



## SCHOOLS FORUM

### *Fair Access Protocol*

**26 November 2013**

Content Applicable to;		School Phase;	
Maintained Primary and Secondary Schools	✓	Pre School	
Academies	✓	Foundation Stage	✓
PVI Settings		Primary	✓
Special Schools / Academies	✓	Secondary	✓
Local Authority	✓	Post 16	
		High Needs	✓

### Purpose of Report

Content Requires;		By;	
Noting	✓	Maintained Primary School Members	✓
Decision		Maintained Secondary School Members	✓
		Maintained Special School Members	✓
		Academy Members	✓
		All Schools Forum	✓

1. This report presents the Local Authority's consultation on the proposed changes to the Fair Access protocol.

### Recommendation

2. Schools Forum are recommended to note the report and are invited to comment on the proposals.

### Introduction

3. The Dedicated Schools Grant (DSG) funds expenditure in the High Needs block which includes funding for both statemented pupils and pupils attending Alternative Provision. Children and Young People receive Alternative Provision where their behaviour prevents them attending a mainstream school. Expenditure on this provision has recently been

devolved to Behaviour Partnerships for Key Stage 4 (14-16yrs) pupils. Key Stage 3 provision, currently made at Oakfield School, is subject the topic of the further paper to Forum today.

### **Background**

4. The Fair Access Protocol is a local agreement with schools within a statutory national framework. The National School Admissions Policy requires all local authorities to agree a Fair Access Protocol with schools and academies in it's area. The protocol deals with arrangements for ensuring vulnerable young people who do not have a schools place, are found one quickly. The protocol also makes sure that all schools take their fair share of vulnerable children and young people.
5. The last version of the protocol was published in 2007. Much has changed since then, and the contents of the protocol are now out of date. For example, the protocol makes reference to Local Authority behaviour support services which no longer exist. In addition, secondary behaviour partnerships now have responsibility for commissioning and organising provision at Key Stage 4, that was previously managed by central support services.
6. The new version of the protocol has been designed to support partnerships with this new role. It is also compatible with current arrangements with Primary Schools, where partnership working is more difficult by virtue of the much larger number of schools involved.

### **Resource Implications**

7. A successful Fair Access Protocol will ensure that resources for Alternative Provision are used proportionately and fairly.

### **Equal Opportunity Issues**

8. Vulnerable children and young people without a school place are at risk of educational failure. The longer a young person is out of school, the more difficult it often becomes to re-engage them.

### **Background Papers**

9. Full details of the consultation can be found at:  
[http://www.leics.gov.uk/index/education/going\\_to\\_school/la/edu\\_consultations/fair\\_access\\_protocol\\_consultation.htm](http://www.leics.gov.uk/index/education/going_to_school/la/edu_consultations/fair_access_protocol_consultation.htm)

The Departmental Management Team paper of 2<sup>nd</sup> October seeking approval for this consultation is attached. The proposed Fair Access Protocol is included as an appendix to this paper.

### **Officers to Contact**

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## **Children and Young People's Service**

### **Departmental Management Team**

#### **BUSINESS MEETING**

2<sup>nd</sup> October

### **Secondary Behaviour Partnerships Agreement**

#### **Introduction**

These papers make up the formal agreement between schools and the local authority on secondary behaviour partnerships.

#### **Decisions needed by DMT**

1. Approve the partnership agreement for signing by Heads of Lead Schools
2. Approve the Fair Access Protocol for consultation with schools

#### **Background**

In a series of decisions in 2012-13 DMT have decided to:

- Terminate the central behaviour support services (Locality Support Service and Commissioning and Personalised Programmes Service).
- Seek agreement with the five secondary behaviour partnerships to devolve key stage 4 alternative programmes commissioning arrangements.
- Establish a commissioning agreement with five lead schools to support the devolvement of Key Stage 4 funds to partnerships.
- Extend central services to summer 2013 to ensure young people's GCSE programmes were not disrupted.
- Undertake a readiness assessment with respect to the capacity of partnerships to pick up the work undertaken by central services from Sept 13.
- Appoint a transition support team to assist partnerships for one year (Sept 13 to Aug 31<sup>st</sup> 2014).

