

**Medway Council**

**Fair Access Protocol**

**For Admission to**

**Medway Primary/Infant/Junior**

**Schools and Academies**

**Academic Year 2022/23**

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Medway primary & junior schools and academies

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This can be found at: [www.medway.gov.uk/info/200217/freedom\_of\_information/347/data\_protection/1](http://www.medway.gov.uk/info/200217/freedom_of_information/347/data_protection/1)

**Principles of Inclusion in Medway**

Partners in Medway’s education community include schools of all types, the local authority and other related agencies. All have agreed that the following principles will underpin their work with and for children and young adults.

* In carrying out our work, we will put children and their needs at the centre of all we do and decide.
* All children, including those with additional needs, deserve the best possible educational provision and the best possible chances of realising their potential.
* Vulnerable children are best served when members of the education community accept a shared responsibility for their progress and wellbeing, work collaboratively to support them and do so in a mutually supportive and blameless manner.
* Children’s additional needs will be identified and addressed as early as possible.
* Exclusion of a child will always be a last resort and will only take place after all other strategies and interventions have been tried.
* Children should only be in alternative provision for the short-term.
* We believe that excluded children are capable of modifying their behaviour and deserve ongoing support; provided it is in their best interest, we will work together to support the reintegration of children into mainstream settings.

Confidentiality and fairness agreement  
  
It is noted and agreed by all members of the Medway Fair Access Panel (including schools/academies and LA representatives) that:

1. All cases discussed within the meeting and all related paperwork will not be disclosed to other parties outside of the meeting (other than those directly working with the relevant child)
2. All discussions will be strictly private and confidential within confines of the Fair Access Panel meeting.
3. The decisions reached by the panel will be fair, consistent, objective and, most importantly, in the best interests of the child concerned.
4. No panel member will look to unduly influence other panel members in relation to a specific case before, during or after the Fair Access Panel meeting.
5. All decisions made at the meeting will be binding and all offers made will be honoured by the school/academy concerned.
6. The placement of a child will not be recorded on the fair access figures until the child is on roll of the school/academy concerned.
7. All parties will adhere to the provisions of the School Admissions Code and, where appropriate the School Admissions Appeals Code and all other relevant legislation.
8. All parties will be mindful of and strictly adhere to the requirements of GDPR and all relevant information governance guidance/instruction.

# 1 Aims of Fair Access Protocols

* 1. The agreed aim of the Medway fair access protocol is:

*To place a child or young person in the most appropriate environment to support their learning and development, taking cognisance of the impact on each individual school and education in Medway.*

* 1. This aim is supported by the following principles:
* Decisions made by the panel will be child-centred, with placements that are in the interests of the child
* Cases will be considered by a panel of headteacher peers who have an empathetic understanding of each school’s situation
* All schools and the Council will work collaboratively to ensure that the protocols are effectively applied without jeopardising the provision of efficient education for others in the school.

**2 Background and framework**

2.1 Paragraphs 3.14 to 3.22 of the [School Admissions Code 2021](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001050/School_admissions_code_2021.pdf) provide the basis for the establishment of Medway fair access protocols. In addition, [non-statutory guidance](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001153/Fair_access_protocols.pdf) has been published to assist with the drafting of these protocols:

2.2 It is recognised that the local authority, which has a statutory duty to ensure that all Medway children have a suitable educational placement, is an equal partner in the Fair Access Panel.

**3 Medway Fair Access Protocol Triggers**

**3.1 In-year admission applications**

On receipt of an in-year admission application, the relevant Medway primary school/academy will consider whether the child meets the criteria for consideration under the Medway fair access protocols. This should primarily be determined by the information available on the application form.

If the school applied for is full to PAN, the young person meets the criteria for FAP (see 3.1.1 & 3.1.2) and the school cannot offer a place over PAN through Fair Access Protocol, it can refer the young person to the next panel meeting.

If the applied for school is not full to its PAN, the school is expected to offer the young person a place through the standard in-year admission process (School Admissions Code 3.18) unless the young person meets the criteria to be referred under 3.1.1.

