

## 1. Introduction

The Lewisham Fair Access Protocol is based on the requirements of the School Admissions Code, September 2021 and regulations relating to children missing from education. It takes account of the particular circumstances relating to secondary schools in Lewisham and builds on good practice.

- extending the mandatory categories of children who can be placed via the FAP to include children on a Child in Need/Child Protection Plan, children in refuge, children in formal kinship care arrangements, children who have been out of education for four or more weeks and previously looked after children for whom the local authority has been unable to promptly secure a school place;
- removing the ability for local authorities to introduce their own FAP categories and prohibiting the routine use of FAPs in place of the usual in-year admissions process;
- requiring that placement decisions need to be made within 20 school days of a child being referred to the FAP.

**This protocol should be read in conjunction with:**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1012993/FAP\\_Guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1012993/FAP_Guidance.pdf)

[London's Inclusion Charter | London City Hall:](#)

- Embedding Equity and Diversity
  - Students as Active Citizens
  - Being Adaptable and Reflective
  - Beyond Academic Achievement
- 1.1 Local authorities have a duty to ensure that each student in its area can secure access to education. A Fair Access Protocol supports the local authority in this duty, and provides an equitable system for the allocation of school places outside the normal admissions round. Students in Lewisham are placed under the Fair Access Protocol by the Fair Access Panel. Fair Access Protocol should be to be used as intended – providing a mechanism to secure a school place in-year for the most vulnerable children.
- 1.2 Admission authorities must **not** refuse to admit a child on behavioural grounds in the normal admissions round or at any point in the normal year of entry, except for where **[Code 3.8]** applies. **[Code 3.9]**
- 1.3 Where an admission authority receives an in-year application for a year group that is not the normal point of entry and it does not wish to admit the child because it has good reason to believe that the child may display **challenging behaviour**, it may refuse admission and refer the child to the Fair Access Protocol. **[Code 3.10]**
- 1.4 An admission authority should only rely on the provision in **[Code 3.10]** if it has a particularly **high proportion** of either children with **challenging behaviour** or **previously permanently excluded** pupils on roll compared to other local schools and it considers that admitting another child with challenging behaviour **would prejudice the provision of efficient education or the efficient use of resources**. **[Code 3.11]**

- 1.5 **[Code 3.10]** cannot be used to refuse admission to looked after children, previously looked after children; and children who have Education, Health and Care Plans naming the school in question. **[Code 3.12]**
- 16 Admission 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 to be assessed for special educational needs. **[Code 3.13]**
2. **The law relating to Fair Access Protocol Section 3.14 - 22 of the School Admissions Code, May 2021 and**
  - 2.1 Each local authority **must** have a Fair Access Protocol to ensure that unplaced and vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible. **[Code 3.14]**

The Code is clear that participation in the FAP is a mandatory requirement. To not participate or to reject the FAP decisions is a breach of the Code.
  - 2.3 No school - including those with places available – **should be asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are placed via the Protocol.**

\* Fair Access Protocols **must** also set out how the needs of children who have been permanently excluded, and children for whom mainstream education is not yet possible, will be met. **[Code 3.16]**
  - 2.4 Eligibility for the Fair Access Protocol does not limit a parent's right to make an in-year application to any school for their child. Admission authorities **must** process these applications in accordance with their usual in-year admission.

They **must not** refuse to admit such children on the basis that they may be eligible to be placed via the Fair Access Protocol. The parent will continue to have the right of appeal for any place they have been refused, even if the child has been offered a school place via the Fair Access Protocol. **[Code 3.18]**
  - 2.5 There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol, but parents' views should be taken into account. **[Code 3.19]**
  - 2.6 Fair Access Protocols should seek to place a child in a school that is appropriate to any particular needs they may have. The Fair Access Protocol **must not** require a school automatically to admit a child via the Fair Access Protocol, in place of a child permanently excluded from the school. **[Code 3.20]**
  - 2.7 Where it has been agreed that a child will be considered under the Fair Access Protocol, a school place **must** be allocated for that child within 20 school days. Once they have been allocated a school place via the Fair Access Protocol, arrangements should be made for the child to start at the school as soon as possible. **[Code 3.21]**
3. **Children who have been permanently excluded twice or display challenging behaviour**

3.1 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<sup>1</sup>. **[Code 3.8]**

3.2 The twice excluded rule **does not apply** to the following children:

- a) children who were below compulsory school age at the time of the permanent exclusion;
- b) children who have been reinstated following a permanent exclusion (or would have been reinstated had it been practicable to do so);
- c) children whose permanent exclusion has been considered by a review panel, and the review panel has decided to quash a decision not to reinstate them following the exclusion; and
- d) children with Education, Health and Care Plans naming the school.

