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To: Kent Schools Admissions Forum – 11 September 2007

Subject: **Fair Access Protocol**

Classification: Unrestricted

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Summary: Provides details of the Kent In Year Fair Access Protocol in line with national requirements on all Local Authorities and invites the Forum to adopt it and monitor its impact.

## **FOR DECISION**

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### **In Year Fair Access Protocol**

#### **Introduction**

##### **Aim**

1. The aim of this protocol is to ensure that all children and young people who are out of school are admitted to appropriate education quickly at any time of the year. This matter was considered initially by the Kent Schools Admissions Forum on March 8, 2007.
2. The protocol demands that the Local Authority and its Clusters and Schools do not allow the circumstances of any child or young person to inhibit or delay their right to access education.
3. Most children and young people in Kent are able to secure quickly a high quality education placement through standard school admissions procedures, including in-year admissions processes. Despite the effective admissions process and the good practice of most schools and Clusters, a small number of pupils each year face an unreasonable delay in accessing education.
4. Schools, settings and Clusters across the County recognise this and are aware of the need to ensure vulnerable groups are afforded additional support in this process e.g. priority consideration for education placement for Looked After Children.
5. In addition, a small percentage of pupils across the County are permanently excluded each year. In the 2005/6 academic year, 378 pupils were permanently excluded across the County. Most permanently excluded pupils are placed efficiently within an appropriate school or setting through local agreement. However, a small number of children and young people formerly referred to as “hard to place” do not benefit from fair and timely access to education.

## Context

6. In November 2004, the Department for Education and Skills (DfES) asked each Local Authority (LA) to develop a protocol for
  - finding provision, including schools, for secondary age pupils who are out of school and who are “hard to place” (HT);
  - allocating places for HTP pupils, equally and fairly amongst schools.
7. By virtue of the government’s new Code of Practice on Admissions, the position is mandatory from September 2007 i.e.
  - each LA has a statutory duty to introduce and operate a protocol;
  - every school (including Academies) is bound by the provisions of the protocol, with no exceptions;
  - this includes admitting children above the published admission number;
  - the protocol will be known as the In Year Fair Access Protocol (IYFAP).

The main elements of this aspect of the Code are attached and the full Code can be found at [www.dfes.gov.uk/sacode/](http://www.dfes.gov.uk/sacode/)

## The position in Kent

8. Many Kent schools have been involved in work to develop Fair Access Protocols as part of the process of planning for devolution.
9. Fair Access Protocols need to be consistent across the County to enable cross Cluster collaboration and the following protocol is proposed as a minimum standard.
10. The Admissions Forum had the opportunity to consider the attached draft protocol and agreed that there should be further consultation with head teachers before considering whether to formally adopt the protocol.
11. The protocol is designed to:
  - Ensure that access to education is secured quickly for children who have no school place
  - Ensure that all schools in an area admit pupils with challenging educational needs on a turn-taking basis
  - Be fair and transparent

While currently there is no mandatory “maximum” time nationally within which a young person should access admission to education<sup>1</sup>, it is proposed that 30 school days should be regarded as the maximum in Kent. It is intended to reduce this maximum over time.

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<sup>1</sup> excepting those who are excluded

## Main Principles

12. In order for the protocol to be successful:

- all schools in the area **must** take part, even if they are responsible for their own admissions, including Academies
- schools should continue to admit local pupils who apply for an available place under normal admission arrangements
- schools cannot cite oversubscription as a reason for not admitting a pupil under the protocol
- hard to place pupils should be given priority for admission over others on a waiting list or awaiting an appeal
- schools must respond immediately to requests for admission so that the admission of the pupil is not delayed
- schools **must not** insist on an appeal being heard before admitting a child under this protocol
- the local placement panel) should take account of any genuine concerns about the admission, for example a previous serious breakdown in the relationship between the school and the family, or a strong aversion to or desire for the religious ethos of a school
- wherever possible, parents' views will be considered, but will not override the protocol if the preferred school is unable to take the pupil.
- wherever possible, pupils with a religious affiliation should be matched to a suitable school, but this should not override the protocol if the school is unable to take the pupil, or if the pupil identified for the school does not have that affiliation.

## Pupils with Fair Access Status

13. The protocol will cover:

- Children who live in the locality and are permanently excluded from other schools (including those pupils excluded from mainstream provision with a Statement of Special Educational Needs<sup>2</sup>). This is to ensure that these pupils have an education placement within 6 school days of exclusion in accordance with DCSF 2007 exclusion guidance ([www.dfes.gov.uk/exclusions/guidance/](http://www.dfes.gov.uk/exclusions/guidance/) )
- Children who have been out of education for more than 24 school days. This is to ensure that these pupils secure an education placement within the specified 30 school days.