The papers attached are the formal underpinning for the relationship between the LA and behaviour partnerships. The papers include:

1. Appendix 1: Partnership Agreement between LA and lead schools
  - Schedule 1: Overarching vision and outcomes framework
  - Schedule 2: Partnership Business Plan Template
  - Schedule 3: Termly Progress Report
  - Schedule 4: Annual Expenditure Report
  - Schedule 5: Template Memorandum of Understanding between Schools in a Partnership
2. Appendix 2: Draft Fair Access Protocol

The papers in appendix 1 have been approved by legal services. The Fair Access Protocol was approved by legal services in its previous form. This version will be checked with them again following consultation.

The Fair Access Protocol will be the subject of a consultation with schools and schools forum, as required by the School Admissions Code 2012.

## **Financial Implications**

Partnership budgets have been developed with finance, and the legal agreement in Appendix 1 provides the basis for the devolvement of funds to the partnerships. This document will need to be signed by the five lead schools, one leading each behaviour partnership.

## **People implications**

None

## **Equalities issues/implications**

These arrangements secure educational provision for vulnerable children at risk of permanent exclusion.

## **Safeguarding issues/implications**

None

## **Environmental Implications**

Local provision in each partnership area should reduce transport costs and associated pollution.

## **Information Management Implications**

None

## **ICT Implications**

None

## **National/local Political Implications**

The DfE continues with a series of national pilots to test the recommendations of the Taylor report. The latter seeks to increase schools' responsibility for the commissioning of alternative provision.

Author: C Palmer

Date: 30/9/13

**Appendix 2: Draft Fair Access Protocol**

**Leicestershire County Council**

**Behaviour Partnerships**

**Draft Fair Access Protocol**

**September 2013**

## Introduction

Behaviour Partnerships have developed in Leicestershire to enable schools to work together to make educational provision for vulnerable and challenging children. Partnerships are led by schools, supported by local authority policy, use a combination of devolved and pooled resources, and seek to engage all schools within their area. The statutory basis for their operation is the Fair Access guidance included in the National School Admissions Code<sup>1</sup>.

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

The protocol needs to be agreed with a majority of schools and is then binding on all schools in the area<sup>2</sup>.

## Fair Access Applies To

Leicestershire's Fair Access Protocol will include the following children of compulsory school age who have difficulty securing a school place<sup>3</sup>:

- a) Children from the criminal justice system or Pupil Referral Units who need to be reintegrated into mainstream education;
- b) Children who have been out of education for two months or more;
- 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);

Looked after children and children with statements are further groups of children for whom special arrangements apply, as indicated below.

## Principles

- The local authority must have a Fair Access Protocol, in which all schools (including Academies) must participate since it is binding on the admission authorities for all schools and academies<sup>4</sup>. In Leicestershire, Behaviour Partnerships will operate the protocol on a day to day basis for secondary aged pupils.
- Schools (including Academies) should work together collaboratively, taking into account the

<sup>1</sup> <http://www.education.gov.uk/aboutdfe/statutory/g00213254/school-admissions-code-2012>

<sup>2</sup> Ibid section 3.9

<sup>3</sup> This list of groups is as suggested as the minimum scope of Protocols in the statutory admissions code (section 3.15).

<sup>4</sup> The term "Academies" in this document refers to all types of Academy schools, i.e. including Academy converters, sponsored Academies, and all types of Free Schools, including University Technical Colleges and Studio Schools, with the exception of Special Schools and alternative providers

needs of the child and those of the school / academy. There is no duty to comply with parental preference when allocating places through the Protocol but it is expected the wishes of the parents are taken into account.

