

## FAIR ACCESS PROTOCOL

### 1. Introduction

- 1.1 In line with the School Admissions Code 2014, Local Authorities must have a Fair Access Protocol (FAP) agreed with the majority of schools in its area. This Protocol has been produced to comply with the Admissions Code and takes account of the Fair Access Protocols: Principles and Process, departmental advice issued in November 2012. **Decisions made under this protocol are binding on all schools.**
- 1.2 Fair Access Protocols (FAPs) exist to ensure that, outside the normal admissions round, unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible. In agreeing a Protocol, the local authority must ensure that no school, including those with available places, is asked to take a disproportionate number of children who have been excluded from other schools.
- 1.3 The use of the Protocol is triggered when a parent/carer of an eligible child has not secured a place under normal in-year admission procedures. The majority of children requiring a school place will continue to be admitted to their local school in accordance with the usual admission procedures, rather than through this Protocol. The South Gloucestershire FAP can be used to enable the placement of children who fall within the categories set out in **Section 3** of this document and have not been able to secure a place in a school through the normal admission procedures.
- 1.4 The aim of this Protocol is to place a child in a school or alternative provision within 10 days from the decision of the Fair Access Panel. The flow chart in **Appendix 1** sets out the actions required by schools and the Local Authority in order to meet this aim.
- 1.5 A school will not be expected, automatically, to take a child with challenging behaviour in place of a child excluded from that school. This Protocol applies to children who reside in South Gloucestershire, except for applications under 4.4 where it applies to children on roll at a school in South Gloucestershire.
- 1.6 Cases where children are permanently excluded (**Category i of Section 3.1**) sit within the Fair Access Protocol. The Fair Access Protocol is designed to ensure

effective and timely placement decisions following a permanent exclusion. Parents/carers are encouraged to accept the decision made by the Fair Access Meeting under the Fair Access Protocol. This process is most likely to ensure a successful outcome. This process does not affect the statutory rights of parents/carers.

## 2. Definitions

In this Protocol the following terms are used:

- 2.1 **Alternative provision** means education outside of school, when arranged by the local authority or schools. It can range from pupil referral units and further education colleges to the voluntary or private sector;
- 2.2 **Children returning from the criminal justice system** includes young people returning from secure accommodation;
- 2.2 **Children** refers to children and young people of school age;
- 2.3 **Head Teacher** includes Principal, Head Teacher or the title designated by the academy for the person who leads the school;
- 2.4 **Schools** includes academies, maintained settings, free schools, studio schools and university technical colleges;

### 3. Categories of eligible children who may have difficulty in securing a place

3.1 The categories of children who may have difficulty in securing a place are set out in the table below. The majority of children will be dealt with under the normal admission arrangements. Where children are unable to secure a place through the normal admission arrangements, they are referred to the Fair Access Meeting. Children listed in categories b), i) and j) are the only categories that are automatically referred for consideration at a Fair Access meeting.

Categories of Children who may have difficulty in securing a place	Children in these categories will normally be dealt with by the appropriate Admission Authority as part of in-year admissions	Fair Access Meeting
a) Children from the criminal justice system who need to be reintegrated into mainstream education	✓	
b) Children from pupil referral units who need to be reintegrated into mainstream education		✓
c) Children who have been out of education for two months or more	✓	
d) Children of gypsies, roma, travellers, refugees and asylum seekers	✓	
e) Children who are homeless	✓	
f) Children with unsupportive family backgrounds for whom a place has not been sought e.g. families working with children's social care or health professionals	✓	
g) Children who are carers	✓	
h) Children with special educational needs, disabilities or medical conditions (but without a statement)	✓	
i) Children who have been permanently excluded		✓
j) Children who have been refused admission by school's governing bodies due to challenging behaviour		✓
k) Children who have to move school because of domestic violence (whether staying in a refuge or with friends/other relatives)	✓	
l) Children of UK Service personnel	✓	

