Fair Access Protocol for In-Year admissions to secondary schools in Essex\*

\*for children without a local school place or alternative provision

Effective from 1 September 2019, updated 1 September 2021

This document represents the Fair Access Protocol for in-year admissions to secondary schools in Essex. It has been agreed with the majority of secondary schools in Essex during the summer of 2019.

The principles behind the protocol are:

* To ensure all students are offered a place at a suitable school as quickly as possible.
* To ensure that no school is asked to take a disproportionate number of challenging students.
* To ensure that where a school has been asked to admit a child with challenging behaviour, that currently does not have a school place, they are able to gain financial support via the Hard to Place panel.

This protocol relates solely to children without a local school place or alternative provision. For the purposes of this protocol, a ‘local school place’ is considered to be one that is within 3 miles in walking distance from the home or accessible by bus/public transport in a one-way journey of up to 75 minutes.

The arrangements are set out below.

**Statutory Basis for the Protocol**

The [School Admissions Code](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001050/School_admissions_code_2021.pdf) requires that each local authority must have a Fair Access Protocol applicable to schools within its area to ensure that – outside the normal admission round – unplaced children, especially the most vulnerable, are offered a place as soon as is possible.

**Scope of the Protocol**

All admission authorities **must** participate in the Fair Access Protocol in order to ensure that unplaced children (considered as hard to place) are allocated a place quickly. This includes all community and voluntary controlled schools, foundation schools, voluntary aided schools and Academies. The protocol applies to all Essex resident children in accordance with paragraph 3.17 of the [School Admissions Code](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001050/School_admissions_code_2021.pdf).

**Principles governing a Fair Access Protocol**

As well as ensuring prompt access to education for children without a school place, a principal driver of a Fair Access Protocol is to ensure that no school – including undersubscribed schools, is asked to admit a disproportionate number of children with challenging behaviour who apply for a place. This is particularly pertinent in the case of schools which generally have unfilled places across most or all year groups who would otherwise be required to admit all such children because they have vacancies, whilst other schools do not.

**In-year admission where the student does not currently have a school place, either because the child has recently relocated or because he/she has been home-educated.**

When making an in-year application for a secondary school place parents will need to apply using the agreed application form, which must be accompanied by a completed template from the previous/current school.

The form and the template will be used for the purposes of determining whether the child has presented with the behaviours described below and as such a child with ‘challenging behaviour’ as defined in this protocol. Admission authorities will be responsible for complying with the requirements of the General Data Protection Regulations (GDPR) at all times.

All schools are expected to determine applications for admission within 10 school days (and **must** within 15 school days) of receipt of the application and template from the previous/current school. By ‘determine’ this protocol means that a formal letter is sent either offering the child a place or refusing and giving the right of appeal.

Under the protocol, all secondary schools may wish to refuse an application and refer to Hard to Place pupils who have demonstrated previously high levels of challenging behaviour where it is evidenced that the pupil meets one or more of the agreed thresholds as shown below;

* Behaviour resulting in a placement at an alternative provision (AP) or equivalent within the last two years preceding the request for a school place or where the pupil’s last provision was a PRU; **or**
* Behaviour resulting in 3 or more fixed term exclusions (or equivalent, such as a short term placement at an external or internal provision), where at least 2 of the exclusions must be more than 1 day each, within a period of one year preceding the request for a school place; **or**
* Where the child has been off a school/AP roll for a minimum of 1 term. However, for those who are home educated, there must be evidence of one of the above criteria when the child was last in school. If this does not apply, the child must return to the original school and if necessary, alternative provision or managed move should then be considered.

The above provisions will not apply to a looked after child, a previously looked after child or a child with an EHCP naming the school in question – as these children must be admitted in accordance with paragraph 3.12 of the [School Admissions Code](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001050/School_admissions_code_2021.pdf).

If none of the above thresholds are met, a school receiving an application must offer a place upon receipt on an application if there are less children on roll in the year group than the admission number. The admission number for this purpose is the published admission number when the year group in question first started i.e. Year 7 (with the exception of the circumstances described on page 2).

For the avoidance of doubt, attendance and punctuality will not be acceptable reasons to refuse a place.

Admission of a pupil meeting the above criteria through Hard to Place would attract funding from the HTP dowry. The level of funding applicable is defined later in this protocol.

