

Leicestershire
Children and Family Services

Fair Access Protocol

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1. Introduction

- 1.1. The purpose of the Fair Access Protocol (FAP) is to ensure that vulnerable Children and Young People (CYP)(see para 3.1 for definition of the vulnerable groups) who are not on a school roll are found a school place quickly and fairly, so that the amount of time any child is out of school is kept to the minimum. Exceptions to FAP triggers, are Looked After Children (LAC) and Children with Education and Health Care Plans (EHCP) (see paras 2.5 and 2.6). The protocol also makes sure that all schools and academies admit their fair share of vulnerable children. Every local authority is required to have in place a Fair Access Protocol, developed through consultation with local schools and academies.
- 1.2. There is a statutory basis for the protocol as laid out in the National School Admissions Code¹ 2014.
- 1.3. The protocol needs to be agreed with a majority of schools and is then binding on all schools in the area².
- 1.4. Leicestershire's Protocol is designed to ensure that the needs of vulnerable children are considered as paramount in decision making about their educational provision and at the same time ensure that schools share the additional responsibilities in a fair way.

2. In Year Admissions and Fair Access

- 2.1. The majority of CYP enter schools through the normal admissions process at the beginning of the school year.
- 2.2. Parents / Carers of a CYP who need a school place once the school year has begun will apply, in most instances, through the County Council's online admissions process operated by Leicestershire's Schools Admissions Service. Unless the academy processes their own admission applications, in which case parents/carers would apply directly to the own admitting authority (academy).
- 2.3. The application processor(s), whether Leicestershire's School Admissions Service or an own admitting authority, as part of the processing will assess the application for "Fair Access" triggers (under sec 3.1):
 - Where trigger(s) met, and are low level, the school or academy will be approached, and the application will be discussed to place the CYP;
 - Where multiple triggers at met, and there are significant issues, a referral to the relevant Secondary Education Inclusion Partnership (SEIP) will be made.

1 School Admission Code 2014, paras 3.9 – 3.15, [Draft Code June 2020, paras 3.16 – 3.21]

2 Ibid, para 3.9, [Ibid 3.14]

- 2.4. When a FAP referral is made it will be passed to the Co-ordinator of the SEIP in whose area the child resides. The Co-ordinator will initiate the local arrangements for Fair Access decisions within the time frame laid down by the Fair Access Protocol.
- 2.5. Looked after children are not subject to the Fair Access process. Schools should not normally refuse a place for a Looked After Child even if full.
- 2.6. Children with Education and Health Care Plans (EHCP) follow a separate admissions process administered by Leicestershire Special Educational Needs Assessment service (SENA).

3. Who Fair Access Applies To (i.e. the vulnerable groups) :

- 3.1. Leicestershire's Fair Access Protocol will include the following children³ of compulsory school age who have difficulty securing a school place:
 - Children involved with the criminal justice system or Pupil Referral Units who need to be reintegrated into mainstream education;
 - Children on a Child in Need/Child Protection Plan;
 - Children in refuges and those in safe accommodation;
 - Children who have been out of education for two months or more (see 5.11 below);
 - Children of Gypsies, Roma, Travellers, refugees and asylum seekers;
 - Children who are homeless;
 - Children with unsupportive family backgrounds for whom a place has not been sought;
 - Children who are carers;
 - Children with special educational needs, disabilities or medical conditions (but without an Education and Health Care Plan (EHCP))
 - Children with a previous history of challenging behaviour⁴ in school with more than two periods of fixed term exclusion in the previous twelve months or who are judged to need SEIPs Tier Three⁵ or above interventions to sustain their school place

4. Schools' (inc academies) Powers in relation to Fair Access

- 4.1 Schools' are expected to admit Looked After Children even if they are full, as expressed in 2.4 above, admission for CYP with EHCPs is managed through a separate process.
- 4.2 Schools may ask that the School Admissions Service refer application via the Fair Access Protocol if the CYP is an in-year admission and meets the criteria listed in 3.

³ Ibid, para 3.15), [*ibid para 3.16*]

⁴ School Admissions Code 3.12

⁵ See Appendix 2

- 4.3. The school's governing body may also refuse children with challenging behaviour, even if they have space for applications outside the normal round. Where the school is able to evidence high proportion of children with challenging behaviour or previously excluded children. This condition does not apply to LAC or EHCP children. If otherwise, the condition is met a referral will be made to the relevant SEIP, evidencing the relevant governing body's reasons.
- 4.4. Once the referral has been considered by the local FAP Panel Schools will be expected to accept the decision of the Panel (or its equivalent).

5. Principles

- 5.1. The local authority must have a Fair Access Protocol, in which all schools (including Academies) must participate since it is binding on the admission authorities for all schools and academies⁵
- 5.2. For Secondary aged children the School Admissions Service will initiate the process of Fair Access in order to enable the SEIPs to allocate an appropriate school. The School Admissions Service will support the decisions of the SEIPs where requested to do so, and may if necessary refer the matter to the Education Skills and Funding Agency (ESFA) for a power of direction, where the receiving schools refuses to abide by the Panel's decision;
- 5.3. For primary aged children the School Admission Service supported by Oakfield Short Stay Schools (North, Shepshed and South, Earl Shilton) will operate the protocol.
- 5.4. Schools (including Academies) should work together collaboratively, taking into account the needs of the child and those of the school / academy. There is no duty to comply with parental preference when allocating places through the Protocol but it is expected the wishes of the parents and young people are taken into account and that all pupils will be on a school roll. When seeking to place a child under the Protocol, all schools and academies should be treated in a fair, equitable and consistent manner. No school should be asked to take a disproportionate number of children who have been excluded from other schools⁶. This does not apply to LAC or Children with EHCPs, for whom separate admission arrangements apply⁷.

