

Devon Fair Access Protocol

for in-year admissions after where a child is without appropriate education and would otherwise be unable to access a school place - Reception to Year 11

for admissions from 16 April 2018

This Policy applies to:

All state-funded schools in the Devon County Council area at primary and secondary phase except for special schools and alternative provision.

All parents and carers seeking admission after the normal round of admissions to any state-funded school within the Devon County Council area.

Policy version:

This policy was agreed by the majority of Devon schools and determined by the Cabinet of Devon County Council on 9 February 2018.

Description of Policy:

This policy describes how the Local Authority will allocate places after the normal round of admissions where a child does not have access to appropriate education and would not otherwise be offered a school place under the In-Year Co-ordinated Admissions Scheme for admission to primary, infant, junior, secondary and studio schools and University Technical Colleges, including academies and free schools.

It describes how the LA will respond where a school wishes to refuse admission.

Linked Policies:

[Normal Round Co-ordinated Admissions Scheme](#)
[Individual policies for own admission authority schools](#)
[In-Year Co-ordinated Scheme](#)
[Managed Move and Reintegration Protocols](#)
[Education Transport Policy](#)



Devon Fair Access Protocol

Section	Contents	Page
Description of Policy		1
General Information and Contacts		3
1	Purpose of the Devon School Admissions Service	4
2	Equality and Safeguarding Statements	4
3	Fair Access Purpose	5
4	Fair Access Principles	6
5	Fair Access Process	7
6	Recording Fair Access	10
7	Eligibility under Fair Access	11
8	Challenging Behaviour	12
9	Where a School is minded to Refuse Admission	13
10	In Response to a School being minded to Refuse Admission	16
11	Direction to Admit	18
12	Children who have been Permanently Excluded	20
13	Children not placed as a Fair Access admission	20
14	Year 11 children requesting admission	20
15	Funding	21
Policy History		22
Appendix 1	Equality Impact Needs Assessment is located at www.devon.gov.uk/admissionsarrangements	
Appendix 2	Glossary is located at www.devon.gov.uk/admissionsarrangements	
Appendix 3	Responding to refusal to admit or potential refusal to admit	23
Appendix 4	DfE Directions flow chart (overview of process)	24
Appendix 5	Fair Access Protocol Recording Sheet	25
Appendix 6	Primary Admissions Refusal Information Sheet	26
Appendix 7	Secondary Admissions Refusal Information Sheet	28
Appendix 8	Admissions Refusal Information Sheet – LA Summary	30

General Information and Contacts

Date	9 February 2018
Review date	Annual
Approval	by Cabinet Members of Devon County Council
Key partners	Learning and Development Partnership Education Welfare Service Devon Association of Secondary Headteachers Devon Association of Primary Headteachers Devon Association of Governors Church of England Diocese of Exeter Roman Catholic Diocese of Plymouth
Author	Devon School Admissions Service admissions@devon.gov.uk
Sponsors	Dr Phil Norrey, Chief Executive Jo Olsson, Chief Officer for Childrens Services
Other contacts	Karen Howes, Admissions Manager 01392 383000 karen.howes@devon.gov.uk School Admissions Service 0345 155 1019 – contact through My Devon call centre admissions@devon.gov.uk Education Transport Team 0345 155 1019 – contact through My Devon call centre Clerk to the Independent Devon Schools Appeals Partnership 01392 382486
Other links	Department for Education 0870 000 2288 www.education.gov.uk Office of the Schools Adjudicator www.education.gov.uk/schoolsadjudicator Children’s Education Advisory Service – Ministry of Defence 01980 618244 enquiries@ceas.detsa.co.uk The Education and Skills Funding Agency (ESFA) - Bristol 0370 000 2288 www.education.gov.uk/b00199952/educationfundingagency School Admissions Code www.gov.uk/government/publications/school-admissions-code--2 School Admissions Appeals Code www.gov.uk/government/publications/school-admissions-appeals-code

INTRODUCTION

1 Devon School Admissions Service

- 1.1 The Devon Schools Admissions Service operates within the Children's Services of Devon County Council to deliver the statutory responsibilities of the local authority (LA) with regard to admissions to school and to support schools in delivering their responsibilities.
- 1.2 The School Admissions Service will:
- Act as admissions champion for children and families;
 - Offer advice to parents and schools;
 - Monitor and challenge the admission arrangements and practices of schools within the Devon County Council area and those others affecting the residents of Devon;
 - Operate a Fair Access Protocol to ensure children at risk of missing education are allocated a school place quickly, even where local schools have reached an admissions limit;
 - Operate a scheme to co-ordinate admissions to school at other times during Year Groups Reception to 11;
 - Assist schools to correctly rank applications according to their oversubscription criteria as necessary;
 - Manage school waiting lists as required;
 - Support schools in the preparation and presentation of school admissions appeals;
 - Liaise with other teams within the LA and beyond where this assists in the planning of school places across the county;
 - Report no less than annually on school admissions within Devon as required to the Office of the Schools' Adjudicator and partner organisations across the county;
 - Offer a traded service to academy schools to support them in the delivery of their statutory responsibilities.

2 Equality and Safeguarding Statements

- 2.1 Devon County Council will only commit to policies and practices which will eradicate discrimination and promote equality for all, regardless of age, gender, disability, religion and belief, race and ethnicity and sexual orientation.
- 2.2 This Protocol will be subject to an Equality Impact and Needs Assessment. This assessment will be integral to all future policy and guidance reviews.
- 2.3 Devon County Council and its partners recognise that safeguarding is everybody's responsibility. Whether their interest is in all young people 'staying safe' in all aspects of our services, or whether they are working in specific areas of vulnerability, all staff will have appropriate training and induction so that they understand their roles and responsibilities and are confident in carrying them out. Settings, schools, children, young people and their parents or carers, or any member of the community should feel secure that they could raise any issues or concerns about the safety or welfare of children and know that they will be listened to and taken seriously. This will be achieved by maintaining an ethos of commitment to safeguarding and promoting the welfare of children and young people. This is supported by a clear child protection policy, appropriate induction

and training, briefings on and discussion of relevant factors and refreshed learning in line with current legislation and guidelines.

- 2.4 Devon County Council acts as a Corporate Parent for Children in Care. This means that the LA has a legal and moral duty to provide the kind of support that any good parents would provide their own children. This Protocol has been written to comply with this principle.

Purpose

- 3.1 The purpose of Fair Access Protocols is to ensure that unplaced children, especially the most vulnerable, are found and offered a place quickly outside the normal admissions round so that the amount of time any child is out of school is kept to the minimum. This is why every LA is required to have in place a Fair Access Protocol, developed in partnership with local schools.

Devon's FAP seeks to ensure that access to education is secured quickly for all children of statutory school age who live in the Devon County Council area¹ who have no school place² and to help ensure that all schools in Devon admit their fair share of vulnerable children or children with challenging behaviour. The FAP should be seen as a safety net when children could not otherwise access appropriate, local education.

The FAP is intended to identify appropriate placements quickly and will be managed by the School Admissions Service.

It is written to comply with the requirements and advice from the Department for Education³.