#### 4. Deciding when to make an application for action under the FAP

- 4.1 The operation of the FAP is triggered when the information provided by a parent/carer on an in-year application form or other information obtained by a school or the local authority demonstrates that the child falls within a category specified in Section 3 of this Protocol. However, the majority of children will be admitted through the normal admission process. The FAP must not be used as a means to circumvent the normal admission process. Where own admission authorities receive an in-year application and the school has a vacancy in the relevant year group, the child must be admitted. Where there are no places available, own admission authorities must provide details to parents/carers of their right to an independent appeal. Only applicants that meet the requirements set out in the table in 3.1 may be considered under the FAP.
- 4.2 On receipt of requests for cases to be considered under the FAP, LA officers will check that they cannot be placed under the normal admission arrangements. Following a request, an email response will be given by the Department advising if:
- a) child will be considered at a FA meeting; or
  - b) advising the school on the relevant next steps.
- 4.3 Children with a Statement of Special Educational Needs or EHC Plan, Looked After Children or previously Looked After Children should not be referred under the Fair Access Protocol as their admission falls outside of this process.
- 4.4 **Challenging behaviour:** Where a governing body does not wish to admit a child with challenging behaviour (defined below), outside the normal admissions round, it must:
- (i) apply to the Admissions and Transport Team for action under the FAP;
  - (ii) present their case for refusal in writing, demonstrating challenging behaviour (see 4.4 above) and how the admission of the child would impact on the successful outcomes of other children in their school, providing supporting evidence.
- 4.5 Challenging behaviour is defined as ‘serious criminal behaviour resulting in a conviction or a police caution or other seriously disruptive behaviour that is specifically endorsed as impacting or likely to impact upon staff or children at the school. This should not be general comments about prior poor behaviour but specific evidence that the threat to staff or children’s well-being, and evidence that there would be an **impact on the requested school** or where there is a current or recent evidence of criminal involvement **with a child at the school**.

Note: Admission 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 to be considered for an Educational Health Care Needs assessment.

## 5. Fair Access Protocol Arrangements

- 5.1 The majority of children listed in the table in Section 3 will be allocated a school place either under the normal admission arrangements or through the Fair Access meeting.
- 5.2 Applications to the Fair Access meeting can be made by any educational establishment in South Gloucestershire provided they are in category b), i) or j).
- 5.3 If the child is currently on roll at a South Gloucestershire school, the school should complete a Fair Access application form, to provide in-depth information relating to the child's needs, parent/carer preference and signed by the head teacher and chair of the governing body. The completed forms should be sent to Kingswood Business Support for the attention of Business Support FAP via S.O.F.I.E. or secure mail.
- 5.4 The parent/carer will be invited to send their views to Kingswood Business Support, for the attention of Business Support FAP via S.O.F.I.E. or secure email. Parents/carers will be advised by the sending school that their application for a school place has been sent to the Fair Access meeting prior to the meeting taking place.
- 5.5 For children considered by the Fair Access Meeting, the panel representatives will take into account the circumstances of the individual child, including parent/carer preference and any concerns from schools about admission, seeking to protect any one school from a disproportionate number of placements of children from vulnerable groups. In deciding a placement, every effort will be made to ensure that transport arrangements, which may be the responsibility of parent/carers, are reasonable and cost effective.
- 5.6 All schools are expected to respond with a decision to applications by local authorities to admit under FAP **within seven calendar days**.
- 5.7 Children who have been excluded will be discussed at the Fair Access Meeting. The Fair Access Meeting will determine a school place taking into account the circumstances of the individual child. Parent/carer preference will be obtained and written representation of the parent/carer, if provided, will be considered. Panel representatives will consider which school will be best able to meet the needs of the child, taking account concerns from schools about admission and seeking to protect any one school from a disproportionate number of placements

of children who have been previously permanently excluded. In deciding a placement, every effort will be made to ensure that transport arrangements, which may be the responsibility of parent/carers, are reasonable and cost effective.

- 5.8 If a meeting is convened under the FAP this will operate as set out in the terms of reference in **Section 9** and will act in accordance with the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 5.9 There is no duty for local authorities or admission authorities to comply with parent/carer preference when allocating places through the FAP. The parent/carer of a child refused admission under this Protocol still has a right of appeal to an independent admission appeal panel.
- 5.10 The fact that the admission number has been reached or exceeded cannot be given as a reason for not admitting a child under this Protocol unless placement would contravene the regulations on infant class size. Schools are able to admit over their published admission number (breach) to admit children under the FAP.
- 5.11 Schools must not require that an appeal be heard before a child is admitted under the Protocol and must not refuse a child on the basis that an appeal was previously unsuccessful.
- 5.12 It is acknowledged that some schools may hold waiting lists during the academic year, however the DfE School Admissions Code (Section 2.14) requires children being placed under Fair Access to have priority. Children allocated a place at a school in accordance with the FAP take precedence over those on a waiting list or awaiting appeal.
- 5.13 A start date will be agreed for placement on roll within 10 school days from the date of the Fair Access Meeting decision.