⁵ The term "Academies" in this document includes: free, studio and converter Academy schools

⁶ Ibid 3.9

⁷ Ibid 3.12

- 5.5. Secondary Schools working together in their local SEIP under the leadership of the Chair of the Partnership and the local Co-ordinator will seek to ensure that Fair Access allocations balance a fair sharing between schools with securing provision that is in the child's best interests. Schools receiving a child allocated through the FAP may then refer to the local SEIP for access to the additional delegated resources. These are designed to support the provision of alternative programmes and in-school support to meet the needs of all vulnerable and challenging children, including those not ready for mainstream education⁹. Primary schools will also use delegated funding to make the same provision and may also access support from Oakfield Schools for school to school support system and behaviour pathways (see appendix 2 - Leicestershire Behaviour Support (Primary)).
- 5.6. The Fair Access Protocol should not be used as a means to circumvent the normal in-year admissions process. A parent can apply for a place as an in-year admission at any point and is entitled to an appeal when a place is not offered¹⁰.
- 5.7. Undue delays in admission, particularly of Children in Care, will be referred to the Adjudicator (LA Schools) or Secretary of State (Academies). An application to direct from the Secretary of State should only be requested as a last resort¹¹.
- 5.8. Schools must admit children and young people promptly, and arrange short term educational support themselves, pending longer term support agreed via the partnership¹².
- 5.9. A school/academy that has delayed a decision to agree an in-year admission for a child can result in the child meeting the Fair Access criterion of a period out of school for more than two months. In these circumstances the Fair Access decision will normally result in the child being allocated to the delaying school/academy.
- 5.10. The LA will inform schools and partnerships when it becomes aware of other admissions processes in train for a particular case.
- 5.11. Placements decisions need to be based on full information. This will drive the development of systems and procedures and will not delay the entry of individual students.

ibid paras 3.8, 3.12 and 3.13 - Ibid section 2.21

8 Ibid para 3.9, [*ibid para 3.15*]

9 The Secretary of State will base his decision having regard to whether due process, in line with the locally agreed provisions in the Fair Access Protocol, has been applied appropriately.

10 The Protocol should establish the education provision a child will receive whilst discussions to identify a school place are taking place. In the event that the majority of schools / academies 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 and academies up until the point at which a new one is adopted

11 Useful guidance on Alternative Provision is available at:
<http://www.education.gov.uk/aboutdfe/statutory/g00211923/alternative-provision>

6. The Aims of the Protocol

6.1 The In-Year Fair Access Protocol aims to:

- Identify the needs of vulnerable and challenging pupils including those who are not on the roll of any educational establishment quickly and sympathetically.
- Reduce the time that vulnerable and challenging pupils miss out on education.
- Ensure that all schools/academies admit vulnerable and challenging pupils on an equitable basis.
- Be fair and transparent, and to build the confidence of all schools/academies, in the placement decisions made.

7. Timing and Application

- 7.1. Schools, Academies and the Local Authority will act together, with a sense of urgency, guided by the best interests of the young person, to identify a suitable school or academy place for those qualifying under this protocol.
- 7.2. Schools and academies, will reply to requests from the Local Authority to admit a young person under the FAP without delay, normally within 7 days. (For Secondary admissions the Local Authority will contact the local SEIP Coordinator who will speedily activate locally agreed procedures to process the admission and will require schools to respond speedily.)
- 7.3. The Local Authority will always consult and carefully consider any response before using its power over maintained schools to direct the admission of a young person. If following consultation the LA decides to direct, it will inform the governing body and head teacher of the school. The LA will do the same when considering requesting a direction for a child to be admitted to an academy through the ESFA.
- 7.4. The governing body of a maintained school can appeal against a direction by referring the case to the Schools Adjudicator within 15 calendar days.
- 7.5. If an academy has not agreed a start date for the child within 15 calendar days, the local authority can apply for a direction from the Secretary of State via the ESF, who acts on his behalf in these cases. (Where a secondary academy has refused an admission following a decision by the local SEIP to allocate a child the LA expects that the academy will agree a starting date for the child or set out its reasons for refusal in writing to the local authority and the Chair of the SEIP within 15 calendar days. The LA must not make a direction until

the 15 days have passed since the decision to allocate the child to the school has been made by the local SEIP.)

- 7.6. Looked After Children are particularly vulnerable. The Fair Access Protocol does not apply to LAC and schools have a duty to admit LAC when a request for admission is made. The admission authority of a school must inform the LA within 7 days if it wishes to object to the admission of a LAC but such objections are likely to be over ruled.) (Local arrangements are in place in some SEIPs to note admissions of children in care to schools in order to inform any Fair Access admissions decisions that school partnerships may need to take subsequently.) (There is separate guidance for SEIP co-ordinators on their role in the admission of children in care, particularly those who remain the responsibility of other local authorities but are resident in Leicestershire.)
- 7.7. The Fair Access Protocol will not apply to a LAC, a previously LAC or a child with an EHCP in respect of naming the school in question, as these children must be admitted¹³. Appendix 2 provides further information on the different admissions processes.
- 7.8. Admissions 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 assessed for special educational needs.
- 7.9. Additional support for children in the following categories should be sought from:
- SEN. Through SENA (Special Educational Needs Assessment) for children with SEN Education Health and Care Plans,
 - In the care of Leicestershire CC. Through the Virtual School for Leicestershire Children in Care,
 - In need of multiagency support, Through a request for services e- form¹⁴. (Early Help Assessment.)
 - In care but are the responsibility of a local authority other than Leicestershire. The virtual school of the originating local authority and through the SEIPs – contact the Co-ordinator.
- 7.10. Over subscription, including an individual Year Group that is regarded by a school/academy as “full”, cannot be used as a reason for refusing the admission of a child allocated to the school under the terms of the Fair Access protocol. Receiving schools are responsible for completing any necessary risk assessment as part of the admissions procedures. Risk assessments should be based on available information and updated if necessary when new information is received. The completion of a risk assessment is not a reason to delay entry for more than 3 school days.

¹³ DfE School Admissions Code (2014) para 3.12

¹⁴ <https://www.leicestershire.gov.uk/education-and-children/special-educational-needs-and-disability/education-and-childcare/get-help-with-your-childs-progress/assessment>

8. Responsibility for Pupils and Transfer between Secondary Education and Inclusion Partnerships (Secondary aged children only)

8.1. Children and young people are the responsibility of a SEIP if:

- They attend a partnership school or live within the county area of Partnership
- They attend a partnership school, but live outside the county and been subject to a second qualifying permanent exclusion within two years

8.2. Where children and young people transfer schools up to the end of KS3, the receiving school/partnership can expect the departed school/partnership to continue to fund any current alternative provision for a period of up to 6 weeks to allow new arrangements to be established.

