



LEICESTERSHIRE SECONDARY EDUCATION AND INCLUSION PARTNERSHIPS FAIR ACCESS QUESTIONS

Question 1: Do schools have to take a student on to their roll if the Partnership asks them to?

YES

The Leicestershire Fair Access Protocol for Secondary Schools has been locally agreed and reviewed regularly in line with DFE Regulations. The FAP gives the power over fair Access Admissions to each local Partnership. Schools collectively, working through their local partnership group meetings, can therefore decide which local school should admit a Fair Access child. Partnerships aim to ensure that schools all take their fair share of the extra admissions arising from Fair Access

Question 2: Can Schools refuse to go along with a FAP decision on the grounds that they are in an Ofsted category.

NO

There is no reference to Ofsted Categories in the current DFE Guidance nor in the Leicestershire Protocol. The Guidance states explicitly that all schools must participate in the FAP. The Guidance sets out that the use of the word **must** indicates that this is a statutory requirement. We would expect that a Panel would take such issues into account whilst remaining mindful that the needs of the child must remain a high priority in decision making.

From DFE Guidance: The admission authorities of all schools in the area must participate in the FAP. This means they must authorise a representative to participate in discussion and decision making on placing children referred to the FAP and admit their fair share of children when asked to do so in accordance with the FAP.

Question 3: The Year Group is “full”. Can the school refuse a Fair Access direction from the Partnership?

NO

Fair Access Regulations have been put in place to ensure that every child who needs a school place outside the normal admissions round gets one. A school can challenge the Local Panel decision to place a child via Fair Access on the grounds that it was not consulted or that it has taken more than its fair share of Fair Access cases. The Partnership should be able to demonstrate that the Panel was correctly convened and took the decision in a way that balances the needs of the child with “fair shares” across the schools. Provided these conditions have been met the school must place the child on roll.

The Local Panel convened by the Partnership decides but the Local Authority has the duty to enforce the decision. The Partnership is required to check with the school after a Fair Access decision has been made. This is to ensure that the school has placed the child on roll. If this has not happened the Partnership Coordinator is required to report the issue to the Admissions team at the Local Authority. Normally the LA will seek to resolve the issue through discussion but has the duty to refer unresolved issues to the Secretary of State for a direction to admit.

It is very unlikely that any Leicestershire School would be able to resist a direction from the Secretary of State on the grounds that they are being asked to “*take a disproportionate number of childrenchallenging behaviour*” The guidance doesn’t say what a high proportion is but the majority of Leicestershire Schools are not likely to reach the threshold. Schools might be able to argue that the process of deciding the place was flawed – on the few occasions that this has happened in Leicestershire this has been the area of contest. (City local authorities number Fair Access cases in the 100’s - Leicestershire’s are in the 10’s)

From the DFE Guidance: When seeking to place a child through the FAP, 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 otherwise being placed via the FAP.

Question 4: Can a school refer a child for Fair Access?

YES

The responsibility for deciding whether a case is Fair Access lies with the Admissions Authority – usually the LA. It is neither a decision for the Partnership nor the Panel. A school receiving an in-year application should consider whether the child meets any of the criteria in the county FAP. If the school thinks one or more criteria apply it should ask the LA to make this a Fair Access Case **but will need also to make the case that one or both of the bullet points quoted below apply.**

The Partnership acting on behalf of all the local schools, when receiving a Fair Access referral from the LA will do its own check against the criteria and may also refer to the LA. It is the LA’s responsibility to make the final decision.

From the DFE Guidance: Admission authorities may only do this (ie ask for the child to be considered as a Fair Access case) 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.*

Question 5: Are Permanently excluded children entitled to be admitted to a school under the rules of Fair Access?

YES

The short answer is "Yes". Children who live in the locality of a Partnership, do not have a school place and meet the criteria set out in the Fair Access Protocol are entitled to a school place and should be placed on a roll swiftly. A school who receives a FAP student with a background that includes recent exclusions will make a referral to the local partnership for partnership support up to and including "Programme Management". This means that a school may have to take the child on roll but the responsibility for providing education will be with the Partnership.

Question 6: Can Schools overrule the Partnership Coordinator or Chair following a panel decision?

NO

The role of the local SEIP is to convene the local panel and follow up any decisions made by that panel. Schools who are unhappy with a panel decision need to challenge the panel not the partnership. Partnerships should be careful to make sure that Fair Access decisions are taken formally through these panels. Once a Panel decision has been made it is reported to the Admissions Authority who have the responsibility to enforce it.

Question 7: What powers do schools have in relation to in year admissions and Fair Access?

Schools should admit children who apply for a place out of the normal admissions round unless the appropriate year group is full. However schools are strongly advised to check with the child's previous school:

- If the previous school is local in Leicestershire and the child is in KS4 Leicestershire Heads have agreed that both schools will work to discourage the move as disruptive to the child's education (FAP Appendix 2)
- Identify those requests made "in the heat of the moment" that can be reconsidered
- Check with the previous school if the child meets any of the criteria in Section 3 of the Fair Access protocol. If the school think the child does meet one or more of these criteria it should talk to the LCC Admissions team as soon as possible. This may result in the admission being treated as Fair Access to be decided at the Panel convened by the local partnerships (SEIP). A school can request that an admission

becomes Fair Access for any in year admission (FAP Section 4.2) but the child must meet the criteria.

There are two important considerations for schools when seeking to admit via Fair Access

- The school, Admissions and the local SEIP need to move quickly in order to abide by the regulatory time frame (Timings are set out in Section 7 of the FAP)
- The school should ask itself “Will my local Fair Access Panel be likely to direct this school to take the child?” If yes would it make more sense to admit the child quickly and ask the panel to note your decision to keep in mind for future FA decisions?

Question 8: How do schools know that Fair Access is being operated fairly?

In most Partnerships schools have agreed that a record should be kept of Fair Access Admissions along side other indicators including referrals for Tier Four Programme Management and Permanent Exclusions. The Guidance encourages this but care should be taken to ensure that schools see that as a means of ensuring fairness not as a way to secure a “one in – one out” response to permanent exclusion.

DFE Guidance states: All schools should be treated in a fair, equitable and consistent manner. This means that no school – including those with places available – is asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are otherwise being placed via the FAP. What constitutes a ‘disproportionate number of children’ should be defined locally when agreeing the FAP.

It must be clear that schools with available places should not be expected to admit all children being placed via the FAP where doing so would mean they are being asked to take a disproportionate number of such children compared to other local schools. FAPs must also not require schools to automatically admit a child via the FAP in place of another child permanently excluded from the school. Where a school expresses compelling reasons for not being able to admit a child via the FAP, for example due to health and safety reasons, this should be taken into consideration before a decision is made to place a child in that school.

More FAQs on line at <https://www.leicsseips.org/fair-access-faqs>

Fair Access Protocol at <https://www.leicestershire.gov.uk/sites/default/files/field/pdf/2019/6/6/fair-access-protocol.pdf>

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