

Herefordshire In-Year Fair Access Protocol

Reviewed and Updated August 2021 in line with the updated School Admissions Code (September 2021)

Related Document – Fair Access Protocols in School Admissions 2014

Admissions Code 2021: paragraphs 3.14 to 3.22. School Admissions Appeals Code 2012: paragraphs 3.23-4

1. Rationale

There is a statutory requirement for all Local Authorities to have an In Year Fair Access Protocol. The In Year Fair Access Protocol (IYFA) decides outcomes for In Year Transfer applications for children, especially the most vulnerable, who have been defined as ‘hard to place’. The In Year Fair Access process is designed to ensure that the applications of these children are determined quickly to keep the amount of time these children are out of school to a minimum and ensure that the child has access to the most appropriate school provision. The In Year Fair Access Panel process forms part of the overall fair access arrangements. Herefordshire’s aim is that no child is left behind.

The updated School Admissions code September 2021 is clear that Admission authorities may admit above their PAN through in-year admissions. The PAN only applies to the relevant age group. This means that admission authorities may not refuse admission to other age groups on the grounds that they have already reached their PAN. They may, however, refuse admission where the admission of another child would prejudice the provision of efficient education or efficient use of resources. The expectation is therefore that Herefordshire schools will admit where it is in the best interest of the applicant to do so, this could be for example where the school applied to is the catchment/ nearest school. Referrals to the in year fair access process should only be for vulnerable and/or hard to place children, where they are having difficulty in securing a school place in-year, and it can be demonstrated that reasonable measures have already been taken to secure a place through the usual in-year admission procedures

2. Principles

2.1. We want all children and young people in Herefordshire to have the best start in life and to grow up healthy, happy and safe within supportive family

environments. We want them to have the best possible health, education and opportunities to enable them to reach their full potential. To that end schools will work together to ensure that the needs of every child are being met.

2.2. This protocol has been agreed by, and applies to, all maintained schools and academies in Herefordshire.

2.3. Schools in Herefordshire accept and promote the principle of inclusion. Schools agreed in 2013 to a set of guiding principles which stated that as an education community we will not turn our back on anybody.

2.4. The In Year Fair Access process will seek to ensure that no school is required to accommodate more than its fair share of 'hard to place' children (see section 3. However all schools will be required by the process to admit a hard to place child where it is demonstrated to be the best setting to meet the needs of a child considered by the process. In the case of children with Education, Health and Care Plans, schools must admit pupils in accordance with parental preference, irrespective of how many other children with EHC Plans the school has on roll. The only exceptions to this statutory guidance are set out in the SEND Code of Practice, 2015. See 4.3 below

2.5. Parents have the right to apply and express a preference for a school place. The In Year Fair Access process commits to consider that parental preference but is not bound to meet that preference where the process identifies a more appropriate school placement. This includes the possibility that a child will be required to continue to attend the school he/she is currently enrolled at. Parents have the right to appeal against any decision that does not meet their preference (see appeals process).

3. Definition of Hard to Place Pupils

The School Admissions Code lists circumstances where it is appropriate for the In Year Fair Access process to decide the outcome of an application:

School Admissions Code Sections 3.14 – 3.22

Fair Access Protocols may only be used to place the following groups of vulnerable and/or hard to place children, where they are having difficulty in securing a school place in-year, and it can be demonstrated that reasonable measures have been taken to secure a place through the usual in-year admission procedures:

- a) children either subject to a Child in Need Plan or a Child Protection Plan or having had a Child in Need Plan or a Child Protection Plan within 12 months at the point of being referred to the Protocol;
- b) children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol;
- c) children from the criminal justice system;
- d) children in alternative provision who need to be reintegrated into mainstream education or who have been permanently excluded but are deemed suitable for mainstream education;
- e) children with special educational needs (but without an Education, Health and Care plan), disabilities or medical conditions;
- f) children who are carers;
- g) children who are homeless;
- h) children in formal kinship care arrangements;
- i) children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers;
- j) children who have been refused a school place on the grounds of their challenging behaviour and referred to the Protocol in accordance with paragraph 3.10 page 32 School Admissions code September 2021
- k) children for whom a place has not been sought due to exceptional circumstances;
- l) children who have been out of education for four or more weeks where it can be demonstrated that there are no places available at any school within a reasonable distance of their home. This does not include circumstances where a suitable place has been offered to a child and this has not been accepted; and
- m) previously looked after children for whom the local authority has been unable to promptly secure a school place.