8.3. Leicestershire Secondary Schools have agreed to minimise the movement of students between schools once they have entered Key Stage Four at the start of Year 10. Unless there is an overriding reason related to the welfare of a child **any Fair Access cases for KS4 students who seek to move from one Leicestershire School to another will be turned down by the local SEIP and the original school will be asked to retain the child on roll.** Full details of the local agreement are in Appendix Two.

8.4. In the Secondary Sector Fair Access Protocols operate within the five SEIPs and their associated families of schools. Where a SEIP is approached for a school place under Fair Access and the pupil lives and has been educated in another area, the partnership will make a referral to the “home” partnership. SEIPs may use the template letter in Appendix 3.

9. Fair Access Procedures

9.1. The LA’s School Admissions Service will lead the Fair Access Protocol for primary aged children in partnership with Oakfield Schools and for secondary schools in partnership with the SEIPS as outlined in 3.2.

9.2. SEIPS will establish and maintain core groups to:

- Receive referrals for school places and/or additional support under this protocol
- Use their best endeavours to ensure children resident in their area receive appropriate educational provision when out of school pending placement under this protocol
- Organise the collection of additional information about the case to assist with decision making of the group

- Agree a school and start date in response to a request for placement at a school in the local area, and inform the LA Admissions Service
- Keep records of all referrals and their outcomes
- Provide standard reports for the annual LA report to the national Schools Adjudicator on the operation of the protocol.

9.3. Where schools do not accept the FA decisions of the partnerships (secondary) or the LA School Admissions Service (primary) so that a child remains without a place:

- For secondary aged children the SEIP will inform the LA's School Admissions Service that they are unable to place, and for primary the individual school that refuses to accept a pupil must inform the LA's School Admissions Service. The response to the LA must be within 15 working days.
- The LA School Admissions Service formally writes to a nominated academy/school¹⁵ indicating their intention to issue a letter of direction¹⁶ asking for a response as swiftly as possible and within the maximum allowed by regulation of 15 days, either in response to inability to place or a refusal to accept, or no response to a partnership decision within 7 working days.
- Any response from the school will be given careful consideration. If the LA accepts the reasons for refusal, the local SEIP will be asked to reconsider the placement decision (secondary) or a further academy/school will be approached (primary). If the LA do not accept the reasons, or no response is received within 15 days, a formal letter directing the academy/school to admit will be issued. The letter will explain the LA's reasons for rejecting the school's case.
- The governing body of an Academy can appeal to the Education Funding Agency, within 15 days from the letter of direction. Schools can similarly appeal to the Schools Adjudicator.
- If the Academy/School does not admit, the LA will consider applying for a direction from the Education Skills and Funding Agency (ESFA) in the case of Academies or the Secretary of State in the case of Schools.

15 The LA will nominate the nearest school to the child's home address, unless that school has already accepted significantly more fair access admissions than other schools in the area in that school year. Schools should expect to admit to an individual year group at least two FAP admissions during a school year (Aug- July),. Further nominations will again be based on next nearest to home.

16 - For Academies, the ESFA issue directions based on referrals from Local Authorities.

- 9.4. Operational procedures are summarised in flow chart form in Appendix 2. The form for lodging appeals with the ESFA against a direction to admit is available at: [https:// www.gov.uk/government/publications/academy-admission-request-form](https://www.gov.uk/government/publications/academy-admission-request-form)
- 9.5. Any school may ask the LA to consider action under this protocol where it does not wish to admit a pupil with challenging behaviour outside the normal admissions round. The National School Admission Code (under section 3.12) states that this will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children. This provision does not apply to LAC, Children who have previously been in Care, or Children with EHCP needs.

10. The process for requesting that the Secretary of State direct an Academy to admit a child

- 10.1. The Local Authority and Academies are expected to mediate between themselves before a request is made to the Secretary of State to direct an Academy to admit a child.
- Therefore if a school/academy fails to comply with a Fair Access decision the School Admissions Service will ensure that reasonable efforts have been made by the SEIPs Chair and staff and by Local Authority Officers to resolve the issue and secure a place for the child (secondary)
 - Reasonable efforts have been made by Admission Team staff, Oakfield staff and by Local Authority Officers to resolve the issue and secure a place for the child (primary)
 - It has carried out a scrutiny of the records of the decision-making process for Fair Access to ensure that the process is in line with the Protocol and National guidance. Once satisfied on these three points the Local Authority will have no option but to report the Academy to the ESFA: <https://www.gov.uk/government/publications/academy-admission-request-form>
- 10.2. Where reviewing an Academy direction, the ESFA will act on behalf of the Secretary of State to consider whether due process has been followed in applying the provisions of the Fair Access Protocol.
- 10.3. In requesting a direction from the Secretary of State, the Local Authority must provide evidence that the provisions of the Fair Access Protocol have been applied in a fair and appropriate manner, the Academy's reasons for refusal and the Local Authority's response.
- 10.4. The Local Authority should send the information using the above template link to the Education Funding Agency. On receipt of a request to direct, the ESFA will inform the school that it has received a request for a direction. The letter will request that the Academy provides any evidence other than that already

received that the process has not been properly applied within seven calendar days. (The admission authority for an Academy must inform the LA within 7 days as to whether it will admit a child in care. If the LA decides after this consultation to direct admission, any undue delay will be referred to the Secretary of State.)

10.5. Where the Secretary of State is asked to consider a direction he will make that decision on the basis of the papers provided, taking into account:

- Whether the local Fair Access Protocol has been applied appropriately;
- The arguments of the Academy and Local Authority, whether the Local Authority has considered the arguments for refusal and why it still considers the Academy to be the appropriate provision for the child;
- Whether the Academy has been asked to accept a disproportionate number of children under the Fair Access Protocol compared to other schools.
- Evidence that the provisions of the Fair Access Protocol have been applied in a fair and appropriate manner, the Academy's reasons for refusal and the Local Authority's response.