The Local Authority retains the right to direct any maintained school to admit a child in their care to the school best suited to his or her needs.

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<sup>2</sup> The Local Authority will continue to be responsible for naming a school within Part IV of the Statement of Special Educational Needs, taking account of any recommendation from the Cluster

## Procedure

14. If a pupil is permanently excluded from school or moves into the locality and cannot find a school place within 24 school days he/she will receive Fair access Status (FAS).

Where either event occurs, the cluster (or wider partnership) **must** agree a school placement within 6 school days.

## Head teacher Panels

15. It is recommended that schools in a cluster or wider partnership, establish Head teacher panels to administer or to monitor the process. The Panel may not physically meet on each occasion but may choose to adopt a “virtual panel” approach where appropriate. Such panels could also determine which pupil’s should access devolved provision such as Pupil Referral Units and Alternative Curriculum placements prior to placement in school.

## Process and Monitoring

16. Where a pupil is permanently excluded from school, the excluding school should continue to advise the Exclusions Officer immediately. The Exclusions Officer will send a formal e-mail to the Cluster Chair (of the cluster in which the child lives), LEO, ABS representative and Admissions representative notifying them that this pupil now has Fair Access Status. It will be the responsibility of the Cluster representatives and Head teacher panel, to ensure the pupil has an identified school placement within the statutory 6 school days.
17. Where a pupil is out of school for reasons other than exclusion or has moved to the locality and is unable to secure a school place through normal admissions procedures within 24 days, the Admissions representative will send a formal e-mail to the Cluster Chair (of the cluster in which the child lives), LEO and ABS representative notifying them that this pupil now has Fair Access Status. It will be the responsibility of the Cluster representatives and Head teacher Panel to ensure the pupil has an identified school placement within the 6 school days to ensure the 30 school day requirement is met.
18. If the cluster fails to secure an educational place for the pupil within the required time period, the Local Authority will be obligated to direct a school or setting to admit the pupil and in extreme cases will use its powers in suspension of delegation to achieve this.
19. The Admissions Code is clear that Admission Forums **must** monitor how well they are working, how quickly the children are found places, and the contribution every school in the area is making.

The Local Authority will provide the data to enable the Admissions Forum to fulfil this role.

## **The Points-Weighted List of Schools**

20. Within many clusters, local partnership arrangements already exist to ensure the admissions process for this group can occur by mutual agreement and with the support of all schools. Where these arrangements are effective and amicable, placement issues are resolved within the specified timescales and no further action is required,

Where a more transparent or rigorous system is required to ensure this happens, the Local Authority advocates the use of a Points Weighted System, detailed below.

If a pupil needs to be placed using the In Year Fair Access Protocol an agreed points-weighted list will be referred to in order to identify the schools whose turn it is to admit next.

Schools are ranked using data relating to the following factors:

- Percentage of pupils with statements of special educational need\*
- Percentage of pupils at school action plus
- Percentage of pupils eligible for free school meals
- Percentage of Looked After Children
- Percentage of mobility placements.

\* Not including children with statements of special educational need attending an attached Unit/designation.

Data will be based on PLASC agreed with Management Information Systems. Baseline points will be established annually across the County and reset annually in September. Data will be supplied to each cluster at the beginning of the academic year, to enable them to implement this process.

Each time a child is placed in a school under the protocol additional points are credited and the school moves to a lower position in the list. This means that it would be unusual for a school to be asked to admit two pupils in quick succession.

Analysis of hard to place pupils over the last 2 years suggests that it would be unusual for a secondary school to be asked to admit more than 5 children in any one year under the protocol. Primary school would rarely have to admit more than one child per year.

## **Managed Move Protocols**

21. Many Clusters and groups of schools have established voluntary managed move protocols as a preventive measure. Such protocols can work alongside

the statutory protocol which is for children without a school place. Head teacher panels may want to include managed moves data within the overall data set.

### **Finding a school place at a different time of year**

*Information contained with Kent School Admissions Booklet 2007 (for reference)*

22. If you are the parent or carer of a child who is looking for a school place outside the usual admissions round you can apply direct to any school for a place for your child, and in most cases – unless it is a grammar school and the child has not reached the required standard – you can expect that you will be offered a place if the school has one. If the school is full you will be told how to appeal for a place, and how to put your child's name on any waiting list the school keeps.

If you need information about which schools may have spaces, or if you have contacted local schools but been unable to find a place, ring 01622 696565 and ask to be put through to the Casual Admissions Team.

