will recommend placement at the same school.
- 3.8. The LA will make every effort to inform schools and partnerships when it becomes aware of other admissions processes in train for a particular case.
- 3.9. Placements decisions need to be based on full information. This will drive the development of systems and procedures and will not delay the entry of individual students.

## 4. The Aims of the Protocol

### 4.1. The In-Year Fair Access Protocol aims to:

- 4.1.1. **Identify the needs of vulnerable and challenging pupils including those who are not on the roll of any educational establishment quickly and sympathetically**
- 4.1.2. **Reduce the time that vulnerable and challenging pupils spend out of education**
- 4.1.3. **Ensure that all schools/academies admit vulnerable and challenging pupils on an equitable basis.**
- 4.1.4. **Be fair and transparent, and to build the confidence of all schools/academies, in the placement decisions made**

## 5. Timing and Application

- 5.1. Schools, Academies and the Local Authority will act together, with a sense of urgency, guided by the best interests of the young person, to identify a suitable school or academy place for those qualifying under this protocol.
- 5.2. Schools and academies, will reply to requests from the Local Authority to admit a

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<sup>10</sup> Ibid section 2.21

<sup>11</sup> The Secretary of State will base his decision having regard to whether due process, in line with the locally agreed provisions in the Fair Access Protocol, has been applied appropriately. The Protocol should establish the education provision a child will receive whilst discussions to identify a school place are taking place. In the event that the majority of schools / academies in an area can no longer support the principles and approach of the local Protocol, all the school heads should initiate a review with the local authority. The existing Protocol however remains binding on all schools and academies up until the point at which a new one is adopted.

<sup>12</sup> Useful guidance on Alternative Provision is available at:

<http://www.education.gov.uk/aboutdfe/statutory/g00211923/alternative-provision>

young person under the Fair Access Protocol without delay, normally within 7 days, through partnership structures where operational.

- 5.3. The Local Authority will always consult and carefully consider any response before using its power to direct the admission of a young person. If following consultation the LA decides to direct, it will inform the governing body and head teacher of the school. The LA will do the same when considering requesting a direction for a child to be admitted to an academy through the Education Funding Agency.
- 5.4. The governing body of a maintained school can appeal against a direction by referring the case to the Schools Adjudicator within 15 calendar days. Similarly, it is expected that an academy will agree a starting date for the child or set out its reasons for refusal in writing to the local authority within 15 calendar days. The LA must not make a direction until the 15 days have passed and the case has not been referred.
- 5.5. If an academy has not agreed a start date for the child 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.
- 5.6. Children in Care are particularly vulnerable. The admission authority of a school must inform the Local Authority within 7 days whether it is willing to admit a young person where they are looked after.
- 5.7. The Fair Access Protocol will not apply to a looked after child, a previously looked after child or a child with a statement of special educational needs in respect of naming the school in question, as these children must be admitted<sup>13</sup>. Appendix 2 provides further information on the different admissions processes.
- 5.8. Admissions authorities must not refuse to admit a child thought to be potentially disruptive, or likely to exhibit challenging behaviour, on the grounds that the child is first assessed for special educational needs (section 3.13 School Admissions Code 2012).
- 5.9. Additional support for these children must then be considered separately through SENA (Special Educational Needs Assessment) for children with SEN statements (or Education Health and Care Plans), through the EdCIC Team for Leicestershire Children in Care, through a request for services e-form<sup>14</sup> (Early Help Assessment) for multi agency support or through the Behaviour Partnership for out of county or any previously looked after children and for children with challenging behaviour.
- 5.10. Schools/academies should not cite over-subscription as a reason for not admitting a pupil under the Protocol.
- 5.11. Receiving schools are responsible for completing any necessary risk assessment as part of the admissions procedures. Risk assessments should be

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<sup>13</sup> DfE School Admissions Code (2012) para 3.12

<sup>14</sup> [http://website/index/children\\_families/commonassessmentframework.htm](http://website/index/children_families/commonassessmentframework.htm)

based on available information, and updated if necessary when new information is received. The completion of a risk assessment is not a reason to delay entry for more than 3 schools days.