- When seeking to place a child under the Protocol, all schools and academies should be treated in a fair, equitable and consistent manner. No school should be asked to take a disproportionate number of children who have been excluded from other schools.<sup>5</sup> This does not apply to Children in Care or Children with statements, for whom separate admission arrangements apply.
- Behaviour partnerships will use a combination of pooled and devolved resources to provide alternative programmes and in-school support to meet the needs of all vulnerable and challenging children.
- The Fair Access Protocol should not be used as a means to circumvent the normal in-year admissions process. A parent can apply for a place as an in-year admission at any point and is entitled to an appeal when a place is not offered<sup>6</sup>.
- Undue delays in admission, particularly of Children in Care, will be referred to the Adjudicator (LA Schools) or Secretary of State (Academies). An application to direct from the Secretary of State should only be requested as a last resort.<sup>7</sup>
- Schools must admit children and young people promptly, and arrange short term educational support themselves, pending longer term support agreed via the partnership.<sup>8</sup>

## The Aims of the Protocol

The In-Year Fair Access Protocol aims to:

- Identify the needs of vulnerable and challenging pupils including those who are not on the roll of any educational establishment quickly and sympathetically
- Reduce the time that vulnerable and challenging pupils spend out of education
- Ensure that all schools/academies admit vulnerable and challenging pupils on an equitable basis.
- Encourage schools and academies to work together in partnership to improve behaviour and reduce demands for alternative provision where possible.

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<sup>5</sup>Ibid section 3.9

<sup>6</sup> Ibid section 2.21

<sup>7</sup> The Secretary of State will base his decision having regard to whether due process, in line with the locally agreed provisions in the Fair Access Protocol, has been applied appropriately. The Protocol should establish the education provision a child will receive whilst discussions to identify a school place are taking place. In the event that the majority of schools / academies in an area can no longer support the principles and approach of the local Protocol, all the school heads should initiate a review with the local authority. The existing Protocol however remains binding on all schools and academies up until the point at which a new one is adopted.

<sup>8</sup> Useful guidance on Alternative Provision is available at:

<http://www.education.gov.uk/aboutdfe/statutory/g00211923/alternative-provision>

- Reduce the number of permanent exclusions by providing headteachers with a range of alternatives for young people at risk of the exclusion.
- Be fair and transparent, and to build the confidence of all schools/academies, in the placement and resourcing decisions made
- Work in partnership with each other (schools, academies, providers, agencies and the Local Authority).

## Timing and Application

- It is expected that all parties will act with a sense of urgency to identify a school or academy place for any child who has had difficulty securing one or who falls under the Fair Access Protocol.
- All schools, including Academies, are expected to respond to requests by the Local Authority to admit a child under the Fair Access Protocol without delay.
- Before deciding to issue a direction, the local authority must consult the governing body of the school, the parent, and the child, if they are over compulsory school age. If following consultation the local authority decides to direct, it must inform the governing body and head teacher of the school. A local authority should do the same when considering requesting a direction for a child to be admitted at an Academy through the Fair Access Protocol.
- The governing body of a maintained school can appeal by referring the case to the Schools Adjudicator within 15 calendar days. Similarly, it is expected that an Academy will agree a starting date for the child or set out its reasons for refusal in writing to the local authority within 15 calendar days (providing contact details to cover any approaching bank holiday or holiday periods). The Local Authority must not make a direction until the 15 days have passed and the case has not been referred.
- If an Academy has not agreed a start date for the child within 15 calendar days, the local authority can apply for a direction from the Secretary of State via the Education Funding Agency, who acts on his behalf in these cases.
- The admission authority of a school must inform the LA within 7 days whether it is willing to admit a young person where they are looked after.
- The Fair Access Protocol will not apply to a looked after child, a previously looked after child or a child with a statement of special educational needs in respect of naming the school in question, as these children must be admitted<sup>9</sup>.
- Admissions authorities must not refuse to admit a child thought to be potentially disruptive, or likely to exhibit challenging behaviour, on the grounds that the child is first assessed for special educational needs.
- Additional support for these children must then be considered separately through SENA (Special Educational Needs Assessment) for children with SEN statements (or Education Health and Care Plans), through the EdCIC Team for Leicestershire Children in Care,

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<sup>9</sup> DfE School Admissions Code (2012) para 3.12



through a request for services e-form<sup>10</sup> (CAF assessment) for multi agency support or through the Behaviour & Attendance Partnership for out of county or any previously looked after children and for children with challenging behaviour.