As required in 2.30 of the [School Admissions Code](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001050/School_admissions_code_2021.pdf), all schools must notify the Local Authority of any application and its outcome within 2 school days. Where applications for admission are being refused, the refusal letter must be forwarded to the LA must also include a copy of the application form. Where the refusal has been based on challenging behaviour, the template from the previous school must be included in the notification to the LA, clearly demonstrating that at least one of the threshold criteria is met. Verbal communication from previous schools is not acceptable, as this information will form the basis of the referral under the Hard to Place process.

Where a child was removed by a parent to be home educated from any schools within 3 miles in walking distance or accessible by public transport within 75 minutes (one way), in the event of the parent requiring a school place again, the school from which the child was last withdrawn will offer to take the child back on roll and assume responsibility for education provision. This will be the case in all circumstances where the child still lives within the parameters described above.

Where a child does not meet any of the thresholds defined above, the nearest school\* to the home will admit the child on application, regardless of the admission number for the year group, up to a maximum of 5 children in each year group.

**\***[**http://www.compare-school-performance.service.gov.uk**](http://www.compare-school-performance.service.gov.uk)can be used for establishing the nearest school for this purpose. It must be noted that this site has no relevance to the application of admission oversubscription criteria or school transport eligibility. The nearest school for this purpose is the nearest non-grammar school located in the Essex County Council area.

Where a school chose, of its own volition, to admit above its published admission number in the normal admission for the year group i.e. Year 7, the admission number for the purposes of this protocol will be the number the school admitted up to.

Cases of permanently excluded children and children currently in alternative provision will continue to be dealt with through existing processes and with the input of the Alternative Education Commissioning Service. This applies even if the child’s last permanent exclusion was from a school outside of the county of Essex.

**Cases taken to the BAP Panels, or other agreed forum e.g. local ASHE meetings**

Where a child with challenging behaviour as defined in this protocol is without a school place having had an application for a school place refused, the case will be referred and tabled by the Council’s Fair Access Officer at the next available meeting of the local BAP provision/hard to place panel. Case papers will be circulated to the Headteachers of schools in advance of the BAP meeting. All admission authorities must participate in the Fair Access part of the BAP arrangements.

At the BAP meeting, Headteachers, or their representatives, will be in attendance and places will be agreed for all children’s cases presented. If Headteachers are not present, those representing the school must be empowered to make decisions about agreeing to admit children whose cases are tabled. All schools, including academies are expected to participate fully and admit their fair share of children through the BAP process, including schools full to the admission number. Children can be admitted under the Fair Access Protocol above any children already on a waiting list. It is vital that a place is resolved for every child presented at each meeting of the BAP.

The Alternative Education Service and Pupil Referral Units will be members of the BAP and will take responsibility for cases where appropriate.

**Funding for children meeting the ‘challenging’ threshold(s) and placed via the BAP/under this protocol will be allocated using the following sliding scale:**

£2,500 for a child admitted in Key Stage 3

£3,500 for a child admitted in Year 10

£5,000 for a child admitted in Year 11 (during the autumn term)

£3,000 for a child admitted in Year 11 (during the spring term)

£1,500 for a child admitted in Year 11 (during the summer term)

Payments will be arranged by the Local Authority once confirmation has been received that a child has actually been admitted or started in the provision that has been arranged.

**Compliance**

All admission authorities (inclusive of academies, foundation and voluntary aided schools) will be expected to and must participate and comply with the requirements of the agreed protocol. This is both required by the [School Admissions Code](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001050/School_admissions_code_2021.pdf) and an expectation of the Local Authority and ASHE Council.

In the event that any school fails to comply, the Local Authority has the means to intervene in a number of ways, which include:

* Initiating Direction proceedings, either itself or through the Secretary of State
* Supporting parents with any independent appeal hearing
* Advising parents on the complaints process to the Secretary of State

Non-compliance with the protocol will also be reported to ASHE Council.

In the event that a majority of schools can no longer no support the principles and approach of the Fair Access Protocol, a review can be initiated via ASHE Council with the Local Authority, with clear written evidence that the majority of schools no longer support the current protocol. The current protocol prevails until such time, following any review, that a new one is adopted.