## **6. Responsibility for Pupils and Transfer between Partnerships**

- 6.1. Children and young people are the responsibility of a Behaviour Partnership if:
  - 6.1.1. They attend a partnership school or live within the county area of the Partnership
  - 6.1.2. Attend a partnership school, but live outside the county and have not been subject to a second qualifying permanent exclusion within two years
- 6.2. Where children and young people transfer schools, the receiving school/partnership can expect the departed school/partnership to continue to fund any current alternative provision for a period of up to 6 weeks to allow new arrangements to be established.
- 6.3. Fair Access Protocols are agreed for families and schools in Local Authority areas. Where a partnership are approached for a school place under Fair Access and the pupil lives and has been educated in another area, the partnership can use the template letter in Appendix 3 to make a referral to the home area.

## **7. Fair Access Procedures**

- 7.1. Behaviour Partnerships will operate the Fair Access Protocol in Leicestershire on a day to day basis for secondary aged pupils.
- 7.2. Partnerships will establish and maintain core groups to:
  - 7.2.1. Receive referrals for school places and/or additional support under this protocol
  - 7.2.2. Use their best endeavours to ensure children resident in their area receive appropriate educational provision when out of school pending placement under this protocol
  - 7.2.3. Organise the collection of additional information about the case to assist with decision making of the group
  - 7.2.4. Agree a school and start date in response to a request for placement at a school in the local area, and inform the LA Admissions Service
  - 7.2.5. Keep records of all referrals and their outcomes
  - 7.2.6. Provide standard reports for the annual LA report to the national Schools Adjudicator on the operation of the protocol.

7.3. Where partnerships are unable to agree a placement:

- 7.3.1. The Partnership will inform the LA Admissions Service that they are unable to place, or an individual school refuses to accept a pupil and informs the LA admissions service. The response to the LA must be within 15 working days.
- 7.3.2. The LA Admissions Service formally writes to a nominated academy/school<sup>15</sup> indicating their intention to issue a letter of direction<sup>16</sup>, asking for a response within 15 days, either in response to inability to place or a refusal to accept, or no response from the partnership within 7 working days.
- 7.3.3. Any response from the school will be given careful consideration. If the LA accepts the reasons for refusal, a further academy/school will be approached. If the LA do not accept the reasons, or no response is received within 15 days, a formal letter directing the academy/school to admit will be issued. The letter will explain the LA's reasons for rejecting the school's case.

7.4. The governing body of an Academy can appeal to the Education Funding Agency, within 15 days from the letter of direction. Schools can similarly appeal to the Schools Adjudicator.

7.5. If the Academy/School does not admit, the LA will consider applying for a direction from the Education Funding Agency in the case of Academies or the Secretary of State in the case of Schools.

7.6. Operational procedures are summarised in flow chart form in Appendix 2. The form for lodging appeals with the EFA against a direction to admit is available at:  
<http://media.education.gov.uk/assets/files/doc/e/efa%20direction%20request%20form.doc> .

7.7. Any school may ask the LA to consider action under this protocol where it does not wish to admit a pupil with challenging behaviour outside the normal admissions round. The National Code (section 3.12) states that this will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children. This provision does not apply to Children in Care, Children who have previously been in Care, or Children with Statements of Special Educational Needs.

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<sup>15</sup> The LA will nominate the nearest school to the child's home address, unless that school has already accepted significantly more fair access admissions than other schools in the area in that school year. Schools should expect to admit to an individual year group at least two FAP admissions during a school year (Aug- July), or one per term.

Further nominations will again be based on next nearest to home.

<sup>16</sup> For Academies, the EFA issue directions based on referrals from Local Authorities.

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

- 8.1. The Local Authority and Academies are expected to mediate between themselves before a request is made to the Secretary of State to direct an Academy to admit a child.
- 8.2. Where a local resolution cannot be found, it is the responsibility of the Local Authority and the Academy to document the case for and against admission.
- 8.3. When reviewing an Academy direction case, 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.
- 8.4. In requesting a direction from the Secretary of State, the Local Authority must provide evidence that the provisions of the Fair Access Protocol have been applied in a fair and appropriate manner, the Academy's reasons for refusal and the Local Authority's response.
- 8.5. The Local Authority should send the information using the attached template to the Education Funding Agency. On receipt of a request to direct, the Education Funding Agency will inform the school that it has received a request for a direction. The letter will request that the Academy provide any evidence other than that already received that the process has not been properly applied within seven calendar days. The admission authority for an Academy must inform the LA within 7 days as to whether it will admit a child in care. If the LA decides after this consultation to direct admission, any undue delay will be referred to the Secretary of State.
- 8.6. Where the Secretary of State is asked to consider a direction he will make that decision on the basis of the papers provided, taking into account:
  - 8.6.1. whether the local Fair Access Protocol has been applied appropriately;
  - 8.6.2. the arguments of the Academy and Local Authority, whether the Local Authority has considered the arguments for refusal and why it still considers the Academy to be the appropriate provision for the child;
    - 8.6.2.1. whether the Academy has been asked to accept a disproportionate number of children under the Fair Access Protocol compared to other schools.