- Schools/academies cannot cite over-subscription as a reason for not admitting a pupil under the Protocol.
- Receiving schools are responsible for completing any necessary risk assessment as part of the admissions procedures. Risk assessments should be based on available information, and updated if necessary when new information is received. The completion of a risk assessment is not a reason to delay entry for more than 3 schools days.

## Responsibility for Pupils and Transfer between Partnerships

Children and People are the responsibility of a Behaviour Partnership if:

- They attend a partnership school or live within the county area of the Partnership
- Attend a partnership school, but live outside the county and have not been subject to a second qualifying permanent exclusion within two years

Where Children and Young People transfer schools, the receiving school/partnership can expect the departed school/partnership to continue to fund any current alternative provision for a period of up to 6 weeks to allow new arrangements to be established.

## Fair Access Procedures

Behaviour Partnerships will operate the Fair Access Protocol in Leicestershire on a day to day basis for secondary aged pupils.

Partnerships will establish and maintain core groups to:

- Receive referrals for school places and/or additional support under this protocol
- Use their best endeavours to ensure children resident in their area receive appropriate educational provision when out of school pending placement under this protocol
- Organise the collection of additional information about the case to assist with decision making of the group
- Agree a school and start date in response to a request for placement at a school in the local area, and inform the LA Admissions Service
- Keep records of all referrals and their outcomes
- Provide standard reports for the annual LA report to the national Schools Adjudicator on the operation of the protocol.

Where partnerships are unable to agree a placement:

- The Partnership inform the LA admissions service they are unable to place, or an individual school refuses to accept a pupil and informs the LA admissions service. The response must be within 15 working days.

<sup>10</sup> [http://website/index/children\\_families/commonassessmentframework.htm](http://website/index/children_families/commonassessmentframework.htm)

- The LA Admissions Service formally writes to a nominated academy/school<sup>11</sup> indicating their intention to issue a letter of direction, asking for a response within 15 days, either in response to inability to place or a refusal to accept, or no response from the partnership within 7 working days.
- Any response from the school will be given careful consideration. If the Local Authority accepts the reasons for refusal, a further academy/school will be approached. If the LA do not accept the reasons, or no response is received within 15 days, a formal letter directing the academy/school to admit will be issued. The letter will explain the LA's reasons for rejecting the schools case.
- The governing body of an Academy can appeal to the Education Funding Agency, within 15 days from the letter of direction. Schools can similarly appeal to the Schools Adjudicator.
- If the Academy/School does not admit, the LA will consider applying for a direction from the Education Funding Agency in the case of Academies or the Secretary of State in the case of Schools.

Operational procedures are summarised in flow chart form in appendix 2. The form for lodging appeals with the EFA against a direction to admit is available at:

<http://media.education.gov.uk/assets/files/doc/e/efa%20direction%20request%20form.doc> .

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

- The Local Authority and Academies are expected to mediate between themselves before a request is made to the Secretary of State to direct an Academy to admit a child.
- Where a local resolution cannot be found, it is the responsibility of the Local Authority and the Academy to document the case for and against admission.
- When reviewing an Academy direction case, the Education Funding Agency 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.
- In requesting a direction from the Secretary of State, the Local Authority must provide evidence that the provisions of the Fair Access Protocol have been applied in a fair and appropriate manner, the Academy's reasons for refusal and the Local Authority's response.
- The Local Authority should send the information using the attached template to the Education Funding Agency. On receipt of a request to direct, the Education Funding Agency will inform the school that it has received a request for a direction. The letter will request that the Academy provide any evidence other than that already received that the process has not been properly applied within seven calendar days.
- The admission authority for an Academy must inform the LA within 7 days as to whether it will admit a child in care. If the LA decides after this consultation to direct admission, any undue delay will be referred to the Secretary of State.

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<sup>11</sup> The LA will nominate the nearest school to the child's home address, unless that school has already accepted significantly more fair access admissions than other schools in the area in that school year. Further nominations will again be based on next nearest to home.