- 3.2 The FAP applies only to In-Year Admissions⁴. In Devon there are three groups of admissions:

- **Standard Admission**

Where an admissions authority can make a place available at a school in response parental preference, whether this is within the Published Admission Number (PAN)⁵ for the Year Group or because the school⁶ feels there is space. Standard admissions will include children with an Education, Health and Care Plan⁷ naming the school and Children in Care and children who were formerly In Care⁸.

¹ Not including the Plymouth City Council or Torbay Council areas.

² This means children who are not registered at a school or as being Electively Home Educated.

³ "The School Admissions Code" 2014 and "Fair Access Protocols: Principles and Process", Departmental Advice November 2012.

⁴ This means admissions after the Normal Round of Admissions into a school.

⁵ Or other agreed Admission Number (AN). The PAN only relates to the intake year for the school. After that, each Year Group will have an Admission Number. This may be changed from the original PAN in response to a change in circumstances at the school. References to PAN also mean the AN unless otherwise specified.

⁶ In this document, school should be read as the admissions authority for the school unless otherwise specified. This will either be the LA (for community and voluntary controlled schools) or the governing body (for foundation and voluntary aided schools) or the academy trust (for free and academy schools). The responsibility for decisions does not rest with any one person, including the head teacher of a school.

⁷ In this document, references to EHCPs should be read to include Statements of Special Educational Needs.

- **Fair Access Admissions** (see devon.cc/lapolicies)
- **Reintegration Admissions** (see devon.cc/lapolicies)

3.3 This Protocol aims to:

1. identify the admission needs of vulnerable and challenging children quickly including those who are not on the roll of any educational establishment;
2. reduce the time that vulnerable and challenging children spend out of education between placements;
3. secure a place at a suitable school promptly; although 20 school days should be a maximum, all parties will endeavour to resolve matters sooner;
4. ensure that schools admit vulnerable and challenging children on an equitable basis;
5. be fair, consistent and transparent;
6. maintain the confidence of all schools in the allocation process.

4 Principles

4.1 Every LA **must**⁹ operate a Fair Access Protocol, agreed with the majority of the schools in its area.

All schools¹⁰ **must** participate in the FAP, including those which are not a part of In-Year co-ordination (under their determined admission arrangements).

The LA **must** ensure that no school is required to admit a disproportionate number of children who have been excluded from other schools or who have challenging behaviour.

The LA **must** ensure that alternative provision will be made available for those children who are not ready for mainstream schooling.

Schools **must not** refuse admission under the FAP on the grounds that the Year Group has reached its PAN or AN.

Schools **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.¹¹

Children who are allocated a place under the FAP (along with those who are allocated as Children in Care or formerly in Care **must** take precedence over those already on a waiting list for the school.

There is no duty on the LA to comply with parental preference when allocating places under the FAP but the wishes of the parent and child will be taken into account.

⁸ For school admissions purposes, a child who was in Care and, immediately on leaving Care, was either adopted, made the subject of a Child Arrangements Order or a Special Guardianship Order has the same priority for admission as a child still in Care.

⁹ Where the words **must** and **must not** [in bold] are used within this Protocol, this reflects a mandatory requirement within the School Admissions Code.

¹⁰ This includes community, voluntary controlled, voluntary aided, foundation, academy, free, studio schools and university technical colleges. It does not include fee-paying independent schools, special schools or alternative providers.

Schools and the LA should work together collaboratively, taking into account the needs of the child and those of the school. When seeking to place a child under the FAP, the LA will treat all schools in a fair, equitable and consistent manner.

The FAP 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. Parents cannot rely on the FAP to secure admission to a school where an appropriate school place is available to the child.

The LA will identify what education provision will be available to a child while discussions to identify a school place are taking place.

In the event that the majority of schools in Devon no longer support the principles and approach of the FAP, head teachers should initiate a review with the LA. The existing FAP will remain binding on all schools up until the point at which a new one is adopted.

Schools may refuse admission where they believe that to admit the child would be prejudicial to efficient education or the efficient use of resources. Parents have the right to an appeal to a Panel that is independent of the school whenever they are refused admission to the school.¹² The FAP does not affect the right of a parent¹³ to submit an appeal to the Independent School Appeals Panel where an application for admission to a preferred school is refused.

The FAP does not preclude a school from admitting a child if the school believes it is in the best interests of the child to be admitted and the school could reasonably do so.

5 Process

- 5.1 In Devon, the School Admissions Service will operate the FAP on a day to day basis. In the first instance, it will endeavour to find a place using the **Standard Admissions** process for in-year admissions. Even if a child meets one or more of the criteria for Fair Access it does not follow that the child cannot be allocated as a **Standard Admission**.
- 5.2 The D-CAF¹⁴ asks for information from the parent which can be helpful for the admitting school to better address the child's needs. Schools **must not** take into account reports from previous schools when reaching a decision about admission but where a school is aware there are circumstances that may affect the application, it may approach the current school for clarification.¹⁵ This will be supported by Devon's Inclusions Officers, Admissions Manager and the Policy and Strategy Officer (Education) as necessary. Background information should be used to support a child after admission, not as a reason to refuse admission, except where it is lawful to do so.

¹² This does not apply where a parent has been refused admission to the school in one Year Group but is offered a place in another Year Group. As the child has not been refused admission to the school, there is no right of Appeal.

¹³ or a young person seeking a place beyond statutory school age.

¹⁴ This is the Devon common application form for In-Year Admissions.

¹⁵ It would be unlawful to routinely seek reports from previous schools as part of the **Standard Admissions** process. Clarification should be seen as exceptional, where a school is aware of challenging behaviour.

- 5.3 An Admissions Officer will process each admissions application received by the School Admissions Service. Where a place can be offered under the In-Year Co-ordinated Admissions Scheme as a **Standard** allocation, there will be no recourse to the Protocol. **Standard Admissions** include those children admitted over the Admission Number for the Year Group at the school, where the school is content that there would not be prejudice to efficient education and it can admit.
- 5.4 Where a place cannot be offered as a **Standard Admission**, the child will be referred for consideration by the LA Fair Access Protocol Panel.¹⁶
- 5.5 In many cases this will lead to an automatic eligibility for a place to be offered at a specific school.¹⁷ In others, further consideration will be necessary by the Panel. All allocations under the Protocol will be ratified by the Panel. It will be the responsibility of the Panel to record all cases before it and the outcome of all cases.
- 5.6 **Fair Access** allocations will take into account the following:
- parental preference;
 - whether the child is considered by the current or most recent education setting or the Devon Inclusion Service to be ready for mainstream school;
 - the numbers on roll and vacancies at the preferred school or schools;
 - transport arrangements;
 - how many children have been placed in this Year Group at local schools as **Fair Access** and **Reintegration** admissions¹⁸ during the previous 12 months;
 - which school is best able to meet the child's needs;
 - whether the schools considered are either in special measures or nationally challenged;
 - Infant Class Size Legislation;
 - whether the school has a clear and compelling reason why it cannot meet the child's needs;
 - efficient provision of education and the efficient use of resources at the school;
 - the views of schools identified as possible allocations;
 - fair distribution arrangements described at paragraphs 5.7-5.8 for allocation to primary and to secondary schools.
- 5.7 Where parental preference for a secondary school is refused, a place will normally be allocated as **Fair Access**, looking first at schools with a vacancy, than at schools that have not been required to admit more than 3% above the PAN or AN¹⁹ for the Year Group. ie:

¹⁶ This will consist of three or more of the Admissions Manager, Access Manager, Senior Admissions Officer, Policy and Strategy Officer (Education), Inclusions Officer, an Admissions Officer and any other senior education officer. The Panel will convene as required, no less than once a week.