## **9. Permanent Exclusions**

- 9.1. Section 3.8 of the School Admissions Code makes clear that in the normal admissions round, admissions authorities must not refuse to admit children on the basis of their poor behaviour elsewhere. The same section also states that

admissions authorities do not have to comply with parental requests for places for a period of two years following a second permanent exclusion.<sup>17</sup>

- 9.2. Local Authorities have a legal duty to provide education for permanently excluded children. Leicestershire undertakes this duty through a combination of Oakfield Pupil Referral Unit and locally arranged provision by Behaviour Partnerships. Details are set out in the memorandum of understanding.
- 9.3. Schools will take particular care to explore every possible alternative to permanent exclusion especially in the case of Children in Care, given the disrupted education that is so often part of their experience.

## **10. Provision from the 6<sup>th</sup> day of a Permanent Exclusion**

- 10.1. Local Authorities have a duty to arrange full-time educational provision for permanently excluded children from the 6<sup>th</sup> day of a permanent exclusion. The provision is made by a combination of Oakfield Pupil Referral Unit, and provision locally commissioned by Behaviour Partnerships.
- 10.2. Schools and academies are responsible for educational provision for fixed term exclusions from the 6<sup>th</sup> day.

## **11. Use of Provision for Pupils not ready for School**

- 11.1. Section 3.9 of the National Admissions Code requires Fair Access to Protocols to set out how the local authority will use provision to ensure that the needs of pupils who are not ready for mainstream schooling are met.
- 11.2. For Primary aged pupils, the local authority maintains a Pupil Referral Unit, for pupils with challenging behaviour. Pupils may have been permanently excluded or dual registered with a mainstream school. The provision is designed as a revolving door facility, so that pupils during their stay of around 6-12 months, they are assessed, supported academically and socially, and prepared for either a return to mainstream provision or special education placement.
- 11.3. A range of early help services are available in local areas to support families in difficulty. Support can be accessed via a request for services e-form (<https://forms.leics.gov.uk/af3/an/default.aspx/RenderForm/?F.Name=juxtye735da>).
- 11.4. For secondary pupils, local Behaviour Partnerships have devolved resources to provide alternative education programmes for students who cannot attend mainstream school. Early help services are also available as in 11.3.

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<sup>17</sup> The twice excluded rule does not apply to children who were below compulsory school age at the time of the exclusion, children who have been re-instated following a permanent exclusion (or would have been had it been practical to do so), and children with statements of special educational needs.

## 12. Transport

12.1. All arrangements for transport are detailed in the local authority's transport policy:

[http://www.leics.gov.uk/index/highways/passenger\\_transport/school\\_college\\_transport/school\\_and\\_college\\_transport\\_entitlement\\_policy.htm](http://www.leics.gov.uk/index/highways/passenger_transport/school_college_transport/school_and_college_transport_entitlement_policy.htm)

## 13. Dual Registration/ Managed Moves

13.1. In order to provide support for children who may be at risk of permanent exclusion, the Behaviour Partnership may approve a managed move or a dual registration. Such arrangements should be made in accordance with the Managed Move and Dual Registration Protocols. A dual registration may also be appropriate when a child is reintegrating into a new school following a permanent exclusion.

## 14. Reporting Requirements

14.1. Local Authorities **must** produce an annual report on admission and Fair Access for all schools and academies in their area<sup>18</sup>. This report must be published locally and then sent to the Adjudicator by 30 June each year. Information for this report **must** be collated, updated and provided by the Behaviour Partnerships on request. The report **must** cover as a minimum:

14.1.1. Information about how admission arrangements in the area of the local authority serve the interests of looked after children and previously looked after children, children with disabilities and children with special educational needs, including any details of where problems have arisen;

14.1.2. an assessment of the effectiveness of Fair Access Protocol and co-ordination in their area, including how many children were admitted to each school under the protocol;

14.1.3. the number and percentage of lodged and upheld parental appeals; and

14.1.4. any other issues the Local Authority may wish to include.

