

Hackney Headteachers' Protocol for the Allocation of Fair Access Pupils

Updated October 2018

HACKNEY HEADTEACHERS PROTOCOL FOR THE ALLOCATION OF FAIR ACCESS PUPILS

1. PURPOSE OF THE PROTOCOL

- 1.1. The protocol is designed to acknowledge the need for placement decisions for vulnerable young people, who are not on the roll of a school to be dealt with efficiently and appropriately.
- 1.2. It also aims to:
- Reduce the time these pupils spend out of school;
 - Ensure that all schools admit “Fair Access pupils” on an equal basis.
 - Be fair and transparent;
 - Be led and owned by schools.
 - Comply with the requirement that ‘every local authority must have a Fair Access Protocol agreed with the majority of its schools (which includes Academies, Free Schools and Maintained Schools), in which all schools must participate since it is binding on all schools;
 - Ensure that no school, including those with places available, is asked to admit a disproportionate number of children with challenging behaviour; and to
 - Ensure all parties act with a sense of urgency to identify a school place for any child who has had difficulty securing one or who falls under the Protocol.

GENERAL

- 1.3. Exceptionally, the Wellbeing and Behaviour Partnership or equivalent for primary schools may agree that a school admits fewer pupils.
- 1.4. A parent can apply for a place for their child at any time to any school outside the normal admission round and the majority of pupils will continue to be admitted in accordance with the school’s published oversubscription criteria, if the school has vacancies. Year 10 summer term applicants and year 11 applicants, who are not transferring directly from a mainstream school, will, however, be referred to New Regents College for an assessment to determine whether mainstream or New Regents is more appropriate. If mainstream is appropriate, a school will be named via The Fair Access Protocol if the pupil meets one of the categories listed in paragraph 2.9 below.
- 1.5. The Fair Access Protocol will not apply to a looked after child, a previously looked after child or a child with Statement of Special Educational Needs/Education Health and Care Plan as these

children must be admitted. In the case of a looked after child, the LA has the power to direct admission, even when the school is full.¹

1.6. Hackney Learning Trust is the admission authority for community schools and they will be expected to admit where the Fair Access Panel has allocated a pupil a place at the school.

2. CHILD WITH CHALLENGING BEHAVIOUR

2.1. The definition of challenging behaviour is as follows:

- Behaviour resulting in a significant number of fixed term exclusions (or other evidenced and accepted in-house alternative intervention) which demonstrate that the pupil is at risk of permanent exclusion for at least a year prior to the completion of the application form (see checklist of evidence in Appendix B attached to the Protocol).
- A pupil with less than 65% attendance at school and despite appropriate interventions by the school, a deteriorating pattern of absence (over the previous two terms) continues. In such cases, the clerk to the Fair Access Protocol Panel will request details of the interventions, collate supporting evidence from the school and any other involved agencies such as The School Attendance Service.
- A pupil being educated off-site to improve their behaviour and the most recent review by the current school determines that this is the most appropriate provision (primary and secondary) or has been educated off site for six weeks or more for behaviour issues in the last year (primary).

2.2. Where a Governing Body does not wish to admit a child with challenging behaviour, as defined in **paragraph 2.1**, it must notify the school admission team and give reasons for the decision. If the child is not on the roll of a school, the case will be referred to the Fair Access Protocol panel. If the child is on the roll of a school, the case may be **exceptionally** referred to the Fair Access Protocol Panel, if there is sufficient evidence available to suggest that a change of school is necessary. However, the decision to name a school will be made by the Chair of the Panel in accordance with Section 4.1 of the Protocol.

¹ Previously looked after children means children who were adopted (or subject to residence orders or special guardianship orders) immediately following having been looked after.