**3.1.1 Challenging behaviour Criteria**

Per School Admissions Code 2021 paragraph 3.10, *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.*

*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 it is of such severity, frequency, or duration that it is beyond the normal range that schools can tolerate. We would expect this behaviour to significantly interfere with the pupil’s/other pupils’ education or jeopardise the right of staff and pupils to a safe and orderly environment.*

For the purposes of this Code, challenging behaviour includes:

* + a child who has been permanently excluded within the last two academic years
  + a child who has been excluded for fixed terms totalling 10 days or more over the previous two academic years (the referring school will consider the grounds on which fixed term exclusions were made when deciding whether to refer to FAP)
  + a child currently attending a Pupil Referral Unit (PRU) or whose most recent placement was a PRU or similar provision for behavioural/social or emotional reasons
  + a young person returning from school after a criminal sentence has been served and YOT are involved

**3.1.2 Students deemed to be hard to place**[[1]](#footnote-2)

Other than 3.1.1, FAP protocols may only be used to place 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[[2]](#footnote-3) have been taken to secure a place through the usual in-year admission procedures

1. Children either subject to a Child In Need Plan or a Child Protection Plan or having had a CIN or CP plan within 12 months at the point of being referred to the protocol.
2. Children living in a refuge or in other Relevant Accommodation at the point of being referred to the protocol
3. Children from the criminal justice system;
4. 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
5. Children with special educational needs (but without EHCP), disabilities or medical conditions;
6. Children who are carers;
7. Children who are homeless;
8. Children who are in formal kinship care arrangements
9. Children of, or who are, Gypsies, Roma, Travellers, refugees and asylum seekers;
10. Children who have been refused a school place on the grounds of their challenging behaviour and referred to the protocol in accordance with paragraph 3.10 of the Admissions Code (see 3.1.1 above)
11. Children for whom a place has not been sought due to exceptional circumstances;
12. Children who have been out of education[[3]](#footnote-4) for four weeks or more where it can be demonstrated that there are no places available at any school within a reasonable[[4]](#footnote-5) 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
13. Previously looked after children for whom the local authority has been unable to promptly secure a school place[[5]](#footnote-6)

**3.2 Permanent Exclusion**

If a permanently excluded child does not have an EHC Plan and is not in statutory assessment for SEND, the local authority will consider the child to be eligible for a mainstream school place. The LA will then commission alternative provision for Day 6+ provision only.

At its first meeting after the exclusion, the Fair Access Panel will allocate a receiving school for the child, as described in section 5. In making this allocation, the factors listed in 5.14 will be applied.

If a permanently excluded child does have SEND, then the local authority will commission longer term alternative provision pending subsequent outcomes which might be:

1. the child, in statutory assessment at the time of exclusion, later

receives an EHC Plan which names a special school, in which case the child will transfer to that school.

1. the child, in statutory assessment at the time of exclusion, later

receives an EHC Plan which names a mainstream school, in which case the child will be expected to transfer to that school. If the school contests the placement, then the SEND Code of Practice will be applied, not the FAP, and the child will remain in AP until a resolution is reached.

1. if the child already had an EHC Plan at the time of exclusion, the local authority would arrange an emergency SEND review for the child. The reviewed Plan will then be applied according to the type of school named in it (as above).

**4 Ensuring fair distribution of allocations to schools**

* 1. All Medway schools/academies, including those that are full (i.e. have already admitted up to their PAN) will take their fair share of children referred to the panel.   
     ***NB:*** *going over PAN for Fair Access cases is permitted under the School Admissions Code in Key Stage 2 but infant class size restrictions still apply for Key Stage 1.*
  2. The fair access panel will be responsible for ensuring a fair share of pupils, taking into account quantitative and qualitative data and evidence, which will be reviewed at each meeting.
  3. In line with the aims and principles, placements should be child- centred, whilst being empathetic to the circumstances of individual schools, and as such, there is an expectation that fair access arrangements will result in any school being required to admit more than a reasonable number of pupils.
  4. If any school has concerns about the disproportionate placement of pupils or has other contextual information that they believe should be taken into account, then this should be raised through the chair of the meeting during agenda item 2, and the discussions and conclusions of the panel recorded in the minutes.(see also 5.15-5.17)
  5. An accurate three-year summary of previously agreed placements will be shared and discussed at each meeting, showing the number of children placed under the following headings:
* children with challenging behaviour (referred under 3.1.1)
* children referred for other reasons (referred under 3.1.2)
* Up to date information regarding ‘standard’ casual admissions for each school will also be provided on a termly basis.
  1. Placements will be counted in the summary figures once it has been