¹⁷ For example, it will be clear in some cases that a secondary age child will be allocated a place at the (nearest) catchment school as it is under its 3% threshold. Subject to any challenge by the school, the child will be offered a place and details of the case notified to the Panel.

¹⁸ Reintegration admissions are those children from alternative provision settings: including Managed Moves, detailed in the Managed Moves protocol and Reintegration protocol (devon.cc/lapolicies)

¹⁹ Numbers will be rounded up to the nearest whole child.

- a) Where there is a vacancy, at the closest catchment school²⁰ and then at other schools successively further from the home address,²¹ unless:
 - the school is exempt²² OR
 - the school has been required to admit²³ 3% of the PAN or AN for the Year Group in the last 12 months²⁴ OR
 - the child would be required to travel an unreasonable distance.²⁵
- b) If there are no schools within a reasonable distance with a vacancy, a place will be allocated at the closest catchment school and then at other schools successively further from the home address, unless:
 - the school is exempt OR
 - school is at or above 3% of the PAN or AN for the Year Group OR
 - the child would be required to travel an unreasonable distance.
- c) If all schools within a reasonable distance are at or above 3% of the PAN or AN for the Year Group one further child will be allocated to non-exempt schools, starting with the closest catchment school and then on to other schools successively further from the home address, starting again with the closest catchment school if necessary.

5.8 Where parental preference for a primary school is refused, a place will normally be allocated as **Fair Access**, looking first at schools with a vacancy, than at schools that have not been required to admit more than two children in the affected class.²⁶ ie:

- a) Where there is a vacancy, at the closest catchment school²⁷ and then at other schools successively further from the home address,²⁸ unless:

²⁰ If there is a school without a catchment area closer than a catchment school, it will be considered as if it were one of the catchment schools.

²¹ This will be measured in a straight line, line using the LA's GIS mapping system.

²² A school will be exempt from allocations under Fair Access where:

- it opened in September 2016 or later (applicable for 2017-18)
- it has a current Ofsted rated of Inadequate
- it can clearly demonstrate that it has a disproportionately high number of children with challenging behaviour and the child also has challenging behaviour
- for Colyton Grammar School, the child is not eligible for admission to a selective school.

²³ Admissions that would be taken into consideration are:

- children in Care
- children with an EHCP, issued for behavioural reasons
- children under a Managed Move from another school
- children being Reintegrated into mainstream school from alternative provision
- children allocated under this Protocol

²⁴ This is in the interests of fair distribution of children under this Protocol, to protect schools that are not full from being required to admit large numbers of children under this Protocol.

²⁵ The intentions of the Protocol include enabling children to be educated as close to their community as possible and to avoid significant additional cost to the LA. In considering reasonableness, the presumption will be against journeys greater than 30 minutes for secondary school children or where the LA would be required to operate a new transport route.

²⁶ This means any class that the child could be admitted into. A school with a PAN or AN of 30, teaching children in one class per Year Group would be required to admit up to 2 children; a school with a PAN or AN of 60 would be required to admit up to 4 children; a school with a PAN or AN of 15, mixing two Year Groups together would be required to admit up to 2 children in that mixed class.

²⁷ If there is a school without a catchment area closer than a catchment school, it will be considered as if it were one of the catchment schools.

- the school is exempt OR
 - the school has been required to admit²⁹ 2 children in the class in the last 12 months³⁰ OR
 - the school would be required to breach Infant Class Size Legislation OR
 - the child would be required to travel an unreasonable distance.³¹
- b) If there are no schools within a reasonable distance with a vacancy, a place will be allocated at the closest catchment school and then at other schools successively further from the home address, unless:
- the school is exempt OR
 - school has 2 or more children in the class³² over and above the level at which it would be full OR
 - the child would be required to travel an unreasonable distance.
- c) If all schools within a reasonable distance have 2 or more children in a class over the level at which it would be full, one further child will be allocated to non-exempt schools, starting with the closest catchment school and then on to other schools successively further from the home address, starting again with the closest catchment school if necessary.

5.9 The School Admissions Service will include schools in other LA areas when considering alternatives where there is agreement to do so although Devon cannot offer places at schools outside the county administrative boundary. Where there is no agreement, parents may still be advised how to seek admission to a school in another LA area.

6 Recording Fair Access

6.1 It will be the responsibility of the Panel to record the outcome of all cases. This information will contribute to the annual report of the LA and any other report required by the LA from time to time.

6.2 Where a child is admitted to a school through the **Standard Admissions** process and the school then recognises that he or she meets the criteria for Fair Access, the school may notify the LA. If this is accepted by the Panel, the number of children admitted to the school will be adjusted accordingly as having met the criteria for Fair Access.

²⁸ This will be measured in a straight line using the LA's GIS mapping system.

²⁹ Admissions that would be taken into consideration are:

- children in Care
- children with an EHCP, issued for behavioural reasons
- children under a Managed Move from another school
- children being Reintegrated into mainstream school from alternative provision
- children allocated under this Protocol

³⁰ This is in the interests of fair distribution of children under this Protocol, to protect schools that are not full from being required to admit large numbers of children under this Protocol.

³¹ The intentions of the Protocol include enabling children to be educated as close to their community as possible and to avoid significant additional cost to the LA. In considering reasonableness, the presumption will be against journeys greater than 20 minutes or where the LA would be required to operate a new transport route.

³² Primary schools will not be required under this Protocol to admit more than 2 children in any one class that would be considered to be full while there are alternative options.

- 7.1 The following children will be considered eligible³³ under the FAP:³⁴
- a) children from the criminal justice system³⁵ or Pupil Referral Units³⁶ who need to be reintegrated into mainstream education;
 - b) children who have been out of education for two months or more;³⁷
 - c) children of Gypsies, Roma, Travellers, refugees and asylum seekers;
 - d) children who are homeless;
 - e) children with unsupportive family backgrounds for whom a place has not been sought;
 - f) children who are carers;
 - g) children with special educational needs, disabilities or medical conditions (but without a Statement of SEN or an Education, Health and Care Plan);
 - h) children new to an area where parental preference has been refused;³⁸
 - i) children of serving UK service personnel posted to a new area;³⁹
 - j) children referred by a school because they have been considered to exhibit challenging behaviour.⁴⁰
 - k) children seeking to return to school from Elective Home Education within 8 school weeks.⁴¹
- 7.2 The following children will NOT be eligible under the FAP:
- a) children in Care where a school wishes to refuse on the grounds of challenging behaviour as they must be admitted;⁴²

³³ Criteria a) to g) are mandatory, detailed at the School Admissions Code 3.15.