### 3.3 What is challenging behaviour?

For the purposes of the Admissions Code **behaviour** can be described as **challenging** where it would:

- be unlikely to be responsive to the usual range of interventions to help prevent and address pupil misbehaviour; **or**
- be of such severity, frequency, or duration that it is beyond the normal range that schools can tolerate; **or**
- significantly interfere with the pupil's/other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment.

**The following reasons on their own should not be grounds for considering that a child may display challenging behaviour:**

- poor attendance elsewhere;
- a defined number of suspensions, without consideration of the grounds on which they were made;
- special educational needs; or
- having a disability<sup>2</sup>.

3.4 An admission authority **cannot solely** take account of past behaviour as evidence for concerns about challenging behaviour and on whether it would be appropriate to refuse admission as in **[Code 3.10]**.

3.5 Admission authorities **may only do this** if:

- the school has a particularly high proportion of children with challenging behaviour or previously excluded pupils on roll in comparison to other schools; and
- it believes admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources.

## 4. Principles and criteria for admission under the Fair Access Protocol

- Secondary schools will continue to admit students who apply for a vacancy under in year admission coordinated arrangements in Lewisham.

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<sup>1</sup> Section 87 of the SSFA 1998

<sup>2</sup> Admission authorities should consider the effect of the decision of the Upper Tribunal in C & C v The Governing Body of a School, The Secretary of State for Education (First Interested Party) and The National Autistic Society (Second Interested Party) (SEN) [2018] UKUT 269 (AAC) about the implications of the Equality Act 2010 when a pupil exhibits a tendency to physical abuse of other persons as a consequence of a disability. All schools have a duty to make reasonable adjustments for students with disabilities. Schools should be aware that a child who displays challenging behaviour may do so as a result of their disability or any unmet needs. Schools must therefore consider whether any reasonable adjustments can be put in place to support the needs of a particular child when considering whether admission should be refused on these grounds.

- Secondary schools cannot cite going over Planned Admissions Number (PAN) as a reason for not admitting a student once they are classified as qualifying for admission under the Fair Access Protocol.
- Secondary schools already at or above their PAN for the year group in question will also be required to admit a fair share of these students. Schools which already admit students under the in year arrangements should not admit a disproportionate number of students under the Fair Access protocol.
- Fair Access children will be given priority for admission over others on a waiting list or awaiting an appeal.
- Secondary schools must not refuse to admit a student who has been denied a place at that school at appeal, if the Fair Access Panel identifies that school as the one to admit the student. The Code is clear that participation in the FAP is a mandatory requirement. To not participate or to reject the FAP decisions is a breach of the Code.
- Where an admission is delayed beyond 15 school days the local authority will provide education provision in the interim and on a case by case basis.
- Decisions to recommend placement at a particular school will take into account that school's organisational and structural factors. These will include the PAN, the number currently on roll in that year group, whether there would be an impact on the delivery of the National Curriculum and constraints involving the school site, such as building work; It is important to note that whilst these will be taken into consideration they will not be the determining factors in the decision.

4.1 The Fair Access Panel will decide which school should be required to admit a student using the following criteria:

- The closest school to the student's permanent home address. Distance will be measured in a straight line from the student's home address to a nodal point within the school premises.
- However, in identifying an appropriate school or education provision, the Panel's consideration will be focused on the educational needs of the student.

4.1 Lewisham Fair Access Panel will offer a local authority assessment place for 'school readiness' based on if children who have been permanently excluded, and children for whom mainstream education is not yet possible.

## **5. Purpose of the Fair Access Protocol**

All Lewisham secondary schools, including those that are their own admission authority e.g. faith schools and academies, are required to adhere to the requirements of this protocol. Lewisham's Fair Access Protocol is designed to:

- Respond to the needs of vulnerable students who are not on the roll of any school, placing them in education provision quickly and without delay, taking account of their specific needs.
- Aim to place them in education provision quickly so that students are on roll within 15 school days of the Fair Access Panel meeting.
- Provide a fair, equitable and open allocation of school places, particularly for students who may present challenging behaviour.
- Be fair and transparent, to have the confidence of all secondary mainstream schools and to include representatives of those schools in the decision making process.
- Ensure no secondary school or academy – including those with vacancies – is asked to take a disproportionate number of students who have been excluded from school, or have challenging behaviour. Information such as number of students on roll, exclusions and in year admissions is held by the local authority Fair Access Team and will be monitored and taken into consideration.