Where it has been agreed that a child will be considered under the Fair Access Protocol, a school place **must** be allocated for that child within 20 school days. Once they have been allocated a school place via the Fair Access Protocol, arrangements should be made for the child to start at the school as soon as possible.

4. Provisions of the Herefordshire In-year Fair Access Protocol

- 4.1. Herefordshire Council appreciates the inclusive values of Herefordshire schools and recognises that local schools commonly accommodate vulnerable children of this type without the intervention of the In Year Fair Access Process. It is not the aim of the In Year Fair Access Protocol to inhibit local schools' independent endeavours to admit children whose families request a school place through other routes.
- 4.2. It is acknowledged however that there are circumstances where school leaders may view an admission of a child to not be in the best interests of that individual, or have concerns that the admission could compromise the best interests of the children already accommodated at the school. It is in these circumstances that the In Year Fair Access process could reasonably be commissioned to resolve the outcome of an application for In Year transfer.
- 4.3. It should be noted that the School Admissions Code prescribes that applications for transfer for Looked After Children or those with an Education Health and Care Plan must not be considered through the In Year Fair Access process because it is managed under separate legislation.
- 4.4. Where a young person has been withdrawn from a mainstream secondary school in Herefordshire to be home educated, and subsequently requests a return to a mainstream school place, the school that the child previously left should be offered – see section 15.1
- 4.5. The circumstances listed below are the situations where parents (including parents of the children in the DFE prescribed list above) experience difficulty securing a school place. Consequently, it is these circumstances where school leaders may consider a referral to the In Year Fair Access Process to determine an early outcome, however The Admissions Authority must not refuse to admit a child solely because either:
- (1) they have followed a different curriculum at their previous school;
 - (2) Or, information has not been received from their previous school.

5. Attendance

- 5.1. All schools are required to monitor attendance. Where parents do not ensure their child's regular attendance, enforcement action against the parents may follow in the form of a School Attendance Notice or School Attendance Order. It is not uncommon for a parent to apply for a school transfer to seek to avoid these sanctions or the scrutiny of the school when they are pressed about attendance issues.
- 5.2. Only under exceptional circumstances will IYFA accept cases with significant attendance issues unless there are other factors involved. Generally, it would be expected that the child's school would work to improve attendance, including using enforcement where necessary. IYFA will consider requests for transfer once the attendance issues are resolved.
- 5.3. A child registered as a Child Missing Education in Herefordshire can be referred to the IYFA process by the CME officer.

6. Social, Emotional and Mental Health Needs (SEMH)

- 6.1. Managing challenging behaviour associated with SEMH can be difficult, particularly where the full support of parents is not forthcoming. It is not an uncommon eventuality for parents to seek to transfer to another school as a solution to these issues. Only under exceptional circumstances will IYFA consider cases associated with behaviour management issues.

3.10 Where an admission authority receives an in-year application for a year group that is not the normal point of entry and it does not wish to admit the child because it has good reason to believe that the child may display challenging behaviour⁷⁶, it may refuse admission and refer the child to the Fair Access Protocol⁷⁷

⁷⁶ For the purposes of this Code, behaviour can be described as challenging where it would be unlikely to be responsive to the usual range of interventions to help prevent and address pupil misbehaviour or it is of such severity, frequency, or duration that it is beyond the normal range that schools can tolerate. We would expect this behaviour to significantly interfere with the pupil's/other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment.

⁷⁷ A child with challenging behaviour may also be disabled as defined in the Equality Act 2010. When considering refusing admission on these grounds, admission authorities must consider their duties under that Act. Admission authorities should also consider the effect of the decision of the Upper Tribunal in *C & C v The Governing Body of a School, The Secretary of State for Education (First Interested Party) and The National Autistic Society (Second Interested Party)* (SEN) [2018] UKUT 269 (AAC) about the implications of the Equality Act 2010 when a pupil exhibits a tendency to physical abuse of other persons as a consequence of a disability.