confirmed in writing to School Admissions that the child has started at the school. Until the child has been placed on roll and started at the school, they will be recorded in the ‘pending’ column on the FAP figures.

1. Schools/academies are permitted to offer places to children (who meet the criteria to be referred to panel) outside of the panel meeting. If this occurs, the offering school must inform School Admissions and provide the relevant paperwork to receive credit for doing so.
   1. The local authority will fund the cost of transport to schools where the recommended school is over the minimum distance to be eligible for transport assistance.

4.8 **In relation to Looked After/Previously Looked after Children**

All cases that relate to the admission of a Looked after Child (LAC) or previously Looked after Child (PLAC) **who triggers the Fair Access Protocols through the information received** will be discussed with the relevant school/academy outside of the Fair Access Panel meetings for an application outcome. If, following these discussions, a place is secured for the LAC/PLAC they will be offered and admitted in line with the casual admissions procedures.

The admitting school will subsequently receive recognition of this admission as a FAP case in the FAP figures collated by School Admissions.

**5. Fair Access Panel**

* 1. The allocation of children who fall under the fair access protocols will take place at the meetings of the fair access panel to ensure places are allocated as quickly as possible.
  2. Panel meetings will take place on a monthly basis (11 meetings a year) and will be attended by 2 headteacher representatives from each of the four MELA zones  
       
     If a representative is unable to attend the chairperson of their zone will arrange for another headteacher from the same zone to represent them (please see 5.8).
  3. In cases where an in-year admission application has been submitted, headteacher(s) of the school(s) applied for will be invited to attend.
  4. In all other circumstances, before a Panel hearing, the local authority will have taken a view on the most appropriate school or schools for the placement of the child based on section 5.14. Headteachers of these schools will be invited to attend the hearing.
  5. Council officers from School Admissions will administer the fair access arrangements including the panel meetings. Representatives of School Admissions, Inclusion and the Attendance Advisory Service, will attend meetings to provide professional advice and guidance.
  6. Should a child be known to another service (e.g. SEND) then a representative will be invited by School Admissions to provide additional information to, and to attend, the Fair Access Panel.
  7. The Fair Access Panel will be chaired by the School Admissions Manager. The Vice Chair will be a headteacher/principal from a Medway primary school/academy.
  8. Headteachers are defined as those in substantive headteacher posts with accountability to the inspectorate and named on the school’s Ofsted inspection report. For schools that are part of a multi-academy trust the head of schools or associate headteacher for the purposes of the FAP process will be regarded as the headteacher.
  9. If it is not possible for a headteacher to attend a panel meeting, then another headteacher from the same zone will replace them. The replacement headteacher will need to have been briefed before the meeting to enable them to agree placements.
  10. Case papers for the meeting and minutes of the previous meeting will issued 5 working days prior to the meeting to allow headteachers time to review cases prior to the meeting and to bring supporting guidance as appropriate. If paperwork is not received 5 working days prior to the meeting, the FAP panel reserves the right not to consider the case.
  11. The following contextual information and data will be made available at each meeting and should be sent by the School Admissions team along with the FAP paperwork 5 working days in advance of the meeting:
* Individual school contextual data (to be updated by schools 5 working days preceding the meeting)
* Fair access figures for the last 3 years
* Roll number and capacity figures for all Medway schools
* The number of ‘standard’ casual admission offers for each school (split by year group) will be included on a termly basis.
  1. Each case is presented and discussed so that the panel can make an informed decision over the most appropriate placement for the child. The agenda items for each meeting will be:
  2. Presentation of data on the number of children placed under the fair access protocols for the previous three years
  3. Presentation of contextual information provided by schools for consideration by the panel
  4. Consideration of cases for children that are not in education and that have been considered hard to place
  5. Consideration of cases for children that are already on roll at a Medway school that have requested a transfer to another Medway school, and who meet the criteria in paragraph 3.1 (\*)
  6. Children requiring an allocation

\* Managed transfers are not covered by the FAP protocols and should be discussed using the guidance and protocols for managed transfers.