³⁴ Not every child who meets one or more criterion will be vulnerable in admissions terms. A child who is a carer may have no difficulty in securing a place at a school according to parental preference. The majority of vulnerable children for Fair Access will be those new to the area, for whom parental preference cannot be met, either within or over the school's AN. Where vulnerability is recognised after any admission, this will be recorded by the LA and that child will be taken into account when considering fair distribution.

³⁵ By this we mean children who are returning from secure accommodation.

³⁶ Pupil referral units (PRUs) teach children who aren't able to attend school and may not otherwise receive suitable education. This could be because they have a short- or long-term illness, have been excluded or because they are new starters waiting for a mainstream school place. In Devon, this service is provided by SchoolsCompany.

³⁷ This will be a period of 8 school weeks and will not include school holidays.

³⁸ The Panel will consider a child under the FAP where the first preference is refused and will take into account any other preferences that have been expressed.

³⁹ This Protocol does not provide opportunities to secure a place at alternative schools once a child has been admitted to a local school or where a house move is a matter of parental preference without a new posting.

⁴⁰ This will normally only be appropriate where the school can demonstrate the child has a well-documented recent history of challenging behaviour AND, either the school:

- is currently judged to require special measures and pupil behaviour is a key issue, or
- has already admitted two or more students under Fair Access in the particular year group (secondary schools) or class (primary schools) for which a place is sought in the last 12 months.

⁴¹ Parents sometimes withdraw a child from school to home educate in response to difficulties in school and quickly recognise they are not in a position to home educate successfully. The default Fair Access allocation for children seeking to return to school from Elective Home Education will be a return to the most recent school - unless the school is exempt from Fair Access allocations.

⁴² Sections 3.12 and 3.19 of the School Admissions Code describe arrangements for Children in Care.

- b) children with an Education, Health and Care Plan (EHCP) naming the school where that school wishes to refuse on the grounds of challenging behaviour as they must be admitted;⁴³
- c) children who are already on the roll of a school within a reasonable distance from home, state-funded or private;⁴⁴
- d) children who are registered for Elective Home Education or whose parent has informed the LA or a school of an intention to home educate;⁴⁵
- e) children who were removed from the roll of a school by parents less than eight school weeks previously.⁴⁶
- f) children in Year 10 or Year 11.⁴⁷
- g) children whose first language is not English.⁴⁸

8

Challenging Behaviour

8.1 Where a school with available places does not wish to admit a child with challenging behaviour outside the normal admissions round, it **must** refer the case to the LA or consideration under the FAP. This will only be appropriate when the school can provide evidence that:

- the child has serious challenging behaviour and
- the school has a particularly high proportion of children with challenging behaviour or previously Permanently Excluded children in the Year Group.

8.2 For the purposes of this Protocol, a child will be considered to exhibit challenging behaviour where there is a combination of two or more of:

- behaviour resulting in 3 Fixed Term Exclusions or other evidenced and accepted in-house alternative intervention within the previous 12 calendar months which demonstrate that the child is at significant risk of Permanent Exclusion;
- school attendance below 75% within the previous 12 calendar months except where low attendance is a result of a disability or Special Educational Need;⁴⁹
- where the child is being educated off-site to improve their behaviour and the most recent review by the current school determines that this is the most appropriate provision;
- where a school makes a case that the child has displayed a serious level of

⁴³ Sections 3.8, 3.12 and 3.13 of the School Admissions Code describe arrangements for Children with EHCPs.

⁴⁴ Where these children are not offered a place as a **Standard Admission**, they will not automatically be offered an alternative school. The expectation is that they will remain in their current education setting or further preferences will be submitted. Schools will not be required to admit above the AN. However, where a school wishes to refuse a child who already has a local school place even though it has a vacancy, the LA will consider whether the refusal is lawful.

⁴⁵ Except that a child seeking to return to school from Elective Home Education will be eligible to be readmitted to his or her most recent school as a FAP admission within the first 8 school weeks after moving to EHE.

⁴⁶ Removing a child from the roll of a school will not make the child eligible for a **Fair Access Admission** for a period of 8 school weeks.

⁴⁷ In-year admissions for children in Year 10 and 11 can be more difficult because of curriculum and course option matches but these factors are not reasons to refuse in themselves.

⁴⁸ In-year admissions for children whose first language is not English may require additional support but this is not reason to refuse in itself.

⁴⁹ A child will not be refused admission to a school on the grounds of poor attendance alone.

challenge to its authority and caused significant disruption to the learning of other children, such as physical or verbal abuse to adults or other children in school. This may have been when previously on roll at that school.

It will be the responsibility of the school to provide sufficient written evidence promptly so that a decision can be made without undue delay.

- 8.3 The Head of Devon's Inclusion Service will give a view whether a school has a higher proportion of children with challenging behaviour on roll and any information provided by the school to establish whether there is a disproportionate number compared with other schools in the area.

A view may also be sought on the child's appropriateness for education in a mainstream setting. Children who exhibit challenging behaviour will still require a school place within a reasonable distance from home.

9 Where a School is minded to Refuse Admission

- 9.1 There may be occasions when a school does not wish to make a place available. This may be where it is minded to:

- refuse a child who could be offered a place as a **Standard** admission⁵⁰; OR
- refuse a child who is a **Fair Access** allocation.

With the exception of designated grammar schools, all schools, including schools designated with a religious character, that have enough places available must offer a place to every child who has applied for one, without condition or the use of any oversubscription criteria.⁵¹

There is a clear expectation that mainstream schools located in Devon can provide an appropriate education for any child who is ready for a mainstream education. Only in the most exceptional circumstances could it be said that a mainstream school is unable provide a suitable education for a mainstream child. Where there is disagreement between LA and school over an application, it tends to be whether the school can meet the needs of the child. There are very few circumstances where one mainstream school could not meet a child's needs but other mainstream schools could. A school would have to give compelling reasons for such a position.

In all cases, where a school wishes to refuse an in-year admission for a child on any grounds other than being full, it must provide reasons for refusal in writing. The LA will take a view on whether the reasons are lawful and compelling:

- It will accept those reasons (and seek to identify an alternative setting for the child which may be the child's current school); or
- It will not accept the reasons and take a further decision regarding direction to admit.

⁵⁰ This will generally be children who have a local school place and are refused admission even though the school has a vacancy.

⁵¹ Admissions Code 2.8

9.2 There are limited circumstances when it is lawful to refuse admission:

- **The child is not eligible to be admitted to the school by reason of age**
A child can be refused admission if he or she is not of the appropriate age group for the school. A parent can request admission out of the child's chronological Year Group and it is up to the admission authority for the school to allow or refuse the request.⁵²
- **The child is not eligible to be admitted to the school by reason of gender** This is not applicable in Devon as all Devon schools are co-educational. Devon does not manage admissions in-year to schools outside the county administrative boundary.
- **The child is not eligible to be admitted to the school by reason of selection** Colyton Grammar School can refuse admission where a child has not been successful in its selection test or otherwise demonstrated that he or she is of the required academic standard. There is a statutory right of appeal against refusal.
- **There are no vacancies in the appropriate Year Group** An admission authority for a school can refuse admission where it believes to admit would be prejudicial to efficient education or the efficient use of resources. This would generally be when the school has reached or exceeded its AN for the Year Group but for primary schools it may be more relevant whether the class the child would be taught in is full. This is the reason for refusal in the majority of cases. There is a statutory right of appeal against refusal. Appeals against refusal to a Key Stage 1 class are reviews of the original decision to refuse admission according to the information that was available at the time the decision was made.
- **The child has been Permanently Excluded from two or more schools**⁵³
This provision does not apply where the child was below statutory school age or where the child either was re-instated or would have been re-instated had it been practicable to do so.
- **The child has been Permanently Excluded from that school**
- **The school has a particularly high proportion of children with challenging behaviour or previously excluded children.**⁵⁴ A school must refer any child for consideration under this Protocol where it wishes to refuse in-year admission to a child with challenging behaviour even when there are vacancies. This will normally only be appropriate when the school can establish that it has a high proportion of challenging children already on roll.