3.11 An admission authority should only rely on the provision in paragraph 3.10 if it has a particularly high proportion of either children with challenging behaviour or previously permanently excluded pupils on roll compared to other local schools and it considers that admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources

- 6.2. The expectation would be that the current school would apply a graduated response to SEMH needs. Where it is considered that all relevant strategies have been employed over a sustained period of time, or, there has been an

irreparable breakdown between the school and parent/carer or school and the pupil, a managed move or managed transfer to another mainstream school should be considered. In these circumstances the transfer should be commissioned by the child's current school through the Managed Move process and not through a parental in-year transfer request to the IYFA Panel. Managed moves are administered by the Social Inclusion Officer who sits on the IYFA Panel.

7. Pupil Referral Unit

Admissions to Herefordshire's Pupil Referral Service for pupils who have not been Permanently Excluded (PEX) should refer to the HPRS referral protocol. Pupils who have not been permanently excluded will remain on the roll of the referring school, which will be responsible for the costs of the PRU and the outcomes the pupil achieves. A senior leader from HPRS will sit on the IYFA Panel. All referrals to HPRS whether PEX or not will require an information passport completing

8. Permanent Exclusions

For every pupil who has had a first permanent exclusion, there is the expectation that the school who has permanently excluded will provide the PRU with a fully completed Information Passport. Herefordshire Council's Social Inclusion Officer and the PRU Forum should consider the young person's circumstances, consider the circumstances of the exclusion and where appropriate, Herefordshire Council's Social Inclusion Officer will seek to place into a second school. In most cases this will be the next nearest school with spaces. Only in exceptional circumstances will cases need to be referred to IYFA Panel for resolution. The Council must ensure that the duty to provide 'Day 6' provision, usually through the PRU, is adhered to. However, placement into the PRU in these circumstances should be minimal and only last until the new school is identified.

9. Home and Hospital Hub and Teaching Team (H3)

Referrals to H3 are managed through a separate referral process and require the support of a medical consultant to be considered (link). It is not appropriate to refer these cases via IYFA.

10. Social Care

- 10.1. All schools have safeguarding duties that sometimes result in referral to the Council's social care services. It is not uncommon for parents to apply to transfer schools to seek to avoid the scrutiny of the social care services or to avoid the possibility of future referral by the school. Only under exceptional circumstances will IYFA Panel consider cases for transfer where the child is 'open' to social care (CIN Plan or CP Plan) unless there are other factors involved and it is supported by the child's social worker.
- 10.2. Looked after Children's admission is dealt with by the Virtual School under different legislation.

11. Serial Transfers

- 11.1. Parents have the right to apply to transfer schools and express a preference for an alternative school. It is well documented however that the progress of children who transfer schools is adversely effected, and even more so where more than one transfer occurs.
- 11.2. Applications for children who frequently transfer schools can be referred to the In Year Fair Access Process: 2 or more transfers may be considered to be exceptional and unlikely to be supported by the Panel without extenuating circumstances.

12. Children in Year 10 and 11

- 12.1. A school transfer during Year 10 or Year 11 can damage the prospects of children achieving good outcomes at GCSE. This is because schools do not universally subscribe to the same exam boards or syllabus for their courses. For these reasons transfers in Key Stage 4 are not recommended unless exceptional circumstances apply.
- 12.2. Applications for children in Key stage 4 can be considered where the young person meets the 'hard to place criteria' outlined in section 3. The application should be considered by the school applied to even if there are non-matching exam boards.

13. Community Issues

Events in the local community that lead to police involvement can precipitate an application for transfer. The IYFA Process will consider an application in this instance.

14. Shortage of vacancies

The Admissions code states in Section 1.4: Admission authorities may also admit above their PAN through in-year admissions. The PAN only applies to the relevant age group. This means that admission authorities may not refuse admission to other age groups on the grounds that they have already reached their PAN. They may, however, refuse admission where the admission of another child would prejudice the provision of efficient education or efficient use of resources.