- 2.3. All pupils not offered a place via the in-year admissions process will have the right to appeal against the decision to an independent appeal panel.
- 2.4. Pupils who are not resident in Hackney, who meet the definition of challenging behaviour as defined in paragraph 2.1, will be referred back to their home LA if a school refuses to admit with the view that the pupil should be considered under their Fair Access Protocol policy.
- 2.5. If the pupil's former or current school is in the UK or the Republic of Ireland, the school will be asked to provide information about the pupil by completing the Part 2 Section of the application form. If on receipt of the Part 2 form, it is clear that the pupil meets the definition of challenging behaviour as described in this protocol, the school will be informed and can refuse admission in accordance with the paragraph 2.2. If it transpires at a later date that inaccurate/misleading information was given on the Part 2 Section, this will be taken up with the school concerned. In the case of all other pupils, the Part 2 form will only be forwarded to schools to assist the enrolment meeting, once the offer has been made.
- 2.6. If it is the view of the school that a pupil has challenging behaviour, but does not meet the definition of the challenging behaviour as set out in this protocol, it will be the responsibility of the school to produce the evidence to justify their view by completing the Part 3 form attached to this Protocol at Appendix A. If, following the receipt of the Part 3 form, there is sufficient evidence to suggest that the pupil has challenging behaviour, the application will be processed in accordance with paragraph 2.2. above.
- 2.7. If a pupil is admitted via the in-year admission process but after admission it is clear the pupil meets the definition of challenging behaviour as set out in paragraph 2.1 above, the case can be referred to the Fair Access Protocol Panel for a retrospective weighting.
- 2.8. The Protocol will adhere to the infant class size legislation, when placing infant children unless one of the legal exceptions apply.
- 2.9. **The Category of children covered by the Protocol with weightings is set out below.**

Pupils not on a school roll	Weight	Pupils on or off a school roll	Weight
Children from the Criminal Justice System who need to be reintegrated into mainstream school	6	Behaviour resulting in a significant number of fixed term exclusions or other evidenced and accepted in house alternatives from which it is clear that the child is at serious risk of permanent exclusion within a period of at least one year	3

		preceding the request for a school place	
Children who are off roll and attending New Regents College or another provider following a permanent exclusion and are ready to return to mainstream school, as demonstrated in the report submitted to the panel by New Regents College.	5	A pupil considered exceptionally at Fair Access who is being educated off-site but who is not able for good reason to return to their current mainstream school. (Other pupils considered exceptionally may be given a lower weighting; the weighting will be decided by the Chair).	3
Children who have been out of education for two months or more	2		
Children of Gypsies, Roma, Travellers, refugees and asylum seekers Children who are Carers Children with unsupportive family backgrounds where a place has not been sought, and Homeless Children	2	A pupil with less than 65% attendance and despite appropriate interventions by the school, a deteriorating pattern of absence (over the previous two terms) continues.	2
Children with special educational needs, disabilities or medical conditions (but without Education Health and Care (EHC) plan).	2		
In-year applicants who cannot be offered places because schools are full.	1		

2.10. The above weightings demonstrate greater transparency in the **type of allocation** per school.

2.11. Exceptionally, a child not meeting any of the above categories may be considered by the Fair Access Protocol Panel following the receipt of an in-year application form. For example, a pupil educated off site who is ready to return to school but for good reasons is not able to return to their current school. Appendix B attached to this protocol provides details of the type of evidence required for each of the above.

2.12. For all exceptional cases, the reason for the referral with a summary of the evidence submitted and the decision with reasons will be recorded.

2.13. The process for each type of application is summarised in the table below:

A pupil off roll who does not meet the definition of challenging behaviour, as set out in this protocol	<ul style="list-style-type: none"> • A place is offered at one of the preference school or another school has a vacancy and a place is offered at that school; • The pupil is referred to The Fair Access Protocol panel, if all schools are full.
A pupil on roll who meets the definition of challenging behaviour, as set out in this protocol.	<ul style="list-style-type: none"> • Preference school(s) are notified that the child has challenging behaviour; • If the preference school(s) decide not to offer a place, parent will be notified and informed of their right to appeal to an independent appeal panel against the decision. • Exceptionally, the pupil may be referred to the Fair Access Protocol Panel, if there is sufficient evidence to suggest that a change of school is necessary. However, any decision to name a school will be made by the Chair.
A pupil on or off roll who does not meet the definition of challenging behaviour as set out in this protocol but it is the view of the school that the	<ul style="list-style-type: none"> • The preference school(s) will be expected to complete the Part 3 form (Appendix A

<p>pupil has challenging behaviour and a place should not, therefore, be offered.</p>	<p>of this Protocol) setting out the reasons for their view.</p> <ul style="list-style-type: none"> • If this view is accepted by the admission team, who may consult other professionals, as appropriate, the case will be referred to the Fair Access Protocol Panel, if the pupil is not on the roll of a school. If the pupil is on the roll of a school, the case may be referred on an exceptional basis (Section 2.2 above) • If this view is not accepted by the admission team, the school will be informed that there is no legal basis for refusing admission and will be asked to re-consider their view. <p>If the school refuses to admit, the parent will be informed of the school's decision and of their right to appeal against the decision to an independent appeal panel.</p> <p>If the pupil is not on a school roll, the case will be referred to the Fair Access Protocol Panel with a recommendation that the school is named in accordance with Section 3.4 of the Protocol.</p> <p>The case may also be referred to the DFE/EFA</p>
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3. THE “FAIR ACCESS” PROCESS