- Reduce the time all students and particularly vulnerable students spend out of education.
- Strengthen and develop the existing admissions arrangements and procedures, taking into account the local authority's roll in coordinating all in year admissions to school.

## 6. The scope of admissions under the Fair Access Protocol

6.1 The School Admissions Code, May 2021 the following groups of vulnerable and/or hard to place children, where they are having difficulty in securing a school place in-year, and it can be demonstrated that reasonable measures have been taken to secure a place through the usual in-year admission procedures<sup>3</sup> **[Code 3.17]**:

- a) children either subject to a Child in Need Plan or a Child Protection Plan<sup>4</sup> or having had a Child in Need Plan or a Child Protection Plan within 12 months at the point of being referred to the Protocol;
- b) children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol;
- c) children from the criminal justice system;
- d) children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education;
- e) children with special educational needs (but without an Education, Health and Care plan), disabilities or medical conditions;
- f) children who are carers;
- g) children who are homeless;
- h) children in formal kinship care arrangements<sup>5</sup>;
- i) children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers;
- j) children who have been refused a school place on the grounds of their challenging behaviour and referred to the Protocol **[Code 3.10]**;
- k) children for whom a place has not been sought due to exceptional circumstances<sup>6</sup>;
- l) children who have been out of education for four or more weeks where it can be demonstrated that there are no places available at any school within a reasonable distance of their home. This does not include circumstances where a suitable place has been offered to a child and this has not been accepted; and
- m) previously looked after children for whom the local authority has been unable to promptly secure a school place<sup>7</sup>.

## 6.2 Admissions in Year 11 – a local indicator

Full and informed parental consent is required to place students who are:

### 6.2.1 Year 11 students – English as a second language

<sup>3</sup> For example, where an application has been made to at least one school and this has been refused, or the local authority has confirmed that there are no places available at any school within a reasonable distance.

<sup>4</sup> Child in Need Plans and Child Protection Plans are plans of help and protection to address safeguarding and welfare needs, where a child has been assessed by the local authority as being a child in need under Section 17 of the Children Act 1989 and/or as suffering or likely to suffer significant hardship under Section 47 of the Children Act 1989. See also statutory guidance Working Together to Safeguard Children (2018) (pages 35 and 48-49).

<sup>5</sup> As evidenced by either a child arrangements order not relating to either birth parent or a special guardianship order.

<sup>6</sup> It is for the local authority to decide whether a child qualifies to be placed via the Protocol on this basis, based on the circumstances of the case.

<sup>7</sup> In most cases use of the Fair Access Protocol should be unnecessary for a previously looked after child. We would expect the local authority to aim to secure a school place particularly promptly for a previously looked after child and for admission authorities to cooperate with this. The local authority may consider swift use of their general powers of direction (under paragraphs 3.26-3.28) or asking the Secretary of State to consider a direction (under paragraph 3.29) to be the most suitable course of action if a school place for a previously looked after child cannot be agreed with an admission authority promptly.

Year 11 students arriving in the borough who have difficulties with fluency in English will be referred to Lewisham College to be placed on the College's EAL programme.

#### 6.2.2 **Year 11 new arrivals or returning to the borough**

Year 11 students arriving in the borough who are English native speakers **will be offered a school place** and an initial assessment to ascertain academic levels and a 'Pathways' meeting at Baseline Lewisham. After the initial assessment and meeting has taken place a referral may, where required, be made to Fair Access Panel for a decision.

#### 6.2.3 **Year 11 out of school for four weeks or more**

Are in the scope of this Fair Access Protocol (**[Code 3.17 – I]**): *children who have been out of education for four or more weeks where it can be demonstrated that there are no places available at any school within a reasonable distance of their home. This does not include circumstances where a suitable place has been offered to a child and this has not been accepted;*

### 7. **Non-statutory advice**

Once a child has been admitted to a school it is for the headteacher to decide how best to educate them. Any decision to move a child to a different age group should be based on sound educational reasons and made by the headteacher in consultation with the parents after admission. Admission to a year group outside the chronological age of the child is dependent on the Admissions Policy of the School.

Therefore a headteacher may decide that it is in a child's best interest to be educated in or outside the child's chronological year group. Each case should be decided on its own merits.