In the event that a family cannot access a school within reasonable distance of home because of a shortage of vacancies, the Local Authority has a duty to provide a school place. The statutory walking distance for children to access school is 2 miles for under 8s and 3 miles for older children. While Herefordshire Council will support families with transport assistance, it also supports the inclusion of children in schools in their local community. In the event that the nearest available school is beyond the statutory walking distance, and where the cost of providing school transport to an alternative setting is not a reasonable use of council resources, the IYFA process will consider applications for children to be admitted to local schools beyond their normal pupil admission number (PAN).

15. Elective Home Education

- 15.1. For a child / young person where parents have elected to home educate and then wants or is required to return to school, that child /young person will normally be expected to be admitted to their original school unless there are compelling reasons why that would not be possible or appropriate. In those cases, the home school must take the children and young people back onto its roll and negotiate a managed move. The managed move process should not delay the start date unnecessarily. The School Admissions code section 3.17 Fair Access Protocols does not cover children who have been home educated therefore these cases should not be referred to the fair access panels and schools should seek to admit

15.2. For a child/ young person where parents elected to home educate in the primary years and then wants or is required to return to school in Year 7 or above, the expectation is that the young person would be admitted to their nearest school with spaces.

15.3. Significant issues that mean the original school place is no longer accessible, may / may not cover the following;

Significant issues need to be evidenced and could cover:

- Significant and irretrievable relationship breakdown between young person / parent carer and school.
- To re-admit the young person would prejudice the education of the children/young people in the year group/school.

Significant issues should not cover;

- The young person is requesting to be re-admitted in Key Stage 4
- The young person has followed a different curriculum model to that of the school

16. In Year Fair Access Referral

Referral to the In Year Fair Access Process can be made by the Herefordshire School applied to, or by a Council professional who is working with or on behalf of a child or family. Referrals are made using section 7 of the in year transfer form. Appropriate referrals that meet the criteria within this document will be considered by the IYFA Panel formed of Council Officers and school representatives. They will consider the best interests of the child and the statutory duty to ensure that no single school is required to accommodate more hard to place children than other schools, and to ensure that applications are resolved quickly.

17. Budgets

Provision is made in this protocol for the IYFA Panel to administer funds in support of the objectives outlined in this protocol. The nature and amounts covered will vary depending on any agreement during the usual budgetary planning processes.

18. Monitoring Activity

The IYFA Panel has an important and legitimate role in monitoring a range of parameters that indicate the health of the IYFA system on behalf of the Herefordshire community of schools. These include:

- Numbers of placements and in year admissions
- Permanent exclusions
- Managed moves and managed transfers
- PRU placements including the success of intervention places
- Elective Home Education

This monitoring work will be supported by the relevant Council Officers and reported on to Herefordshire Council, Herefordshire Association of Secondary Heads (HASH) and representative groups for Herefordshire Primary Heads.

19. Participation in the Fair Access protocol

The Fair Access Protocol (FAP) "must be consulted upon and developed in partnership with all schools in its area". Participation in the FAP includes "making available a representative who is authorised to participate in discussions, make decisions on placing children via the Protocol, and admitting pupils when asked to do so in accordance with the Protocol, even when the school is full". These decisions can be made by one individual, providing that "suitable authority has been delegated" to them, with admissions authorities ensuring this complies with "relevant governance requirements". Herefordshire Council will give admission authorities reasonable notice and information as to how and when discussions will take place; in general this will be once a month at a time / date to be scheduled for the full academic year.

20. Review of the Fair Access Protocol (FAP)

The FAP will be reviewed annually prior to the commencement of the new academic year at a meeting of the fair access panel. If the majority of the schools in the area can no longer support the principles and approach of the protocol then a review will be initiated with Herefordshire Council Children and Families Directorate to seek a mutually agreed outcome. Until such time a new FAP is in place the existing FAP will remain binding on all schools.

21. Cross Border Activity

If in the case of child needing to be placed across local authority borders the In year fair access panel chair will consult with neighbouring authorities' admissions colleagues. Neighbouring authorities to include: Powys, Monmouthshire, Shropshire, Worcestershire, Gloucestershire