10.6. The Local Authority should send the information using the above template link to the Education Funding Agency. On receipt of a request to direct, the Education Funding Agency will inform the school that it has received a request for a direction. The letter will request that the Academy provides any evidence other than that already received that the process has not been properly applied within seven calendar days. (The admission authority for an Academy must inform the LA within 7 days as to whether it will admit a child in care. If the LA decides after this consultation to direct admission, any undue delay will be referred to the Secretary of State.)

10.7. Where the Secretary of State is asked to consider a direction he will make that decision on the basis of the papers provided, taking into account:

- Whether the local Fair Access Protocol has been applied appropriately;
- The arguments of the Academy and Local Authority, whether the Local Authority has considered the arguments for refusal and why it still considers the Academy to be the appropriate provision for the child;
- Whether the Academy has been asked to accept a disproportionate number of children under the Fair Access Protocol compared to other schools.

11. Permanent Exclusions

- 11.1. Section 3.8 of the School Admissions Code makes clear that in the normal admissions round, admissions authorities must not refuse to admit children on the basis of their poor behaviour elsewhere. The same section also states that admissions authorities do not have to comply with parental requests for places for a period of two years following a second permanent exclusion¹⁷.
- 11.2. In Leicestershire the SEIP Agreement with Secondary Schools sets out that any permanently excluded child will be placed on the roll of a secondary school in the partnership area where they live. This is because the county council has delegated all funding for provision for permanently excluded secondary pupils to schools. Partnerships will therefore use the FAP to allocate a place for a child who has had two permanent exclusions, although it is likely that the child will have education provided through Partnership programme management.

12. Duty from the 6th day following a Permanent Exclusion

- 12.1. All LAs have a duty to arrange full-time educational provision for permanently excluded children from the 6th day of a permanent exclusion. For Primary Pupils provision is made via the Oakfield Short Stay Schools. For Secondary Pupils the arrangements are commissioned to the SEIPs to deliver through Partnership Agreement.
- 12.2. Schools and academies are responsible for educational provision for fixed term exclusions from the 6th day.

13. FAP and Pupils not ready for School

- 13.1. Paragraph 3.9 of the Code requires FAP to set out how the LA will use a provision to ensure that the needs of pupils who are not ready for mainstream schooling are met.
- 13.2. For Primary aged pupils, the local authority maintains a Pupil Referral Unit, for pupils with challenging behaviour. Pupils may have been permanently excluded or dual registered with a mainstream school. The provision is designed as a revolving door facility, so that pupils during their stay of around 6-12 months, they are assessed, supported academically and socially, and prepared for either a return to mainstream provision or special education placement.

¹⁷ The twice excluded rule does not apply to children who were below compulsory school age at the time of the exclusion, children who have been re-instated following a permanent exclusion (or would have been had it been practical to do so), and children with statements of special educational needs.

- 13.3. A range of early help services are available in local areas to support families in difficulty. Support can be accessed via a request for services e-form: <http://www.leicestershire.gov.uk/education-and-children/social-care-and-supporting-families> (and click on - [Early help for children and young people for the e-form.](#))
- 13.4. For secondary pupils, the SEIPs have devolved resources to provide alternative education programmes for students who cannot attend mainstream school. Early help services are also available 13.3.

14. Fair access and Elective Home Education (EHE)

- 14.1. Secondary Schools in Leicestershire will use the Fair Access Protocol and Procedure for CYP applying to schools after a period of EHE if the following criteria apply:
- The child is returning to the same phase of education;
 - The child has been out of secondary school for no more than a period of two years;
 - The child has not moved address so that the journey to the assigned school (or another setting in the partnership area) would be unreasonable.
- 14.2. Schools agree that the default position for a Fair Access decision will be to return the child to the roll of the school that he or she previously attended.
- 14.3. If the child has additional needs arising from a previous or existing EHCP the child may be referred by the school to the Partnership for support so that the child may not attend the on roll school. The SEIPS may decide that the child should be educated full or part time in the on roll school, another partnership school and/or in a partnership programme.

15. Transport

- 15.1. All arrangements for transport are detailed in the local authority's transport policy: <http://www.leicestershire.gov.uk/education-and-children/school-transport>

16. Dual Registration/ Managed Moves

- 16.1. In order to provide support for children who may be at risk of permanent exclusion, the SEIPS or the Short Stay Schools - Oakfield (North and South) may approve a managed move or a dual (or multiple) registration. Such arrangements should be made in accordance with the Managed Move and Dual Registration Protocols.
- 16.2. Leicestershire's secondary schools and academies should make decisions about Managed Moves in accordance with the Managed Move Protocol - see

appendix 7. Each SEIP has its own local arrangements which are in line with this protocol. SEIPs are required to report Managed Moves via the Partnership Register in order that the LA and SEIPs can review the impact of this strategy for children and young people.

17. Reporting Requirements

17.1. Local Authorities must produce an annual report on admission and Fair Access for all schools and academies in their area¹⁸. This report must be published locally and then sent to the Adjudicator by 30 June each year. Information for this report must be collated, updated and provided by the SEIPS and Oakfield Referral Unit on request. The report must cover as a minimum:

- Information about how admission arrangements in the area of the local authority serve the interests of looked after children and previously looked after children, children with disabilities and children with special educational needs, including any details of where problems have arisen;
- an assessment of the effectiveness of Fair Access Protocol and co-ordination in their area, including how many children were admitted to each school under the protocol;
- the number and percentage of lodged and upheld parental appeals;
- and any other issues the Local Authority may wish to include.

18. Children Missing Education

18.1. Children and Family Services maintain information about

18.2. Children missing education¹⁹ as required by guidance issued in ²⁰

18.3. Therefore, it is vital that all placements are resolved as quickly as possible to prevent pupils missing education.