### 8. **Operational Processes under the Fair Access Panel**

#### 8.1 **Fair Access Panel referrals:** [FAPLewisham@lewisham.gov.uk](mailto:FAPLewisham@lewisham.gov.uk)

- The person responsible for referring a student to Fair Access Panel will need to include copies of all paperwork including the Fair Access Panel Referral form, and ensure that they are completed comprehensively.
- If local authority officers feel that there is insufficient evidence to make a fair and appropriate Fair Access Panel in the submission, the referrer will be advised and the student will not be included on the Fair Access Panel agenda.
- Minutes of the previous meeting, **progress updates on students placed through Fair Access Panel** and profiles for each student to be considered for placement will be circulated to all panel members at least three days before the meeting.

#### 8.2 **Membership** (reviewed annually)

**The Fair Access Panel** is chaired by the Head of Access, Inclusion and Participation. Members for secondary Fair Access Panel include representatives from:

- Heads/Deputies or Assistant Heads from all Lewisham secondary mainstream schools
- Head/Deputy or Assistant Head from Abbey Manor College
- Safeguarding and Inclusion Team

- Fair Access & Admissions Team
- Attendance Team
- Inclusion and Reintegration Officer
- Outreach Inclusion Service
- Children's Social Care (where appropriate)
- Youth Justice Service
- Educational Psychologist / Special Education Needs Team / SEN Advisory Service
- Lewisham Virtual School (where appropriate)

### 8.3 Terms of Reference

The Secondary Fair Access Panel will convene every three weeks in term time for secondary schools.

Data confirming the admission of students under the Fair Access Protocol will be circulated to all secondary schools after each meeting.

- The membership of the Fair Access Panel and the appointments of Panel members is regularly reviewed (at least annually) by the Service Manager of the Access, Inclusion & Participation.
- The Fair Access Panel is responsible for having regard to the scope, principles and processes of the Fair Access Policy and Protocols, accepting and tracking referrals, and identifying for each case referred an appropriate mainstream school or alternative education provider.
- Based on the information from schools, relevant professionals, parents and students, and in the light of provision available, the Fair Access Panel agrees either a referral to appropriate provision, or appropriate action.
- Decisions are reached by consensus (general or widespread agreement) sought among the whole membership. In some cases further meetings and/or further information may be required to achieve consensus.
- The Fair Access Panel members can acquire information that has not been made public. As such, Panel members should never disclose or use confidential information for personal advantage or for the advantage of anyone known to them, or to the disadvantage of the Panel or anyone else.
- For meetings to be valid and quorate there must be at least **six** headteacher / deputy Panel members present.
- The Fair Access Panel can:
  - Direct students to mainstream schools.
  - Support the referral of students within the agreed criteria to Abbey Manor College or alternative education provision.
  - Agree the reintegration of permanently excluded students into mainstream school.
  - Refer students returning from custodial care to Abbey Manor College for assessment, and to a named school for admission.
  - Agree action to be taken forward by a named officer.
  - Arrange a one-off home visit by an Attendance Officer.
  - Ensure, where appropriate, that links are made to Children's Social Care Services.
  - Agree to the implementation of School Attendance Order Proceedings
    - Agree action to be undertaken by a named officer.
    - Escalate any concerns to senior officers (eg conduct of a service, school, professional etc).

### 8.4 Chairs Action

The Chair may be required to take decisions outside of Fair Access Panel throughout the course of the academic year. These cases will be considered on an emergency basis or to

expedite cases with a delay of more than 15 days and will require ratification and minuting at the next appropriate panel meeting.

## **9. Appeals by schools referred to Fair Access Panel**

9.1 If the school feels they cannot meet needs and have grounds for appeal, for example students with **challenging behaviour**, the school may appeal against the decision and must contact the local authority within three days of receipt of the offer or notification to an own admissions authority school.

- Schools must communicate in writing to the inbox: [FAPLewisham@lewisham.gov.uk](mailto:FAPLewisham@lewisham.gov.uk)
- Provide compelling evidence as to why the school cannot meet the student's needs.
- The Chair of the Fair Access Panel will consider if the case is sufficient to be heard by the Panel or by Chair's Action.

9.2 Where a school is unable to generate an appeal within the three-day timeframe due to the lack of information regarding a student's challenging behaviour a school can refer a case back to Fair Access Panel for support if required. This would be in the following situation **only**:

- On receipt of information from the sending school or if it transpired later that the information is inaccurate or misleading.
- There is presentation of challenging behaviour once the student is admitted to the school (as in **3.3** and **3.4**).
- This is within the first **six weeks** of the student's admission to the school.