## **6. In the Event of Disagreement**

- 6.1 If a school disputes the decision of the Fair Access Meeting naming their school, they must inform the LA, within one working day, so that a meeting can be arranged.
- 6.2 The Head of Education, Learning and Skills, Local Authority Officer will review the process followed by the FA meeting and the reasons given for their decision. An offer of a mediation meeting with the school will be made and consultation and negotiation with the school/governing body and the parents and child will take place.

- 6.3 In the case of a maintained school, if following the meeting the school refuse to admit they will notify the LA within 7 calendar days of the meeting. The LA will consider issuing a direction that the child be admitted to the school. Prior to issuing a direction, the local authority will notify the governing body of the school, the parent/carer and the child, if s/he is over compulsory school age.
- 6.4 The governing body of a maintained school can appeal the decision of the local authority to direct by referring the case to the School Adjudicator within 15 calendar days.
- 6.5 In the case of an academy, before seeking a direction, the LA will consult the governing body of the school, the parent and the child, if they are over compulsory school age.
- 6.6 If the academy is not in agreement, it will write to the local authority setting out its reasons for the refusal to admit within 15 calendar days (providing contact details to cover any approaching bank holiday or holiday periods).
- 6.7 If the academy has not agreed a start date for the child within 15 calendar days, the local authority will start the process for requesting a direction from the Secretary of State via the Education Funding Agency (EFA), following the DfE advice.
- 6.8 While a decision is being made, the child will be educated at the Pupil Referral Unit (PRU). In the event that the Secretary of State does not uphold the decision made at the Fair Access Meeting, the child will remain at the PRU and a new application will be required under FAP.

## **7. Powers and Responsibility**

- 7.1 Local authorities and schools in partnership are responsible for providing suitable full-time education for all children. Children who are not receiving a suitable education will be placed at PLC by the LA pending consideration by Fair Access Meeting.
- 7.2 South Gloucestershire LA will use its power of direction to support a decision under Fair Access.

## **8. Review**

- 8.1 In the event that the majority of schools in the local authority can no longer support the principles and approach of the South Gloucestershire Council FAP, Head Teachers should initiate a review with the local authority. The existing Protocol remains binding on all schools up until the point at which a new one is adopted.

## 9. **Reporting, Monitoring and Compliance**

- 9.1 The local authority is required to include an overview of admissions under the FAP and identify any issues in its operation in its annual report to the Schools Adjudicator.

## 10. **Fair Access Meeting - Terms of Reference**

- 10.1 **Co-ordination and Administration:** The Admissions and Transport Team and the Attendance Exclusions and Licensing Team will confirm an agenda with the Chair of the Fair Access Meeting five school days prior to the meeting. The local authority will distribute the relevant paperwork at least five school days prior to each meeting via S.O.F.I.E. or secure email.
- 10.2 **Membership, Chair and Quorum:** The Fair Access Meeting will consist of at least three head teachers to determine a school placement for a child referred under the FAP.
- 10.3 For the meeting to be quorate three head teachers must be present.
- 10.4 Annually, in April, a chair and vice chair will be elected from the Head Teachers of schools in South Gloucestershire to commence the role from the 1st September for that academic year. Dates for meetings will also be agreed. Head teachers vote from nominees and the chair and vice chair is declared by way of a majority vote.
- 10.5 The elected head teacher will chair the meetings for the academic year. The vice chair will chair in the event of the chair's absence. The head teachers are all voting members, however head teachers cannot vote on cases that have been made by their school, under the FAP. Local authority colleagues **do not** have a right of vote. They attend in an **advisory** capacity.
- 10.6 **Communication of Decision:** The chair of the Fair Access Meeting will formally notify the allocated school of the decision by telephone within 24 hours and followed up in writing by secure mail.
- 10.7 **Actions for Schools Following a Fair Access Meeting of the Applying School:** Where relevant, the applicant will make contact with the recommended receiving school to share all relevant information to plan admission.
- 10.8 **Action by Receiving School:** It is the responsibility of the receiving school to ensure that the child accesses education to meet the needs of the individual child as identified by the school. This will be reviewed at the next FA meeting. The Admissions and Transport Team will gather information from the named school and will add this as an item to the agenda.

- 10.9 The receiving school will arrange an induction meeting with the relevant personnel to plan the integration and admit the child onto the school roll within 15 calendar days of the FA meeting's decision.
- 10.10 Where the Fair Access Meeting accepts that the child should not be admitted to the requested school under 4.4 of this protocol, the FA Meeting will name an alternative placement which will normally be in another mainstream school in South Gloucestershire. However, a school will not be named through the Protocol if the child concerned does not live within South Gloucestershire.
- 10.11 The parent/carer of a child refused admission retains the right to appeal to the independent admission appeal panel.