- Where the Secretary of State is asked to consider a direction he will make that decision on the basis of the papers provided, taking into account:
  - whether the local Fair Access Protocol has been applied appropriately;
  - the arguments of the Academy and Local Authority, whether the Local Authority has considered the arguments for refusal and why it still considers the Academy to be the appropriate provision for the child;
  - whether the Academy has been asked to accept a disproportionate number of children under the Fair Access Protocol compared to other schools.

## Permanent Exclusions

Section 3.8 of the School Admissions Code makes clear that in the normal admissions round, admissions authorities must not refuse to admit children on the basis of their poor behaviour elsewhere. The same section also states that admissions authorities do not have to comply with parental requests for places for a period of two years following a second permanent exclusion.<sup>12</sup>

Local Authorities have a legal duty to provide education for permanently excluded children. Leicestershire undertakes this duty through a combination of Oakfield Pupil Referral Unit and locally arranged provision by Behaviour Partnerships. Details are set out in the memorandum of understanding.

Schools will take particular care to explore every possible alternative to permanent exclusion especially in the case of Children in Care, given the disrupted education that is so often part of their experience.

### Provision from the 6<sup>th</sup> day of a Permanent Exclusion

Local Authorities have a duty to arrange full-time educational provision for permanently excluded children from the 6<sup>th</sup> day of a permanent exclusion. The provision is made by a combination of Oakfield Pupil Referral Unit, and provision locally commissioned by Behaviour Partnerships.

Schools and academies are responsible for educational provision for fixed term exclusions from the 6<sup>th</sup> day.

### Transport

All arrangements for transport are detailed in the local authority's Transport policy.

[http://www.leics.gov.uk/index/highways/passenger\\_transport/school\\_college\\_transport/school\\_and\\_college\\_transport\\_entitlement\\_policy.htm](http://www.leics.gov.uk/index/highways/passenger_transport/school_college_transport/school_and_college_transport_entitlement_policy.htm)

### Dual Registration/ Managed Move

In order to provide support for children who may be at risk of permanent exclusion, the Behaviour Partnership may approve a managed move or a dual registration. Such arrangements **must** be made in accordance with the Managed Move and Dual Registration Protocols. A dual registration may also be appropriate when a child is reintegrating into a new school following a permanent exclusion.

## Reporting Requirements

Local Authorities **must** produce an annual report on admission and Fair Access for all schools and

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<sup>12</sup> The twice excluded rule does not apply to children who were below compulsory school age at the time of the exclusion, children who have been re-instated following a permanent exclusion (or would have been had it been practical to do so), and children with statements of special educational needs.

academies in their area<sup>13</sup>. This report must be published locally and then sent to the Adjudicator by 30 June each year. Information for this report **must** be collated, updated and provided by the Behaviour Partnerships on request. The report **must** cover as a minimum:

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

A template for this report is included in Appendix 4.

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<sup>13</sup> [http://www.leics.gov.uk/local\\_authority\\_report\\_to\\_the\\_schools\\_abjudicator-2.doc](http://www.leics.gov.uk/local_authority_report_to_the_schools_abjudicator-2.doc)

## Children Missing Education

The Children and Young People's Service has put in place rigorous arrangements for identifying and maintaining contact with children missing, or at risk of going missing, from education.

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

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

JoAnne Rees; Joe Martin; Lis Haines,

School Admissions & Pupil Services 100B, County Hall, Glenfield, Leicester, LE3 8RF  
Tel: 0116 3052071 - email: [cme@leics.gov.uk](mailto:cme@leics.gov.uk)