## 15. Children Missing Education

15.1. The Children and Young People's Service maintain information about children missing education<sup>19</sup> as required by guidance issued in November 2013<sup>20</sup>.

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<sup>18</sup> [http://www.leics.gov.uk/local\\_authority\\_report\\_to\\_the\\_schools\\_abjudicator-2.doc](http://www.leics.gov.uk/local_authority_report_to_the_schools_abjudicator-2.doc)

<sup>19</sup> This includes those with medical and anxiety related conditions.

<sup>20</sup> <http://www.education.gov.uk/g00229816/children-missing-education>

15.2. Therefore it is vital that all placements are resolved as quickly as possible to prevent pupils missing education.

15.3. The named individuals responsible for receiving details of children found missing from education and for brokering support for them through the most appropriate agencies are:

JoAnne Rees, School Admissions and Pupil Services  
County Hall, Glenfield, Leicester, LE3 8RF  
Tel: 0116 3052071 - email: [cme@leics.gov.uk](mailto:cme@leics.gov.uk)

15.4. The process of tracking pupils without an educational placement is part of our collective responsibility and on-going commitment to safeguarding the welfare of young people. It is vital that anyone who becomes aware that a child is not, or does not appear to be in education, notifies the named person with the responsibility for pupils missing from education in Leicestershire<sup>21</sup>.

## **16. Information sharing and security**

16.1. All parties must ensure that all information shared for the purpose of this area of work should be transferred in accordance with the relevant Information Sharing Agreements, using safe, secure and if necessary encrypted channels.

## **17. Review Arrangements**

17.1. The LA will review the fair access protocol after twelve months, and then at least every three years. The LA will not refuse a reasonable request from schools or other interested parties to undertake a review. While any review is underway, the existing protocol applies.

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[http://www.leics.gov.uk/index/education/going\\_to\\_school/school\\_admissions\\_and\\_pupil\\_services/pupil\\_services/cme.htm](http://www.leics.gov.uk/index/education/going_to_school/school_admissions_and_pupil_services/pupil_services/cme.htm)

## Appendix 1: Relevant Legislation

This appendix sets out the primary legislation most relevant to admission and Fair Access decisions. Admission Authorities, Schools, Adjudicators, Appeals Panels, Local Authorities and Maintained Schools **must** comply with the relevant law as well as acting in accordance with the provisions of this Code. This Code and the School admission Appeals Code (the Codes) are applied to Academies through their Funding Arrangements. The information here aims to signpost the relevant law; it does not aim to provide definitive guidance on interpreting the law that is for the courts

### Primary Law

#### Equality Act (2010)

<http://www.legislation.gov.uk/ukpga/2010/15/contents>

#### School Standards and Framework Act (1998)

<http://www.legislation.gov.uk/ukpga/1998/31/contents>

### Secondary Regulations and Guidance

#### Exclusions Guidance (February 2013)

<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion/g00210521/statutory-guidance-regs-2012>

#### School Admissions Code (2012)

[www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-00013-2012](http://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-00013-2012)