However, a school cannot refuse admission on these grounds to Children in Care, Children previously in Care or children with a Statement of SEN or an EHCP. These children must be admitted.

⁵² There is a statutory right of appeal for the parent if a request for admission out of the chronological Year Group is refused unless a place is offered in another Year Group at that school.

⁵³ Admissions Code 3.8 – the most recent exclusion must have been within the past two years

⁵⁴ Admissions Code 3.12

- **The child has a Statement of SEN or an EHCP that names another school.** Parents of children with a Statement or EHCP must request that the school named on the document is changed if they wish to secure admission there. The school would have the opportunity to comment on whether it could meet the needs of the child. Where a child with a Statement or EHCP requests a move to another school, Devon's 0-25 SEN Team will manage the request.

9.3 It is not lawful to refuse admission:

- where the decision to refuse was taken by a single person for the admission authority for the school⁵⁵
- to a child thought to be potentially disruptive, or likely to exhibit challenging behaviour, on the grounds that the child is first to be assessed for special educational needs⁵⁶
- to a child solely because the application was later than other applications⁵⁷
- to a child not of the faith of a school with a designated religious character⁵⁸
- to a child who followed a different curriculum at the previous school⁵⁹
- to a child on the grounds that he or she is in a Key Stage 4 class and has already begun studying for external examinations
- to a child because information has not been received from the previous school⁶⁰
- to a child who has missed entrance tests for the school⁶¹
- to a child who has expressed a preference for another school
- to a child of a service family because the family does not currently live in the area ahead of a posting to the area⁶²
- to a child who has previously moved between local schools⁶³
- to a child solely because he or she is not a citizen of the United Kingdom or the European Economic Area⁶⁴
- to a child solely because the relevant Year Group has reached or exceeded its PAN or other agreed AN.

⁵⁵ Admissions Code 2.7

⁵⁶ Admissions Code 3.13

⁵⁷ Admissions Code 2.9a – this is aimed at normal round admissions.

⁵⁸ Admissions Code 2.9b

⁵⁹ Admissions Code 2.9c – this includes children in Key Stage 4 who may have studied GCSE courses under different examination boards.

⁶⁰ Admissions Code 2.9d – while it is certainly very much preferable to have more information to place a child in the most appropriate setting within a school, it is not lawful to refuse admission or delay admission while information is sought.

⁶¹ Admissions Code 2.9e – Colyton Grammar School is committed to making a suitable alternative test date available.

⁶² Admissions Code 2.18a

⁶³ It may be that a parent reports that one school has encouraged them to have a fresh start at another school in response to problems there. While a fresh start can be successful in some cases, for other children this may move the problem on to another school. Where that admission breaks down, parents may feel that the best option is to return to the original school. It is not lawful for that school to refuse admission on the grounds that the child had an unhappy or challenging time there. A child who did not leave due to a Permanent Exclusion must still be considered as suitable for readmission. A return can be delayed until the beginning of the next term or next term to reduce the risk of repeated short-term placements.

⁶⁴ Nevertheless, an application for admission will not be processed unless the parent can provide evidence the child can enter the country, either because there is a right of abode or the child has a valid visa. No decision to offer or refuse will be made until then so that there will be no influence on Immigration decisions.

10 In response to a School being Minded to Refuse Admission

- 10.1 The LA **must** be informed when a school managing its own in-year admissions applications refuses an application. They will also be made aware whenever a common application form⁶⁵ is received and the school is minded to refuse as a **Standard** allocation.

When a school refuses a **Standard** allocation, in most cases, the child will still be accepted at the school: most **Fair Access** allocations are straightforward admissions to the designated or nearest school where the school is in agreement that a place will be offered.

- 10.2 Nevertheless, a school may be minded to refuse even though there is a vacancy or where this Protocol indicates that the child should be allocated there. It is expected that the school will advise by email or letter within **5 school days** whether it will admit the child, completing the **Admissions Refusal Information Sheet** as appropriate.⁶⁶ When there is a refusal or no response has been received, the Admissions Officer will refer the application to the Fair Access Protocol Panel immediately.

The Admissions Manager will notify the local Inclusions Officer who may be called upon to negotiate additional support or advice as necessary. The Admissions Manager will contact the school to clarify the situation and seek a resolution which enables the child to be taken on roll at the school. This may include the child then being offered additional support and intervention by the school on or off-site. The emphasis will be on the child being back in school as soon as is possible. Where the school is still minded to refuse after **3 school days**, the Admissions Manager will refer the case to the Education Policy and Strategy Officer who will assume responsibility for the child's return to school. This will include expediting access to the child's file from the previous school where this is necessary.

There will be a further **2 school days** during which the Policy and Strategy Officer will contact the head teacher of the school. It is by this point that the school must provide written reasons for the refusal if it has not already done so, explaining why it is unable to meet the child's identified needs or make reasonable steps to meet those needs, using the **Admissions Refusal Information Sheet** as appropriate. The Policy and Strategy Officer will explain that the LA must be satisfied that there is a lawful cause and compelling reasons to refuse or the LA will be obliged to reach a decision to direct or seek direction to admit.⁶⁷

The Fair Access Protocol Panel will then meet to agree a report for the Head of Education and Learning, considering one of two recommendations:

⁶⁵ This will be the D-CAF. There should be no situation where an application made on a D-CAF6 is refused as schools themselves should only invite a parent to complete a D-CAF6 where they have a confirmed place to make available to the child.

⁶⁶ The Information Sheets for Primary and Secondary Schools are at Appendix 9 and 10.

⁶⁷ At any time during this process, Inclusion Officers may secure resolution by offering appropriate advice and support for the school to enable it to admit the child. This may include a referral to alternative provision.

1. Accept the school's position and immediately seek alternative arrangements.⁶⁸
2. Not accept the school's position. Where local agreement to admit has not been reached, there will be a further **2 school days** during which the Head of Education and Learning will reach a decision on referring the matter to the Regional Commissioner or making (or seeking) a direction to admit.

A flow chart of this process is detailed below at Appendix 3.

10.3 Whenever a school refuses admission, the case and its outcome will be reported to the next meeting of the local Behaviour and Inclusion Panel for peer review. It will also be reported to the Head of Education and Learning and to Chief Officer for Childrens Services, Lead Member and the School Organisation, Capital and Admissions Group. All instances through the academic year will be noted in the annual report by the LA to the OSA.