## **11. Meetings**

- 11.1 Fair Access meetings will be scheduled every four to five school weeks on an agreed day. There will be nine panel meetings a year. A draft schedule will be shared by relevant LA officers in term 5. They will be cancelled if there are no cases to discuss. They will not take place during the last week of each term. The details are circulated by S.O.P.H.I.E. prior to the Fair Access meeting to all schools to allow for contribution of additional evidence that might affect placement decisions.
- 11.2 Where a child has been permanently excluded but the governors or equivalent have not met to consider the head teacher's decision, the PEPP may consider placement decisions if all the information is available. Admission arrangements must not progress until there is confirmation of the decision to permanently exclude.
- 11.3 If a Panel Member is not able to attend, s/he will seek to find a replacement representative and notify the chair.
- 11.4 **Process for Fair Access Meetings:** Meetings are **not** open public meetings. Representation from all relevant parties may be made securely, in writing, and need to be received at least seven school days before the meeting.
- 11.5 If the child is currently on roll at a South Gloucestershire school or parents/carers request a place at an alternative South Gloucestershire school and this place is refused (see section 4) and the child is in category b), i) or j) the school may complete a Fair Access application form. This will provide in-depth information relating to the child's needs, and parent/carer preference, to be signed by the head and chair of the governing body.

The completed forms should be sent to the following email address:

Business.SupportTeamKingswood@southglos.gov.uk for the attention of Business Support FAP via S.O.P.H.I.E. or secure email.

11.6 If a child does not live in South Gloucestershire, please see paragraph 1.5. The LA officers will check to see if the application is appropriate for consideration at the Fair Access Meeting and will let the schools know accordingly via secure email.

11.7 If it is appropriate, the LA will notify the parent/carers who will be invited to send their views to Kingswood Business Support via email to:

Business.SupportTeamKingswood@southglos.gov.uk for the attention of Business Support FAP via S.O.P.H.I.E.

Parents/carers will be advised by the sending school that their application for a school place has been sent to the panel prior to the panel meeting.

11.8 The Fair Access Meeting will consider the circumstances of the child and will decide which school should be approached to take the child.

11.9 When making decisions under FAP, Panel representatives will consider the following:

- the needs of the individual child are paramount together with a thorough consideration of the individual school or academy's ability to cater for these;
- all schools will be treated in a fair, equitable and consistent manner;
- a previous placement from Fair Access Meeting;
- any serious concerns about the admission – from all schools in South Gloucestershire;
- any previous placements at a particular school before determining an appropriate placement. This needs to be documented clearly in the Fair Access application form;
- where a child is currently without a school place, the panel will ensure that a placement is agreed at the meeting. Decisions to postpone consideration of a child to a subsequent meeting will only take place in exceptional circumstances;
- parental preference will be taken into account in any decision on placement, though is not binding. This preference needs to be included on the Fair

Access application form. Fair access decisions should not be delayed pending the outcome of any appeals process;

- for cases which are referred on the grounds of challenging behaviour, the panel will consider whether the child should attend the school requested or whether to name an alternative school placement;
- distances between the child's home and the allocated school. A reasonable travelling distance is considered to be 3 miles along a suitable walking route for a secondary aged child.