18.4. The named individuals responsible for receiving details of children found missing from education and for brokering support for them through the most appropriate agencies are:

- Helen Bakewell, School Inclusion Team, County Hall, Glenfield, Leicester, LE3 8RF
- Tel: 0116 3052071 - email: cme@leics.gov.uk

18 Area – is defined as the area that Leicestershire is responsible for to delivery statutory education

19 - <http://www.leicestershire.gov.uk/education-and-children/schools-colleges-and-academies/school-admissions/applying-for-a-school-place> This includes those with medical and anxiety related conditions.

20 - <http://www.education.gov.uk/g00229816/children-missing-education>

- 18.5. The process of tracking pupils without an educational placement is part of our collective responsibility and on-going commitment to safeguarding the welfare of young people. It is vital that anyone who becomes aware that a child is not, or does not appear to be in education, notifies the named person with the responsibility for pupils missing from education in Leicestershire²¹.

19. Information sharing and security

- 19.1. All parties must ensure that all information shared for the purpose of this area of work should be transferred in accordance with the relevant Information Sharing Agreements, using safe, secure and if necessary encrypted channels.

20. Review Arrangements

- 20.1. The LA will review the fair access protocol after twelve months, and then at least every three years. The LA will not refuse a reasonable request from schools or other interested parties to undertake a review. While any review is underway, the existing protocol applies

21 - <https://www.leicestershire.gov.uk/education-and-children/child-protection-and-safeguarding/children-missing-from-education>

Relevant Legislation

This appendix sets out the primary legislation most relevant to admission and Fair Access decisions. Admission Authorities, Schools, Adjudicators, Appeals Panels, Local Authorities and Maintained Schools **must** comply with the relevant law as well as acting in accordance with the provisions of this Code. This Code and the School admission Appeals Code (the Codes) is applied to Academies through their Funding Arrangements. The information here aims to signpost the relevant law; it does not aim to provide definitive guidance on interpreting the law that is for the courts

Primary Law

Equality Act (2010) <http://www.legislation.gov.uk/ukpga/2010/15/contents>

School Standards and Framework Act (1998)

[http:// www.legislation.gov.uk/ukpga/1998/31/contents](http://www.legislation.gov.uk/ukpga/1998/31/contents)

School Admissions Code (2014)

[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389388/School Admissions Code 2014 - 19 Dec.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389388/School_Admissions_Code_2014_-_19_Dec.pdf)

Guidance on Children Missing Education (July 2016)

<https://resources.leicestershire.gov.uk/sites/resource/files/field/pdf/2016/12/19/children-missing-education-policy-aug2016.pdf>

Annual Report of the Schools Adjudicator

<https://www.leicestershire.gov.uk/education-and-children/schools-colleges-and-academies/school-admissions/school-policies>

Extract from Fair Access Principles and Protocols
DFE Departmental Advice 2012

Principles

- Every local authority must have a Fair Access Protocol, agreed with the majority of its schools, in which all schools (including Academies) must participate since it is binding on all schools.
- Schools (including Academies) should work together collaboratively, taking into account the needs of the child and those of the school.
- There is no duty to comply with parental preference when allocating places through the Protocol but it is expected the wishes of the parents are taken into account.
- When seeking to place a child under a Protocol, all schools should be treated in a fair, equitable and consistent manner. Fair Access Protocols should not be used as a means to circumvent the normal in year admissions process.
- A parent can apply for a place as an in-year admission at any point and is entitled to an appeal when a place is not offered

Leicestershire Agreement re KS4 Roll

Leicestershire Secondary Education and Inclusion Partnerships Agreement

Re: Year 10 and 11 student moves.

Background

Following a discussion at LSH in 2016 and subsequent discussion in SEIPS Heads Groups the following has been adopted as part of the County Secondary Fair Access Protocol

Secondary schools recognise that they have responsibility for securing a school place for any child who needs it. We recognise that any move into a school in Years 10 and 11 is always problematic for school and student.

For Year 10 and 11 students seeking to move from one to school to another within a partnership:

- All partnership schools will discourage parental requests for moves from one partnership school to another for Year 10 & 11 students.
- Where the request is for a student who meets the Fair Access criteria the FA Panel will refuse the request and reallocate the student to the school where he or she was previously on roll.
- Where a student meet the Fair Access criteria as a result of being out of school for a period of time, the Partnership will reassign the student to his or her previous school (where that school offers provision for Year 10 & 11 students.)

Where the interests of the student are best served by:

- **attending another school**
- **part or full time partnership or alternative provision this agreement will not impede such arrangements.**

The student will remain on the roll of the current school and the school will remain involved in the planning and accountability for the student.

For Year 10 and 11 students seeking to move from one school to another across partnership boundaries the same approach will be applied unless:

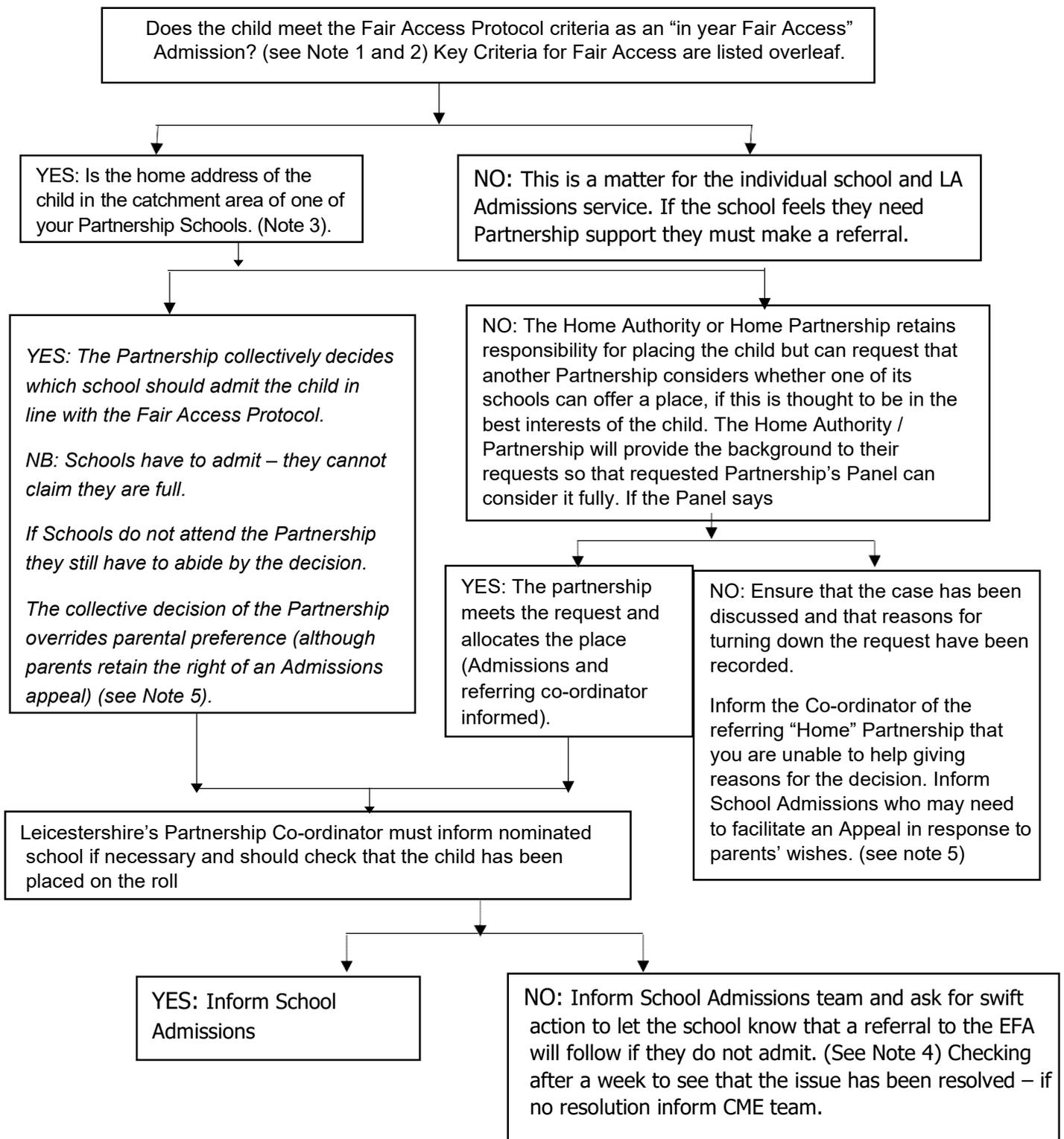
- The child has moved address to another partnership area
- The new partnership area has not yet adopted this approach

The normal Fair Access Process applies to any Year 10 and 11 students who

- moves into a Partnership area from another part of the country
- needs a school place as a result of losing a place in the private sector is permanently excluded by a Partnership school

Fair Access Flow Charts

Leicestershire Secondary Education and Inclusion Partnerships
Fair Access Process – Partnership and School Admissions Responsibilities



Notes as part of Appendix 3 Fair Access Flow Charts

Note 1: In the rare event of the Partnership disagreeing with Admissions as to whether a child is “Fair Access”

The Partnership should record its reasons for its view and the Co-ordinator and Chair should discuss the case with School Admissions.

Note 2: Occasionally a child will be judged as “Fair Access” where he or she had previously been on roll at a Partnership school.(see 2.1.2 below) (For example where a child has moved temporarily to another area and then returned, or been educated at home for a period.) In these circumstances Partnerships will normally allocate a place at the previous partnership school, on the basis that this is likely to be in the child’s best interests – and will override the aim of maintaining balanced allocations across the Partnership.

Note 3: The responsibility for ensuring that a “Fair Access” child is allocated a school place rests with the Partnership in which the child lives. The “home” Partnership may ask other Partnerships to consider offering the child a place if there is good reason for this. The “home” Partnership retains the responsibility for following this through, or in the event of the second Partnership being unable to help, offering a school place in one of its member schools.

Note 4: School Admissions will respond to your report that one of your schools is refusing to admit a child allocated a place by your Fair Access process as follows:

- Phone or personal contact with school to explain why the decision needs to be implemented
- Warning letter setting out the LAs responsibility to report breaches of its FAP to the Education Funding Authority
- Notification to the EFA that a school is in breach of the FAP