10.4 In summary (not children in care)⁶⁹:

Place is not offered as a **Standard** admission. Where criteria are met, Admissions Officer informs school that a place is required under the Fair Access Protocol.

after 5 school days

School is minded to refuse or does not respond with an agreement to admit. Admissions Officer informs the Admissions Manager and Inclusions Officer

after 3 school days

School still minded to refuse or does not respond with an agreement to admit. Admissions Manager informs the Policy and Strategy Officer.

after 2 school days

School still minded to refuse or does not respond with an agreement to admit. Fair Access Officer Panel submits a report to the Head of Education and Learning
Refusal Information Sheet expected from the school.

after 2 school days

School still minded to refuse or does not respond with an agreement to admit. Head of Education and Learning informs the school that the LA is minded to direct admission or refer the matter to the Regional Commissioner or accepts that a place should be sought at another school.

after 15 school days during which the school must admit or refer to the OSA (Office of the Schools Adjudicator) or ESFA (education and Skills Funding Agency)

LA directs the school to admit (or, for academies, asks the Secretary of State to direct).

⁶⁸ Where the LA is satisfied that there is a lawful reason not to admit to the school, it will identify an alternative mainstream school. If it is not anticipated that the child would return to a mainstream school, a place will be sought in alternative provision.

⁶⁹ For children in care, the school must confirm whether the child will be admitted within 5 school days. If the LA is minded to direct, the school has a further 5 school days to refer the case to the OSA.

11

Direction to Admit

- 11.1 The LA will always consult and carefully consider any response before using its power to direct admission.⁷⁰ It will inform the governing body and head teacher of the school.
- 11.2 LAs 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.
- 11.3 Where a local resolution cannot be found, it is the responsibility of the LA and the academy to document the case for and against admission.
- 11.4 When reviewing an academy direction case, 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.
- 11.5 In requesting a direction from the Secretary of State, the LA must provide evidence that:
- the provisions of the Protocol have been applied fairly and appropriately;
 - the academy's reasons for refusal;
 - the local LA's response.
- 11.6 The LA should will information using the template provided (see appendix XX) to the ESFA. On receipt of a request to direct, the ESFA will inform the academy that it has received a request for a direction. The letter will request that the academy provide any evidence other than that already received that the process has not been properly applied within seven calendar days.
- 11.7 In considering a direction, the decision will be on the basis of the papers provided, taking into account:
- whether the Protocol has been applied appropriately;
 - the arguments of the academy and LA, whether the LA 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 Protocol compared to other schools.
- 11.8 The School Admissions Code 2014 summarises the powers of direction for LAs and the differing requirements in relation to admissions to Academies.
- 11.9 **Local authority powers of direction (general)**
A local authority has the power⁷¹ to direct the admission authority for any maintained school in its area to admit a child even when the school is full. The LA can only make such a direction in respect of a child in its area who has been refused entry to, or has been permanently excluded from, every suitable school within a reasonable distance. The LA must choose a school that is a reasonable

⁷⁰ Any reference to direction should be read as a direction for maintained schools or to request a direction with regard to academies unless otherwise specified. For an academy, the LA would request a direction to admit by the Education and Skills Funding Agency acting for the Secretary of State.

⁷¹ School Standards and Framework Act 1998 sections 96 and 97

distance from the child's home and from which the child is not permanently excluded.

The LA must not choose a sixth-form that selects by ability unless the child meets the selection requirements, or a school that would have to take measures to avoid breaking the rules on infant class sizes if those measures would prejudice the provision of efficient education or the efficient use of resources.

Before deciding to give a direction, the LA must consult the governing body of the school, the parent of the child and the young person if they are over statutory school age. If, following consultation, the LA decides to direct, it must inform the governing body and Headteacher of the school.

The governing body can appeal by referring the case to the Office of the Schools' Adjudicator (OSA) within **15 school days**. If it does this, the governing body must tell the LA. The LA must not make a direction until the 15 days have passed and the case has not been referred.

If the case is referred to the OSA, the Adjudicator may either uphold the direction or determine that another maintained school must admit the child. The Adjudicator's decision is binding. The Adjudicator must not direct a school to admit a child if this would require the school to take measures to avoid breaking the rules on infant class sizes and those measures would prejudice the provision of efficient education or the efficient use of resources.

11.10 **Local authority powers of direction (Children in Care)**

The LA also has the power to direct the admission authority for any maintained school in England to admit a child who is looked after by the LA, even when the school is full. The LA **must not** choose a school from which the child is permanently excluded but may choose a school whose infant classes are already at the maximum size as an excepted pupil.

Before deciding to give a direction, the LA **must** consult the admission authority of the school it proposes to direct. The admission authority **must** tell the LA within **5 school days**⁷² whether it is willing to admit the child. If, following consultation, the LA decides to direct, it **must** inform the admission authority, the governing body,⁷³ the LA that maintains the school,⁷⁴ and the Headteacher. The admission authority can appeal by referring the case to the OSA within **5 school days**. If the child has been permanently excluded from two other schools and the most recent exclusion was within the previous two years, the governing body may also refer the case to the OSA.

The admission authority or governing body must not refer the case unless it considers that admitting the child would seriously prejudice the provision of efficient education or the efficient use of resources. If it does refer the case, it must tell the LA that looks after the child. The LA must not make a direction until the **5 school days** have passed and the case has not been referred.

If the case is referred to the OSA, the Adjudicator may either uphold the direction

⁷² The period referred to is 7 days. This is interpreted as 5 school days as it is not expected that schools will act over weekends or holidays.

⁷³ The governing body will be consulted for community and voluntary controlled schools. For other maintained schools, the governing body is the admissions authority.

⁷⁴ Where the school is located in the area of another LA.

or determine that another maintained school in England must admit the child. The Adjudicator's decision is binding. The Adjudicator must not direct an alternative school to admit a child unless the LA that looks after the child agrees, nor if the child is permanently excluded from that school, nor if the admission of the child would seriously prejudice the provision of efficient education or the efficient use of resources.

11.11 Secretary of State power of direction (Academies)

Where the LA considers that an academy will best meet the needs of any child, it can ask the academy to admit that child but has no power to direct it to do so. The LA and the academy will usually come to an agreement, but if the academy refuses to admit the child, the LA can ask the Secretary of State to intervene. The Secretary of State has the power under the academy's Funding Agreement to direct the academy to admit a child, and can seek advice from the OSA in reaching a decision.

12 Children who have been Permanently Excluded

12.1 Permanent exclusion is a final sanction of a school in response to a child's inappropriate behaviour. A child permanently excluded from a school will not be readmitted to that school unless reinstated by an appeal against the exclusion.

12.2 When a child is permanently excluded from a school, the school will inform the Education Inclusion Service in writing within one working day. All permanently excluded children will be offered alternative provision from the sixth school day following the head teacher's decision to exclude.

12.3 A child arriving in Devon from another LA area who has been permanently excluded or was educated in a PRU prior to his or her move will be placed in alternative provision until he or she can be considered for a school place at the next Partnership.

12.4 It is expected that all permanently excluded children from Years R to 10 will be reintegrated into school or into alternative provision within a maximum of two terms of exclusion. Children in Year 11 (or in Year 10 where a new school operates a three year Key stage 4) will not normally be reintegrated into a school following a permanent exclusion.