3.1. Hackney Learning Trust will establish a panel comprising of core members:

- Secondary Headteacher (allocated in advance on a rotational basis);
- Primary Headteacher (as required);
- Head of Service, Admissions, School Place Planning and Travellers' Education Service, (Marian Lavelle)
- Head of Wellbeing and Education Safeguarding (Paul Kelly);
- Head of Admissions and Pupil Benefits (David Court);
- Principal Officer, Pupils out of Education (Billy Baker)

The Executive Principal of New Regents College or delegate will attend to present information on those pupils at New Regents College who have been permanently excluded from a school but are now ready to return to school. Other professionals may be invited to attend to present additional information on a case by case basis. For example, representatives from Young Hackney and the Re-engagement Unit. The officer responsible for Elective Home Education will be invited to attend in cases where the pupil has been previously electively home educated.

3.2. The panel will meet once a month (normally on a Thursday). The panel meetings will be arranged one year in advance and Headteachers or their deputies will be approached to Chair the panel in rotation.

3.3. In-year admission officers will determine potential cases for the panel in accordance with this protocol. The clerk to the panel will draw up the agenda, which will include a summary of each case to be considered, and will collate the data set out in Section 4.2 below. The clerk will also keep brief notes of the discussion, record decisions and notify schools of their allocations. These notes will be distributed to the members of the panel and other relevant parties, on request.

3.4. The panel reserves the right to name a school but the pupil not counted as a 'Fair Access' pupil if in the chair's opinion the application was not appropriately considered via the in-year admissions process. In such instances the school will be named and the school will be expected to admit the pupil.

4. PANEL MEETING

4.1. At the meeting the Chair, supported by the other members of the panel, will decide the school to be named for individual pupils. There is no duty to comply with parental preference when allocating places through the Protocol but the wishes of the parents will be considered along with other factors such as any sibling connection; distance from home to potential schools and any religious affiliation. In the case of pupils who were electively home educated or are returning to the borough from abroad or another part of the UK, there will be a presumption that the previous school is named.

- 4.2. The statistical data listed below will be provided to the panel for each school, some of these will be based on the last census data:
- The number of pupils on the school roll.
 - Number and percentage of pupils admitted to the school via the in-year admission process since the beginning of the school year;
 - Number and percentage with statements/EHC plan in each year group;
 - Number and percentage of permanent exclusions in each year group during the last school year;
 - Number of pupils admitted to schools via the in-year process since the beginning of the school year for whom a retrospective weighting has been given because the pupil meets the definition of challenging behaviour;
 - The number of confirmed managed moves since the beginning of the school year;
 - The number of permanently excluded pupils admitted to schools via the Fair Access Protocol who were referred from the PRU;
 - The total number of pupils admitted to schools via the Fair Access Protocol under all of the categories.
- 4.3. Schools will not normally be asked to admit pupils who have been permanently excluded from their previous school unless it is the view of New Regents College (NRC) that they are ready to return to school. Such pupils will be dual registered in the first instance as part of a package of support provided by NRC to ensure a smooth transition. The dual registration is usually for 6 weeks from the date the pupil starts attending the new school. In exceptional circumstances, (e.g. absence due to sickness), the dual registration can be extended to a maximum of 12 weeks with the agreement of the Chair, supported by the panel members, that took the original decision. Such requests should be submitted to the clerk who will seek the decision of the panel.

5. PANEL DECISION

- 5.1. All referred pupils placed by the Fair Access Protocol panel will be monitored for up to 6 weeks. The monitoring is to ensure that the pupil is still on roll after six weeks. The clerk will request an update after that period for confirmation that these pupils have been successfully placed.
- 5.2. For pupils that have been permanently excluded from a primary school and the exclusion has been confirmed, the clerk to the Alternative Provision Panel will ask the Head of Exclusions whether it is appropriate for a school to be named at the next Fair Access Protocol meeting. If this is the case, dual registration will commence when the re-integration process has started and will continue for 6 weeks as described above.
- 5.3. Once dual registration has commenced, the pupil can only be removed from the roll of the named school in accordance with the Education (Pupil Registration) (England) Regulations 2006. This means that both the school and the PRU will need to agree to the removal from the school's register.