Occasionally, finding a school place will be harder – for example, if all the local schools are full, if the child has educational needs which require special provision, or if he or she has been permanently excluded from the school they used to attend.

In the case of children who have been permanently excluded, they should be found a place within 6 school days, and no child should be out of school for more than 30 school days.

Sometimes, to protect the interests of children who are out of school and haven't been found a school place within these time limits, the Local Authority will use what is called a Fair Access Protocol, to make sure they resume their education as soon as possible. Schools or Academies must give children who are subject to a Fair Access Protocol priority over children on the waiting list who already have a place at another school.

If you need to know more about the Fair Access Protocol, ring 01622 696565 and ask to be put through to the Attendance and Behaviour service.

### **Conclusion**

**The Forum is asked to agree the above as its policy in respect of the nationally required In Year Fair Access Protocol.**

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Background Documents: *MINUTES of a meeting of the Kent Schools Admissions Forum held at Sessions House, County Hall on Thursday, 8 March 2007.*

## Appendix 1

### SCHOOL ADMISSIONS CODE

#### In-Year Fair Access Protocols

**3.14** In-Year Fair Access Protocols (formerly referred to as ‘hard to place pupil protocols’) exist to ensure that access to education is secured quickly for children who have no school place, and to ensure that all schools in an area admit their fair share of children with challenging behaviour. Along with devolved funding and responsibility for alternative provision, an agreed protocol encourages schools to work together in partnership to improve behaviour and tackle persistent absence.

**3.15** All admission authorities and Admission Forums **must** have Fair Access Protocols in place by September 2007. In addition, all schools and Academies **must** participate in their local authority area’s protocol in order to ensure that unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible. This includes admitting children above the published admission number to schools that are already full. For that reason, admission appeal panels **should not** view the fact that a protocol has obliged a school to admit over its admission number as an indication that it can do so in the normal admissions round without causing prejudice to the efficient provision of education or efficient use of resources.

**3.16** There is a balance to be struck between finding a place quickly, when the place might be in an undersubscribed school or one facing challenging circumstances, and finding a school place that is appropriate for the child. In agreeing a protocol the local authority, Admission Forums and admission authorities **should** ensure that no school, including those with places available, is asked to take an excessive or unreasonable number of children who have been excluded from other schools.

**3.17** Admission authorities and Admission Forums **must** ensure that all children who arrive outside the normal admissions round who may have difficulty securing a place are covered in their protocol. Children with special educational needs but without statements **should** be treated in the same way as all other applicants, but protocols

**must** include arrangements for ensuring that, where there is prior need for particular support or for reasonable adjustments to be made for children with special educational needs or disabilities, such children are placed quickly. Children with statements of special educational needs that name a school and who arrive outside the normal admission round **must** be admitted to the school even if the school is full. Similarly, where a local authority, as the corporate parent, directs an admission authority to admit a child in care, the governing body **must** admit the child to the school at any specified time during the year, even if the school is full, unless the Adjudicator upholds an appeal from the admission authority<sup>3</sup>.

**3.18** The governing body of a voluntary aided or foundation school may under section 97 of the School Standards and Framework Act 1998 (as amended by section 49 of the Education and Inspections Act 2006) refer a local authority's decision to direct the admission of a child in accordance with a locally agreed protocol under section 96 of the School Standards and Framework Act 1998 to the Schools Adjudicator. The Adjudicator then determines which school is to be required to admit the child. The governing body of the school **must** admit the child. If a governing body refuses to comply with a direction under section 96 the local authority may refer the matter to the Secretary of State for consideration under section 497 of the Education Act 1996. Similarly, the local authority can refer the matter to the Secretary of State if an Academy refuses to admit a child in accordance with a protocol. In the case of a community or voluntary controlled school where the governing body refuses to accept the local authority decision as admission authority to admit the child, the local authority may refer the matter to the Secretary of State under section 496 or section 497 of the Education Act 1996.

**3.19** Once In-Year Fair Access protocols have been agreed Admission Forums **must** monitor how well they are working<sup>4</sup>, how quickly the children are found places, and the contribution every school in the area is making. Additional guidance, along with example protocols and case studies of good practice can be found at [www.dfes.gov.uk/sacode](http://www.dfes.gov.uk/sacode).

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<sup>3</sup> Section 97(3) of the SSFA 1998 as amended by section 49 of the EIA 2006

<sup>4</sup> The Education (Admissions Forums)(England) Regulations 2002 (SI 2002/2900) as amended by SI 2007/xxxx