In such a case there are two options for the school to take with the support of the Fair Access Panel:

- Support the referral of students within the agreed criteria to Abbey Manor College or alternative education provision, with the consent of the family; or
- if the family disagrees, then the direction process (under section 29A of the Education Act 2002) commences. (See Direction Flowchart and template Direction Letter for guidance)

## **10. Admissions outside the scope of the Fair Access Protocol**

The majority of school admissions are outside of Lewisham's Fair Access Protocol arrangements and include:

### **10.1 In year admissions**

The majority of in year admissions from reception to Year 11 which are not covered by the Reception or Secondary transfer schemes. In most cases the admissions process is straightforward. The parent arrives in the area, applies for a place in a school where there is a vacancy and the student is admitted to school).

All applicants are required to complete an In Year Common Application Form (online - Enrol) and return it direct to the local authority; schools must not accept direct applications. The Admissions Team will determine, based on the details supplied with the application, whether the student qualifies for admission as In Year or Fair Access and either refer the case direct to the school applied for or to the Pre-Fair Access Caseworker.

Further information about the in year admissions process can be found on the website at: <https://lewisham.gov.uk/myservices/education/schools/school-admission/how-to-transfer-your-child-to-a-different-school-during-a-school-year>

### **10.2 In year transfers between schools**



Students who request a transfer from their current school in Lewisham and who have completed an In Year Common Application Form do not take priority over those who qualify under the Fair Access or in year admissions arrangements as detailed below.

Secondary schools – the receiving school will arrange admission for the start of the next half term or sooner if there are compelling reasons to do so earlier. Students who have not moved address and transferred to two or more schools should be notified to the local authority as a safeguarding case which would be communicated to other local authority departments.

Lewisham's In Year Common Application Form requests for information about the student to be completed by the current Headteacher. This will include information about the student's attendance, behaviour and other interventions. This information will assist the local authority in determining whether the application is to be dealt with under the Fair Access Protocol.

**10.3 Students with statements of special educational needs (SEN) or an Education Health Care Plan (EHCP)**

Admission of students with a SEN statement or an EHCP are not covered by these arrangements, as there are different legislative requirements relating to their school placement.

**10.4 Students who move into Lewisham who were attending a Pupil Referral Unit (PRU) directly prior to their move will be transferred to Lewisham's PRU – Abbey Manor College. This will enable Lewisham's PRU to continue any assessments and, when there is sufficient evidence to demonstrate the student is ready for mainstream education, a referral will be made to the Fair Access Panel to agree a reintegration to a suitable school. Alternatively the PRU will continue with gathering sufficient evidence to support a request for an EHCP.**

**10.5 Looked After Children (LAC), Previously Looked After Children (PLAC) and Internationally Adopted and Previously Looked After Children I(APLAC) – Lewisham**

All references to previously looked after children in the 2021 Code mean children who were adopted (or subject to child arrangements orders or special guardianship orders) immediately following having been looked after **as well as** those children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted.

This means that the other provisions in the 2021 Code which apply to PLAC (for example, in relation to the admission arrangements of schools with a religious character, selective arrangements, and boarding priority) apply to IAPLAC in exactly the same way as they do to PLAC.

- LAC, PLAC and IAPLAC are given first priority in all Lewisham schools' admissions criteria and must be placed within 15 school days.
- Where required secondary schools must exceed their Published Admissions number to admit a LAC, PLAC and IAPLAC.
- A LAC, PLAC and IAPLAC who requires admission to a school outside the normal admissions round will normally be offered a place at their first preference school. Applications from CLA will be prioritised and normally processed within three school days. The expectation is that the student will be offered a place in mainstream provision within ten school days of the application, unless there are compelling reasons otherwise. Details about LAC, PLAC and IAPLAC should be transferred between schools as quickly as possible and ideally within a week of the student starting at their new school.

- If an admission is disputed, the case must be referred **relevant Virtual School reserves the right to direct admission if necessary.**

#### 10.6 **Managed moves**

In some cases, schools may decide it is best for a student to move to another school permanently following an off-site direction placement. This is known as a managed move.

Managed moves should be voluntary and have parental agreement before they take place. Schools should not pressure families into agreeing to one.

A managed move should only occur when it is in a student's best interests and all parties, including the new school and family, agree it would be best for the student to move to another school **permanently**.

Schools should not use a **'trial period'** or 'trial admission' for managed moves, as a managed move is a permanent move to another school<sup>8</sup>.

Managed moves are agreed outside of the Fair Access Protocol but will be monitored in order to retain an overview of the movement of hard to place and vulnerable students.

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<sup>8</sup> [A guide for parents on school behaviour and exclusion - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/a-guide-for-parents-on-school-behaviour-and-exclusion)