Where a school has concerns about the viability of a placement, the school should contact New Regents College to discuss the reasons for the concerns. In most cases it is expected that agreement will be reached or that the pupil returns to New Regents. If agreement cannot be reached, the case will be referred to the FAP panel that made the original decision.

- 5.4. If it is the view of the Chair of the panel that unplaced pupils allocated a place through the Protocol should have been offered a place at their preference school(s) under the normal in-year admission process, the decision will be listed separately. Normally, all unplaced pupils, who applied to schools with vacancies but were not offered places and do not meet the definition of challenging behaviour as defined in paragraph 2.1 above will be recorded under this category.
- 5.5. A school is not permitted to rely on oversubscription where the panel has decided a pupil should be admitted to the school-in accordance with the protocol.
- 5.6. Schools must not insist on a parental appeal to an independent appeal panel being heard before admitting a pupil under the protocol.
- 5.7. A school must admit a pupil, who has been denied a place at that school including at appeal, if the protocol identifies the school as the one to admit the pupil.
- 5.8. A school must respond to decisions of the panel within 5 school days of the notification letter/email and must admit the pupil within 10 school days. For permanently excluded pupils, dual registration should also commence within 10 school days. If these time-lines are not adhered to, the matter will be escalated to the Chair of the Governing Body.

6. REVIEW OF PANEL DECISION

- 6.1. Schools can only request that the panel reviews its decision in cases where there is significant new evidence that was not available to the panel at the time. The request for review must be submitted to the clerk within five school days of the decision and include the new evidence. The panel must be convinced that, on the basis of the new evidence, the pupil cannot attend the named school and should, therefore, be allocated another school. For example, the pupil's older sibling attended the school and there was a serious breakdown between the school and family which was not known about when the decision was made.
- 6.2. In such cases, the clerk will forward the request and new evidence to the Chair who, in discussion with members of the panel that supported the original decision, will decide whether the decision stands or a new school should be named. The school will normally be notified of the Chair's decision within 5 school days of receipt of the request. The Chair's decision is binding on the school.
- 6.2 To assist the enrolment meeting, the school should request within 5 school days of notification of the panel decision the pupil's file from the pupil's last school.

- 6.3 If a school admits a pupil defined as “a pupil with challenging behaviour” (as set out in paragraph 2.1) through the normal admissions process, that pupil will be counted as a “Fair Access” pupil. Details of such children will be provided by Head of Admissions
- 6.4 Similarly, if a school admits a pupil defined as having challenging behaviour (as set out in paragraph 2.1) via the manage move process, that pupil will be counted as a “Fair Access” pupil, and will be given a weighting of 3. The onus will be on schools to notify the clerk of confirmed managed moves.
- 6.5 A record of the number of pupils admitted by each school under the Protocol will be kept by the clerk to the panel and monitored by the School Admission Forum and schools.

7 DIRECTION

- 7.1 Hackney Learning Trust will use its powers, where necessary, to direct admission in the case of voluntary aided schools that refuse to admit a pupil who has been allocated a place under the protocol or through the in-year admission process.
- 7.2 Before a direction is issued Hackney Learning Trust shall
- a. Invite other admission authorities within a reasonable distance of the child’s home (3 miles for secondary aged pupils and 2 miles for primary aged pupils), to consider the application and to refuse admission if it is their view that the admission would cause prejudice to the provision of efficient education or the efficient use of resources.
 - b. Consult the governing body of the school, the parent, and the child, if they are over compulsory school age. If following consultation the local authority decides to direct, it must inform the governing body and head teacher of the school.
- 7.3 The Governing Body can appeal by referring the case to the Schools Adjudicator within 15 calendar days.
- 7.4 The school must notify Hackney Learning Trust if an appeal is submitted within the 15 calendar days to the Schools Adjudicator.
- 7.5 If an appeal is not submitted to the Schools Adjudicator within the 15 calendar days, the school must admit the pupil in compliance with the Direction issued by the Hackney Learning Trust.

7.6 Hackney Learning Trust will, where necessary, request a direction from the Secretary of State in the case of academies and free schools that refuse to admit a pupil who has been allocated a place under the protocol or through the in-year admission process.

8 REVIEW OF PROTOCOL

8.1 The clerk to the Fair Access Protocol Panel will produce an annual report each Autumn Term summarising the referrals and decisions of the panel in the previous year for distribution of all headteachers/principals.

8.2 In the event that the majority of schools 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 up until the point at which a new one is adopted.

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