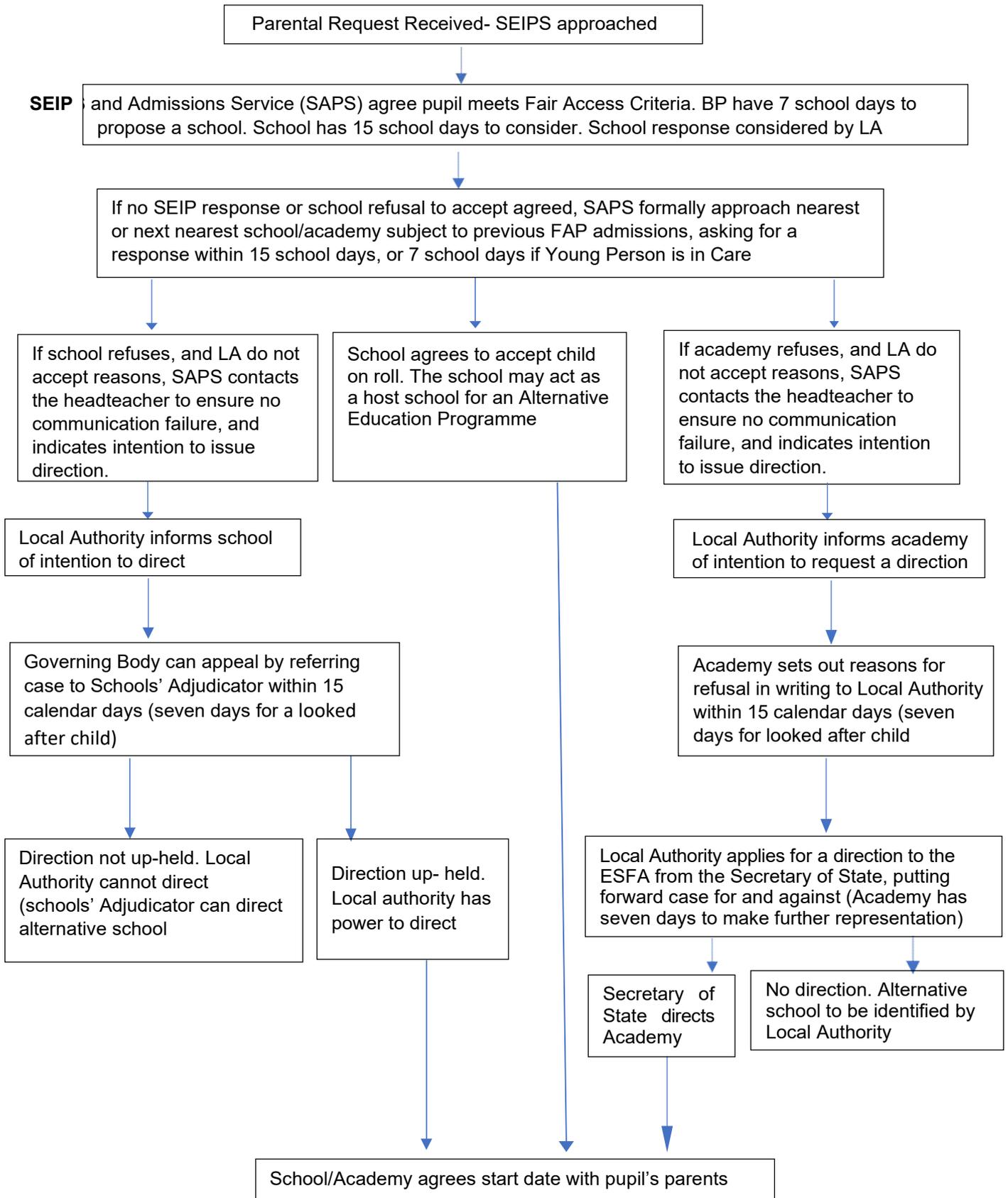
Note 5: In the very rare circumstances where a Parent appeals against a FAP admissions decision the Appeal would be handled by School Admissions. It is important that Partnerships have an evidence trail to show how their decisions have been reached, including where they have been asked to consider a case from another Partnership or LA. This provides key evidence for Admissions in seeking to resist the Appeal

Distinguishing the Five admissions processes: Fair Access, Children in Care, Children with Statements, Within Year Admission, Normal Admissions Round

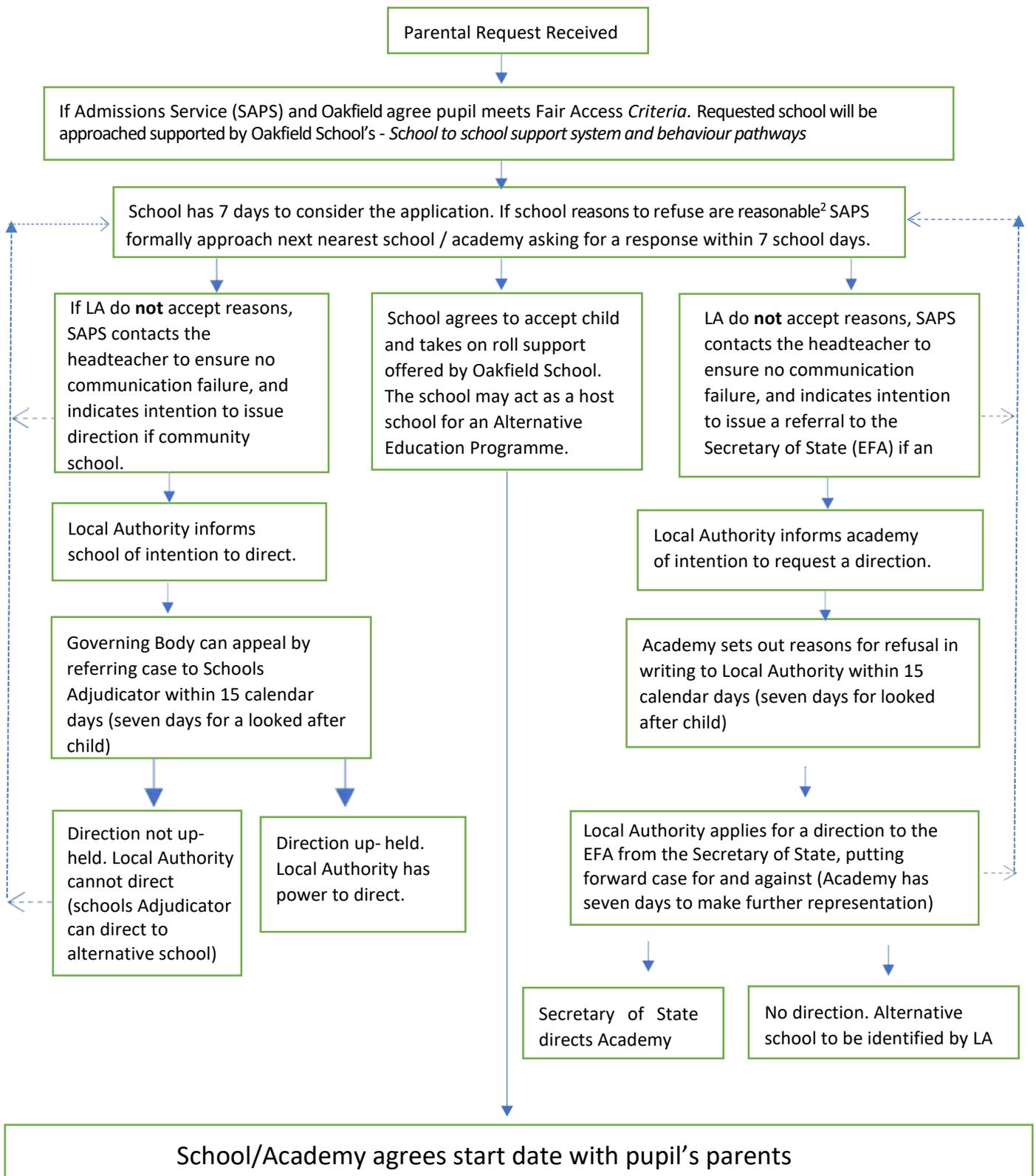
Admission of Vulnerable Children who may need additional support:

Does the referral information suggest that the child may need additional support? Triggers include: poor school attendance history, exclusions, school moves LAC, Social Care involvement	NO	Check if other Fair Access criteria apply, PRU, Criminal Justice, out of ed for 2months+, GRT, refugee, asylum seekers, Homeless, Unsupportive family who have not sought a school place, Children who are carers, Children with SEN or disability but no EHCP
Is the child living in your SEIP area?	NO	Refer to the correct local SEIP
Does the child have an EHCP	YES	Refer to SENA who manage admissions for EHCP children
Is the pupil in care and the responsibility of LCC?	YES	Refer to the Virtual School who support the child's social worker in applying for a school place through the normal admissions process
Is the pupil in Care and the responsibility of another local authority	YES	The child's social worker, supported by the Virtual School from the home LA is responsible for approaching schools to obtain a place but our experience is that the local SEIP Co-ordinator will need to be involved. The local SEIP may wish to treat the case as Fair Access in order to help decide which school is best for the child. Schools selected must accept the child because admission is governed by children in care regulations
Does the child meet the Fair Access Criteria	YES	Follow the Fair Access Protocol
Is the child without additional needs as defined by the questions above?	YES	Either an "In Year Admission" dealt with by school and LA or part of the Normal Admissions Round

Leicestershire Fair Access Flow Chart (secondary)



Leicestershire Fair Access Flow Chart (Primary)



* Note: A community or voluntary controlled school cannot refuse to admit a pupil if requested by its own admissions authority.

* Triggers include: poor school attendance history, exclusions, school moves, SEN, LAC and Social Care Involvement.

Referral for Consideration under Home Protocol

Template Letter: School governors refusing FAP case, and passing back application back to nearest home FAP for consideration:

Dear Parent

Thank you for your application dated Z for a place at XXX County School. This was initially passed to the XX area partnership for assessment under the County Council's fair access protocol.

Fair Access Protocols are agreed locally for schools by all local authorities to ensure that unplaced children, and particularly the most vulnerable, are offered a place at a suitable school as soon as possible.

Following an initial assessment, your application for admission to XXX School has been refused on the grounds that the school already have a disproportionate number of challenging pupils on roll (however, you retain the right to appeal this refusal).

Department for Education advice is clear on Fair Access Protocols and states parental preferences do not have to be taken into account, and instead it is more important to find an appropriate school or provision that best meets the pupil's needs.

I have therefore arranged for your application to be referred to the relevant local authority for your home address area to consider your application under their fair access panel:

3.12 Where a governing body does not wish to admit a child with challenging behaviour outside the normal admissions round, even though places are available, it **must** refer the case to the local authority for action under the Fair Access Protocol.

For information contact details for your home Local Authority are: LA

Tel:

Email

Yours sincerely

Governing body of school

refusing appeal CC: Relevant

agencies



LEICESTERSHIRE COUNTY COUNCIL AND LEICESTERSHIRE SECONDARY EDUCATION AND INCLUSION PARTNERSHIPS

MANAGED MOVE PROTOCOL – SECONDARY SCHOOLS

INTRODUCTION

Managed Moves between schools are used in Leicestershire :

- as an intervention to reduce the risk of a child being permanently excluded
- as one way of meeting the needs of a child with semh SEN issues when measures taken in his or her current school do not prove to be effective in meeting those needs.

The arrangements for Managed Moves in the secondary sector in the County have been delegated to the five Secondary Education and Inclusion Partnerships (SEIPs). The SEIPs work with schools in their locality to support the process of managed moves in ways that are appropriate for children and young people locally. The SEIPs collect data on Managed Moves and report on behalf of all secondary schools on the impact that managed moves have on outcomes for Leicestershire learners. All five Partnerships adhere to a common framework of principles as follows.

Managed moves in Leicestershire normally take place within localities. SEIP staff will assist where managed moves between schools in different partnership areas are being considered.

Managed moves across Local Authority boundaries, particularly to and from schools in the City of Leicester are currently negotiated informally.

THE PRINCIPLES

1. Managed Moves require the agreement of the schools involved and the child's parents
2. Managed Moves begin with a trial period at the receiving school. The trial period will:
 - a. not normally exceed sixteen weeks
 - b. be supported by a transition plan setting out any additional provision for the child and the milestones to be used to judge whether the move is successful.
 - c. include at least two review meetings involving the originating and receiving schools
 - d. ensure that the outcomes of the review meetings are shared with parents/carers
3. During the trial period the child, supported by parents/carers will:
 - a. Remain on roll at the originating school
 - b. Attend the receiving school, who will record attendance and report it to the originating school
 - c. Follow all the practices and rules of the receiving school unless modified by agreement and recorded in the transition plan.
4. During the trial period the originating school will:
 - a. Follow any agreed protocols and procedures set out within the local SEIP. As a minimum the school must inform the SEIP of the decision to use a trial managed move for a named child.

- b. Transfer pupil funding to the receiving school on a pro rata basis
 - c. Maintain involvement in reviews of the child's progress
 - d. Retain final responsibility for any decisions about the child's roll, to include and decisions about fixed term exclusions, partnership referrals or permanent exclusions.
5. During the trial period the receiving school will:
- a. Follow and agreed protocols and procedures set out within the local SEIP including reporting on the outcomes of the trial period to the local SEIP
 - b. Implement the agreed transition plan
 - c. Keep the originating school informed of attendance, progress and any significant incidents concerning the child.
6. During the trial period the local SEIP will:
- a. Offer any support agreed in local protocols and procedures to the child, parents/carers and schools involved
 - b. Record the managed move in the Partnership Register
 - c. Maintain records of managed moves in order to assist in ensuring that individual schools do not face additional demands significantly in excess of the local norm.
7. At the end of the trial period the schools involved, parents/carers and if appropriate, SEIP staff will decide whether the child should be accepted on to the roll of the receiving school or return to the originating school. The on-roll school is then responsible for any further interventions that may be deemed necessary. Details of the decision will be reported to the local SEIP and to the Local Authority.

Revised Nov 2020