#### Guidance on Children Missing Education (November 2013)

<http://www.education.gov.uk/g00229816/children-missing-education>

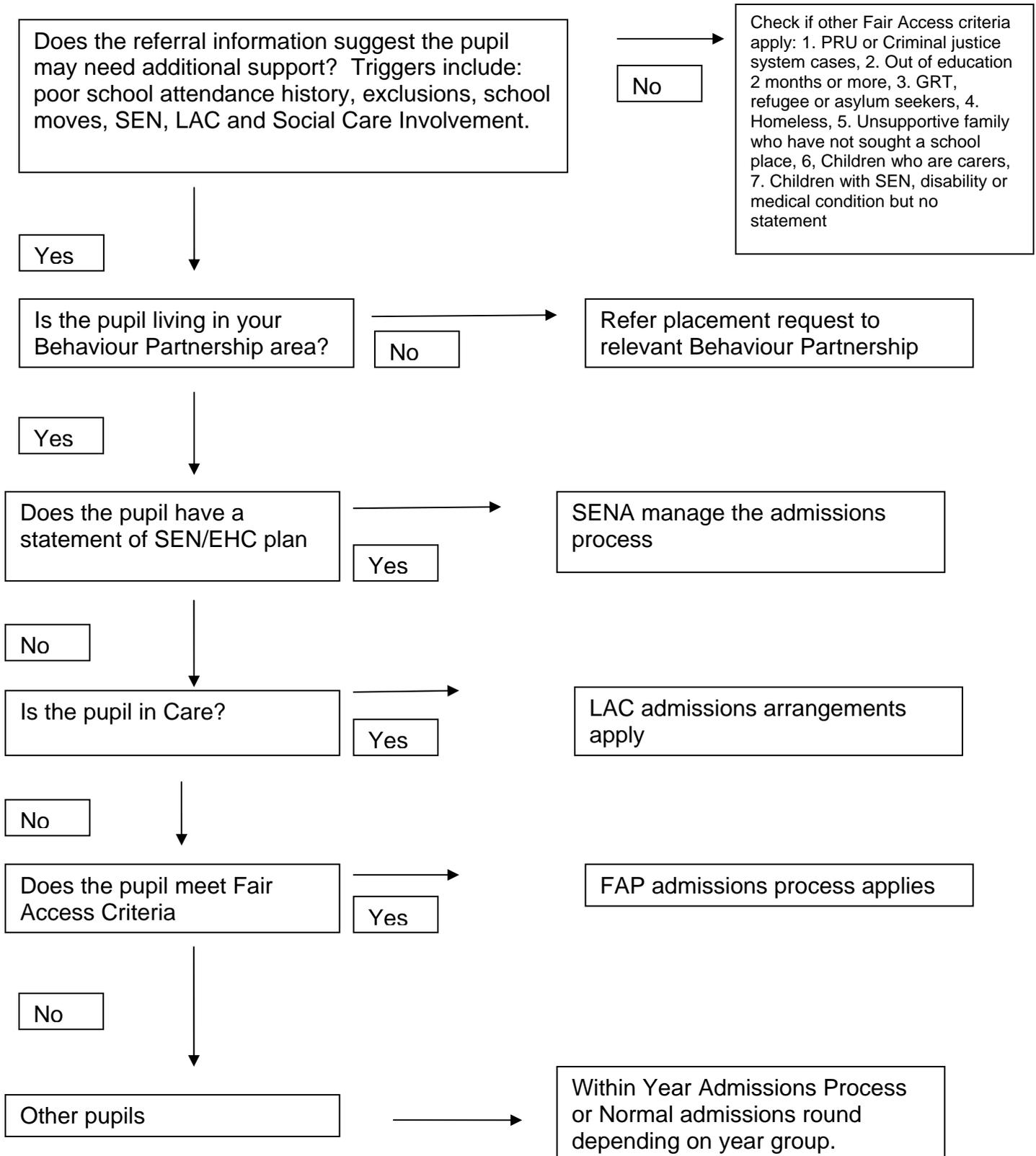
#### Annual Report of the Schools Adjudicator (2013)

<http://www.education.gov.uk/schoolsadjudicator/about/a00199754/annual-report-of-the-chief-schools-adjudicator-for-england>