* 1. Cases will be presented by a local authority officer based on the factual information included in the paperwork. The chair will then invite headteachers and professional advisors to put forward any further contextual information about the individual pupil, including parental preference, any support that may be needed to ensure the placement is a success and reasons why placement at a particular school is thought to be not in the best interests of the child or the school.
  2. The panel will then discuss the most appropriate placement, based upon the factors below (not listed in any priority order):
* Parental/carer preferences
* Geographically nearest / ease of travel
* The views of the local authority
* The most appropriate environment to support the child’s learning and development
* Fair distribution – the number of children already taken by the school/academy
* Whether a child has previously attended a Medway school/academy
* Faith preferences, where evidence is provided in line with the school of faith criteria.
* General contextual information about individual schools
* Contextual information about individual pupils and the impact of their placement at particular schools
  1. In cases of a child returning from being educated at home and children who are ‘children missing education’ through parental choice there would be an expectation for the child to return to their previous school, unless the situation between the school and the family has completely broken down and is therefore untenable or there are exceptional circumstances.
  2. In most circumstances it is expected that the most appropriate school will be agreed through discussion, and with the agreement of the headteacher of the school at the panel meeting. In such cases, this will constitute agreement that an offer can be made, and a formal offer will be sent to the parent within 3 working days of meeting.
  3. If the headteacher of the school proposed for allocation is not present at the hearing, then School Admissions will inform the school and request the child’s admission. If, after that, the headteacher of the school is unwilling to admit the child, the process outlined in section 5.18 (iii) will be followed.
  4. If it is not possible to reach agreement through discussion the following process will be followed:

1. The panel will name the school it thinks is most appropriate to be allocated
2. If the headteacher of that school accepts the allocation, a formal offer will be sent to the applicant within 3 working days of the meeting
3. If the headteacher does not accept the decision, the local authority will write to the headteacher and chair of governors setting out the details of the case, the decision and rationale of the panel, and the intention of the local authority to seek a direction unless the school reconsiders its decision in line with paragraphs 3.23 to 3.29 of the School Admissions Code.  
   1. Where appropriate the panel will outline any additional support that should be put in place to ensure that the pupil has the best chance of a successful integration.

###### 6 Governance arrangements

6.1 On an annual basis (term 5-6 each year) a representative group of headteachers and a local authority representative will be established to review the protocols and update them as necessary with the agreement of the majority of Medway infant, junior and primary schools.

6.2 In the event that the majority of infant, junior and primary schools in Medway area can no longer support the principles and approach of the Fair Access Protocol, they should initiate a review with the local authority.

The process of review will be for the Chair of MELA to confirm in writing to the local authority that the majority of schools no longer support the protocol and therefore a review is required.

The local authority will then review the protocol per 6.1 (albeit at the time of request rather than term 5-6).

The existing Fair Access Protocol will remain binding on all schools in Medway until the point at which the new one is adopted.

1. Schools Admissions Code 2021 para 3.17 [↑](#footnote-ref-2)
2. For example, where an application has been made to at least one school and has been refused and/or the local authority has confirmed there are no school places available at any school within a reasonable distance [↑](#footnote-ref-3)
3. Including those who are educated at home [↑](#footnote-ref-4)
4. Reasonable is deemed to be less than 3 miles [↑](#footnote-ref-5)
5. Local Authorities may consider swift use of their general powers of direction or asking the Secretary of State to consider direction [↑](#footnote-ref-6)