13 Children not placed under Fair Access admission procedures

13.1 In exceptional cases, it may not have been possible for a place to be agreed between the School Admissions Service and a school. The Admissions Manager may:

- direct (or seek to direct) a school to admit
- refer the child to the Behaviour & Attendance Partnership with a proposal for the child to be admitted to a named school.

14 Year 11 children requesting admission

14.1 The School Admissions Code does not make a distinction between children of Year 11 age and all others of statutory school age. Children of Year 11 age may seek admission to school and be allocated a place at school as for other Year Groups. After admission, the school may discuss whether it may be more appropriate to educate the child below his or her chronological age in Year 10. Nevertheless, there may be additional challenges in accommodating a child in the final year of courses for external examinations.

- 14.2 Year 11 children with challenging circumstances may be referred by the school to the Access to Resources Panel of SchoolsCompany. This Panel will consider the child's educational level obtained and individual needs. It will consult with the child, family members and schools to agree the most suitable placement for the rest of the academic year. This may include the option of moving back an academic year at the discretion of the school.

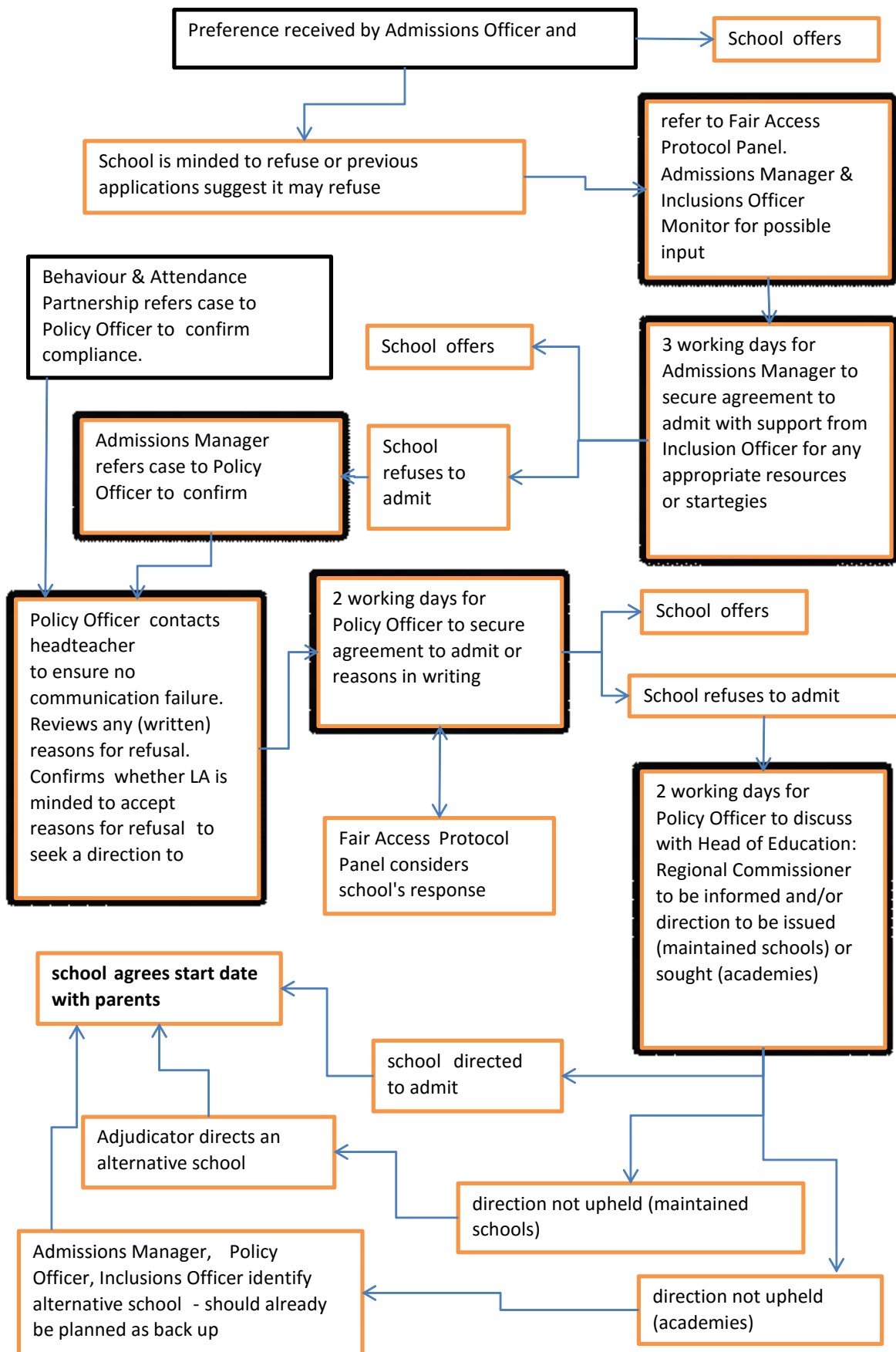
Where it is not considered that a school placement is appropriate SchoolsCompany will provide support as deemed appropriate within the resources that are available.