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

## Information sharing and security

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

## Appendix 1 Relevant Legislation

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

### Primary Law

#### Equality Act 2010

<http://www.legislation.gov.uk/ukpga/2010/15/contents>

#### Human Rights Act 1998

<http://www.legislation.gov.uk/ukpga/1998/42/contents>

#### School Standards and Framework Act 1998

<http://www.legislation.gov.uk/ukpga/1998/31/contents>

### Secondary Guidance

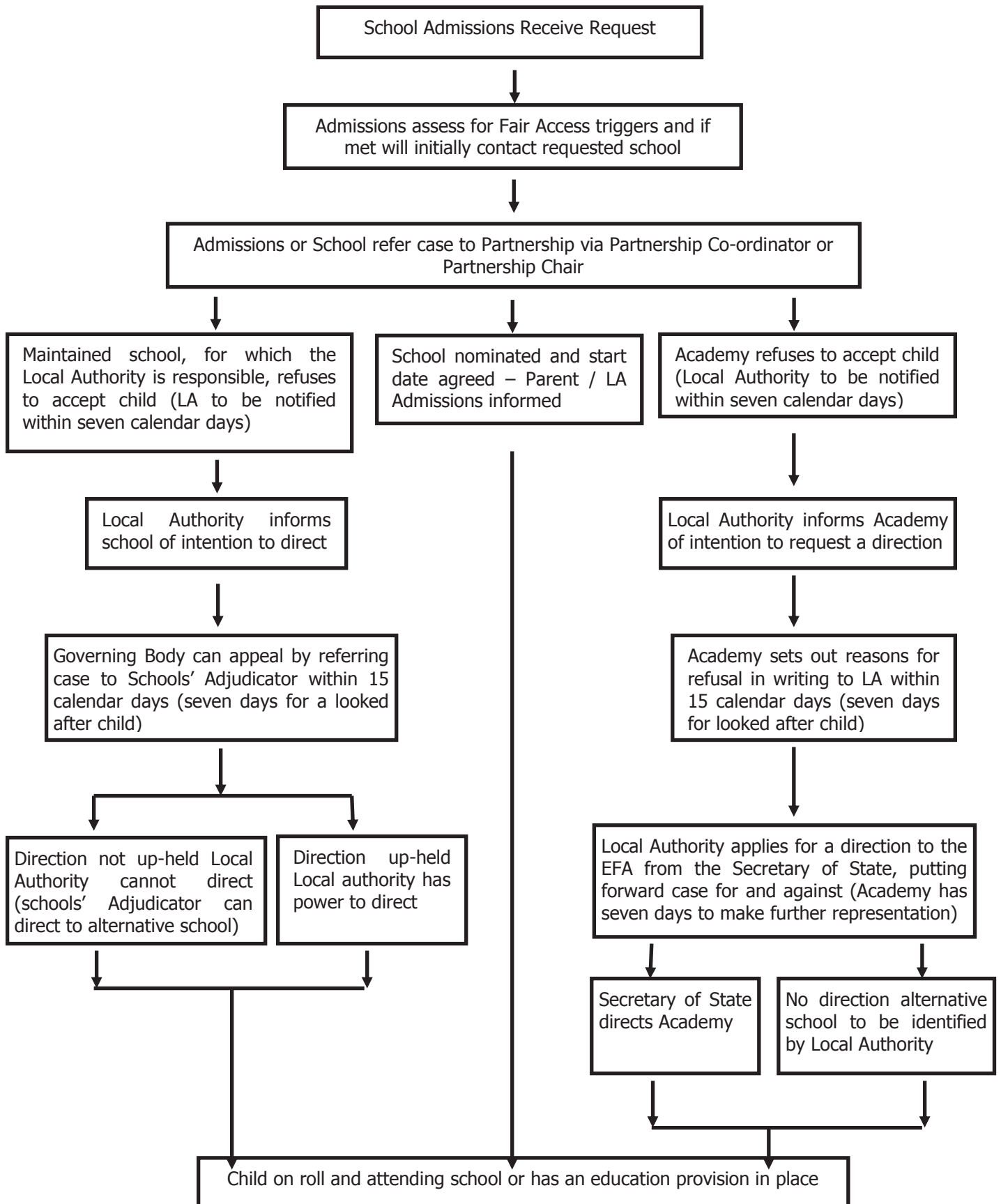
#### Exclusions

Guidance:

<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion/g00210521/statutory-guidance-regs-2012>

Appendix 2

**Fair Access Flow Chart**







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