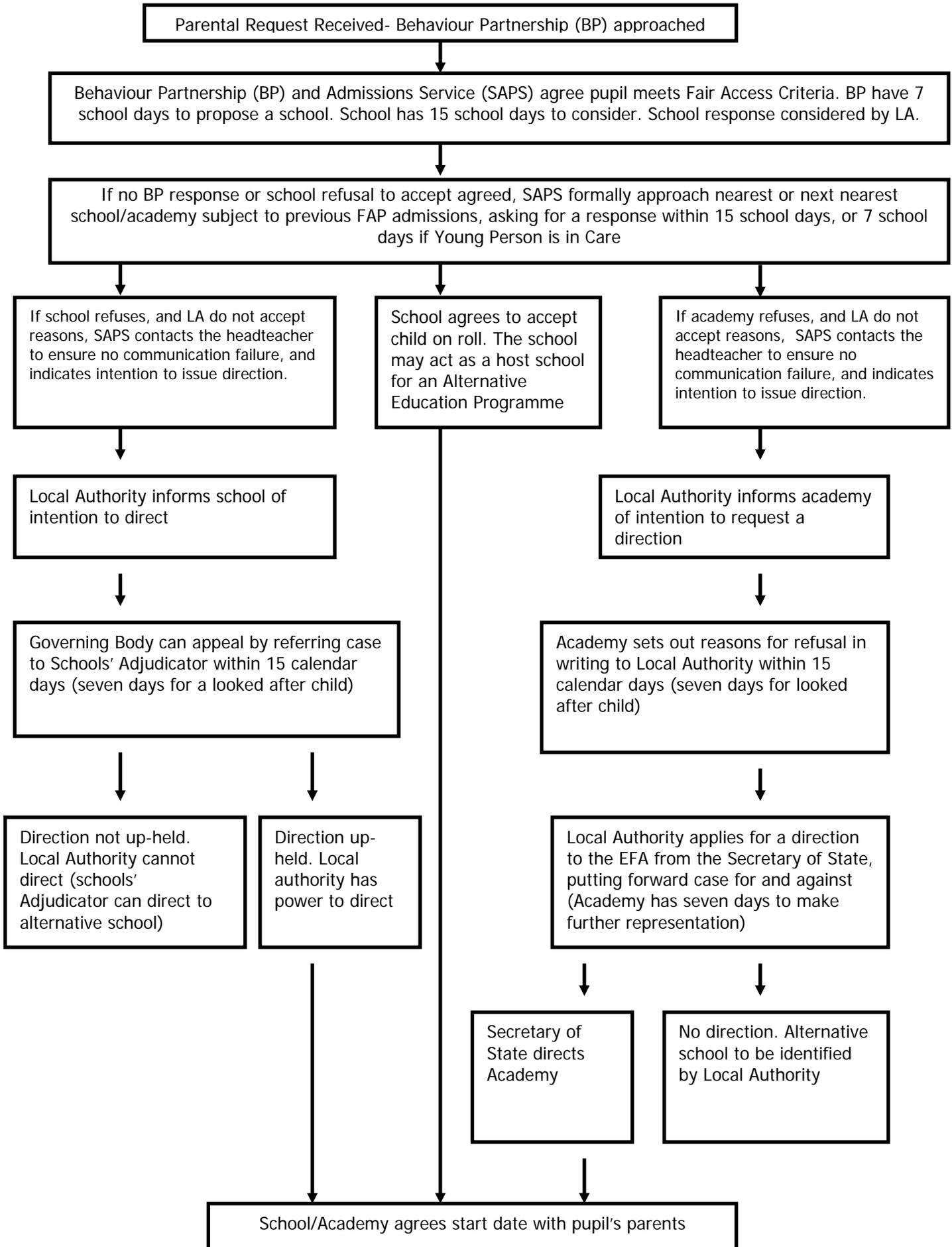
## Appendix 2: Fair Access Flow Charts

### Distinguishing the Five admissions processes: Fair Access, Children in Care, Children with Statements, Within Year Admission, Normal Admissions Round

#### Admission of Vulnerable Children who May Need Additional Support



# Leicestershire Fair Access Flow Chart



### Appendix 3: Referral for Consideration under Home Protocol

**Template Letter:** School governors refusing FAP case, and passing back application back to nearest home FAP for consideration:

Dear Parent

Thank you for your application dated Z for a place at XXX County School. This was initially passed to the XX area partnership for assessment under the County Council's fair access protocol.

Fair Access Protocols are agreed locally for schools by all local authorities to ensure that unplaced children, and particularly the most vulnerable, are offered a place at a suitable school as soon as possible.

Following an initial assessment, your application for admission to XXX School has been refused on the grounds that the school already have a disproportionate number of challenging pupils on roll (however, you retain the right to appeal this refusal).

Department for Education advice is clear on Fair Access Protocols and states parental preferences do not have to be taken into account, and instead it is more important to find an appropriate school or provision that best meets the pupil's needs.

I have therefore arranged for your application to be referred to the relevant local authority for your home address area to consider your application under their fair access panel:

3.12 Where a governing body does not wish to admit a child with 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.

For information contact details for your home Local Authority are:

LA

Tel:

Email:

Yours sincerely

Governing body of school refusing appeal

CC: Relevant agencies