15 Funding

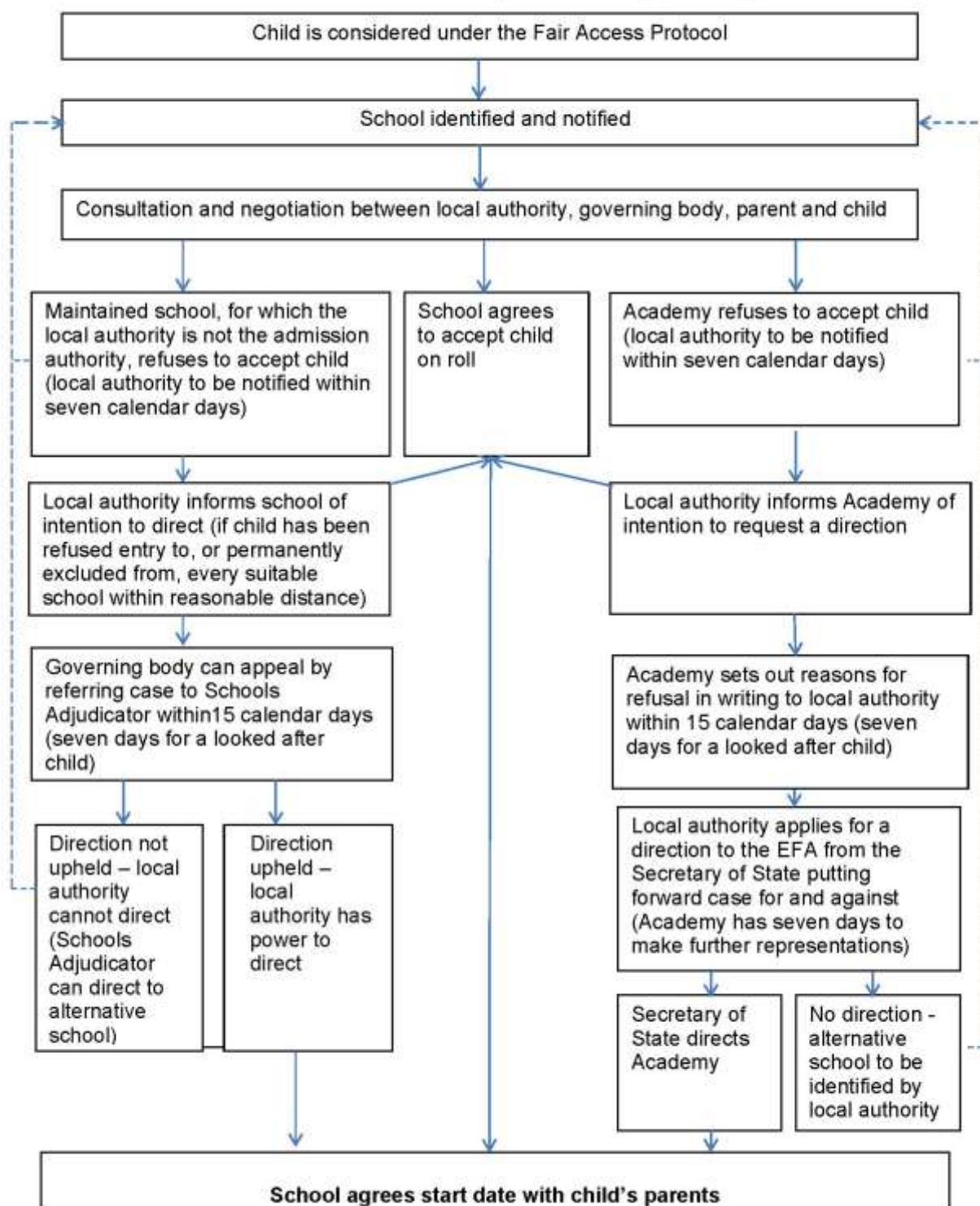
- 15.1 Once a school has admitted a child under **Fair Access** or **Reintegration** admission procedures additional funding may be provided to provide identified extra support such as a Learning Support Assistant required to assist in the child's integration to the school. This support is at the discretion of the Head of the Education Inclusion Service.

Policy History				
Date	Summary of change	Contact	Implementation date	Review date
12/2014	Fair Access Protocol consultation	Policy and Strategy Officer (Education)	1/6/2015	11/2015
3/2015	Protocol considered by School Organisation, Capital and Admissions Group	As above		
8/4/2015	Protocol determined by Cabinet of Devon County Council	As above		
9/2017	Review	As above		7/2018
9/2/2018	Protocol determined by Cabinet of Devon County Council	As above	1/4/2018	7/2018

Responding to Refusal to Admit or Potential Refusal to Admit Flow Chart



Directions flow chart (overview of process)



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

Print Form		Fair Access Protocol Recording Sheet		Devon County Council	
Child's details:					
Pupil forename		DoB		Year Group	
		UPN		Sibling in a school	
Pupil surname		Gender		in Care	☐
		EHCP or Statement	☐		
Fair Access Eligibility					
Schools					
Preferences					
Designated school					
Nearest non-designated school					
Consideration of Fair Access Protocol equity and school pressures					
Consideration of transport impact					
Any other considerations					
FAP Offer Decision		Date of Panel		Agreed by school	☐
Panel Attendees		Date on roll			

FAP Recording Sheet Dec 2014

Print Form

Email Form

Primary Admissions Refusal Information Sheet



Please complete this form where the school is minded to refuse admission for a child.

Child's details:

Pupil forename DoB Year Group UPN

Pupil surname Gender in Care ☐ EHCP or Statement ☐

For children with Statements or EHCPs or for those in the process of assessment, admissions must be referred to the 0-25 SEN Team.

Eligible for Pupil Premium ☐ Ethnic origin First language

School History	From	From	Reason for leaving if known

School Data

School Headteacher

	On roll	PAN or other limit	Statement / EHCP	other SEN	CiC / former CiC	FAP this year	Managed moves in	Managed moves out	Ofsted rating
Recept.									
Year 1									
Year 2									
Year 3									
Year 4									
Year 5									
Year 6									

Please indicate if there are any particular challenges the school is facing in addition to the pupil profile above:

Do you consider this child to be a challenging child? ☐

Why is this child considered challenging (if appropriate); what barriers to admission are there for the school?

What can the school offer the child and what additional support might be necessary to integrate into the school?

If appropriate, what suggests that this child is not appropriate for any local mainstream school?

Are there any other comments regarding this child's education?

Completed by email address

Position at school Telephone Date

Please return this form to the School Admissions Service at **admissions@devon.gov.uk** for consideration by the Fair Access Officer Panel

Primary Admissions Refusal Information Sheet Dec 2014

Print Form

Email Form

Secondary Admissions Refusal Information Sheet



Please complete this form where the school is minded to refuse admission for a child.

Child's details:

Pupil forename DoB Year Group UPN

Pupil surname Gender in Care ☐ EHCP or Statement ☐

For children with Statements or EHCPs or for those in the process of assessment, admissions must be referred to the 0-25 SEN Team.

Eligible for Pupil Premium ☐ Ethnic origin First language

School History	From	From	Reason for leaving if known

School Data

School Headteacher

	On roll	PAN or other limit	Statement / EHCP	other SEN	CIC / former CIC	FAP this year	Managed moves in	Managed moves out	Ofsted rating
Year 7									
Year 8									
Year 9									
Year 10									
Year 11									

Please indicate if there are any particular challenges the school is facing in addition to the pupil profile above:

Do you consider this child to be a challenging child? ☐

Why is this child considered challenging (if appropriate); what barriers to admission are there for the school?

What can the school offer the child and what additional support might be necessary to integrate into the school?

If appropriate, what suggests that this child is not appropriate for any local mainstream school?

Are there any other comments regarding this child's education?

Completed by email address

Position at school Telephone Date

Please return this form to the School Admissions Service at admissions@devon.gov.uk for consideration by the Fair Access Officer Panel

Secondary Admissions Refusal Information Sheet Dec 2014

Print Form

Admissions Refusal Information Sheet - LA Summary



To be completed when a school has returned an Admissions Refusal Information Sheet.

Child's details:

Pupil forename DoB Year Group UPN

Pupil surname Gender in Care ☐ EHCP or Statement ☐

For children with Statements or EHCPs or for those in the process of assessment, admissions must be referred to the 0-25 SEN Team.

Eligible for Pupil Premium ☐ Ethnic origin First language

School History	From	From	Reason for leaving if known

School Data

School Headteacher

Yr Gp	On roll	PAN or other limit	Statement / EHCP	other SEN	CiC / former CiC	FAP this year	Managed moves in	Managed moves out	Ofsted rating

Comments on any particular challenges the school is facing in addition to the pupil profile above:

Considered to be a challenging child by the school? ☐

Comments on why child considered challenging and barriers to admission for the school?

Comments on what can the school offer the child and additional support for integration into the school?

Comments on why this child may not be appropriate for any local mainstream school?

Other comments regarding this child's education?

Recommendation to Head of Education and Learning:

Completed by

email address

Position in LA

Telephone

Date

Admissions Refusal Information Sheet - LA Summary Dec 2014