## 12. Decision Making

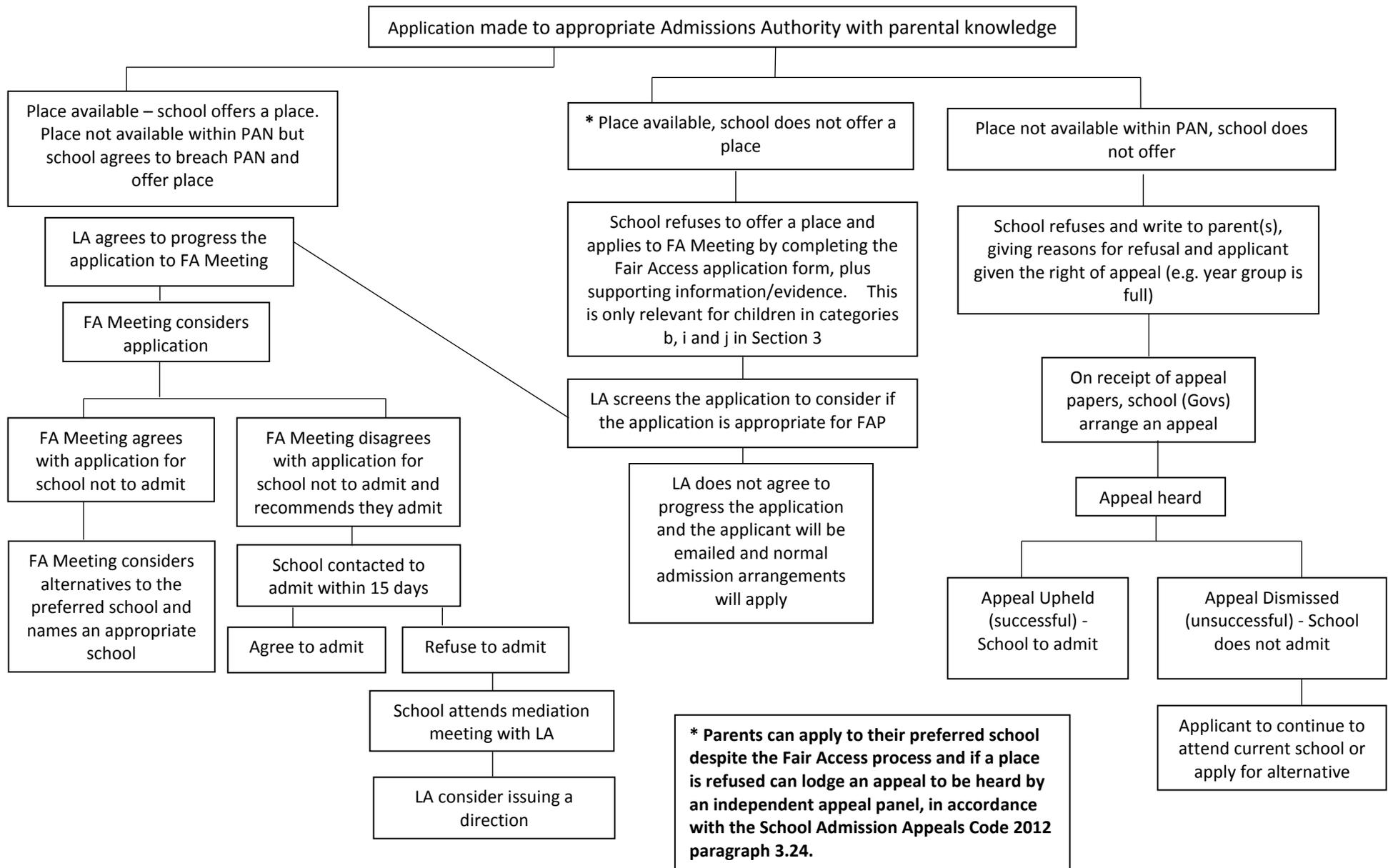
- 12.1 All decisions regarding child placement at the receiving school will be made by the voting members present at the Fair Access Meeting.
- 12.2 The decision will be determined by a majority of votes of those panel members present and voting. If there is an equal number of votes, the chair or vice chair has a casting vote. The head teachers are all voting members, however head teachers cannot vote on cases that have made by their school. Local authority colleagues **do not** have a right of vote. They attend in an **advisory** capacity.
- 12.3 All schools will accept the decision of the Fair Access Meeting on all individual cases whether present at the meeting or not.
- 12.4 Where children are **permanently excluded**, the aim is to:
- Allocate, over an academic year, an even share of excluded children to South Gloucestershire schools.
  - Consider, as a priority, parent/carer preference for a new school.
  - Take account of distance and travel arrangements, as well as the child's need to be part of the wider community, when allocating a new school.
  - Take account of specific issues, as documented by schools on the child's information form provided for the PEPP which could affect the successful reintegration of a child into that school.
  - Request that the LA supports the reintegration process through consideration of transport issues according to LA policy.
  - Support a reintegration by providing all relevant records and documents relating to a reintegrated child.

Note: Where a child has been permanently excluded and parents/carers have requested a review of the governors' decision or equivalent, the Fair Access Meeting may consider placement decisions if all the information is available. However, admission arrangements must not be progressed unless there is confirmation of the decision to permanently exclude or if parents have indicated that they do not want their child to return to the excluding school.

### 13. **Parent/Carer Preference**

- 13.1 There is no duty for local authorities or admission authorities to comply with parent/carers preferences when allocating places through the FAP.
- 13.2 Issues concerning curriculum and exam boards must not override parental preference though may be relevant when there are two or more cases to consider for the same school.
- 13.3 Parent/carers have the right to state a preference for a school place for their child (and an admission appeal if the place is refused) unless the child has twice been permanently excluded from two or more schools.

FLOW CHART ADMISSIONS PROCESS AND FAIR ACCESS PROTOCOL



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