

Kent County Council

Fair Access Protocol 2022

Fair Access Protocol (FAP)

This document sets out the Fair Access Protocol which will operate in Kent, in partnership with schools.

Additional information can be found in the separate document:

- Guidance for Kent's Fair Access Protocol

Fair Access Protocol 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.

- For example, where an application has been made to at least one school and this has been refused, or the local authority has confirmed that there are no places available at any school within a reasonable distance.

School Admissions Code 2021 abbreviated to SAC onwards.

1. Categories of Children and Young People (CYP)

1.1 Children and young people to be placed under this Protocol will be those:

- Who live in Kent; and
- Who are of a mandatory school age; and
- Who are not already on the roll of a school (exceptions apply, see section 1.5); and
- Who 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; and

Who fall under one of the categories 1.2 to 1.14 below:

1.2 *** 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**

Including:

- Child in Need Plans and Child Protection Plans are plans of help and protection to address safeguarding and welfare needs, where a child has been assessed by the local authority as being a child in need under Section 17 of the Children Act 1989

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	and/or as suffering or likely to suffer significant hardship under Section 47 of the Children Act 1989. See also statutory guidance Working Together to Safeguard Children (2018) (pages 35 and 48-49).
1.3	<p>* Children living in a refuge or in other Relevant Accommodation at the point of being referred to the Protocol</p> <p>Including:</p> <ul style="list-style-type: none"> • Those who have been placed in temporary housing by the local council. • Children and young people who are accommodated in an emergency refuge for victims of domestic violence.
1.4	* Children from the criminal justice system
1.5	<p>* 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</p> <ul style="list-style-type: none"> • Children and young people who are permanently excluded from a Kent school will be referred to the Panel by the Inclusion & Attendance Adviser. • Children and young people who are ready for reintegration to a mainstream school from a Kent PRU or other Alternative Provision will be identified and presented by the PRU Head.
1.6	<p>* Children with special educational needs (but without an Education Health and Care plan), disabilities or medical conditions</p> <ul style="list-style-type: none"> • Admission authorities must not refuse to admit a child thought to be potentially disruptive, or likely to exhibit challenging behaviour, on the grounds that the child is first to be assessed for special educational needs. (SAC - p3.13)
1.7	* Children who are carers
1.8	* Children who are homeless
1.9	<p>* Children in formal kinship care arrangements</p> <ul style="list-style-type: none"> • As evidenced by either child arrangements order not relating to either birth parent or a special guardianship order.

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1.10	<p>* Children of, or who are, Gypsies, Roma, Travellers, refugees, and asylum seekers</p>
1.11	<p>* 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 of the School Admissions Code 2021:</p> <ul style="list-style-type: none"> • Where an admissions 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 behaviour¹, it may refuse admission² and refer the child to the Fair Access Protocol³ (SAC - p3.10): <ol style="list-style-type: none"> 1. 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. 2. 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 <i>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)</i> 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. (Judicial Summary can be found here.) 3. Paragraph 1.9(g) does not apply where an admission authority takes account of past behaviour as evidence for concerns about challenging behaviour, solely for the purpose of making a decision on whether it would be appropriate to refuse admission on the basis described in paragraph 3.10. • 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. (SAC - p3.11)

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	<ul style="list-style-type: none"> • The provision in paragraph 3.10 cannot be used to refuse admission to looked after children, previously looked after children; and children who have Education, Health and Care Plans naming the school in question. (SAC - p3.12) • Admission authorities must not refuse to admit a child thought to be potentially disruptive, or likely to exhibit challenging behaviour, on the grounds that the child is first to be assessed for special educational needs. (SAC - p3.13)
1.12	<p>* Children for whom a place has not been sought due to exceptional circumstances:</p> <ul style="list-style-type: none"> • It is for the local authority to decide whether a child qualifies to be placed via the Protocol on this basis, based on the circumstances of the case.
1.13	<p>* Children who have been out of education for four or more weeks;</p> <ul style="list-style-type: none"> • 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.
1.14	<p>* Previously looked after children for whom the local authority has been unable to promptly secure a school place:</p> <ul style="list-style-type: none"> • In most cases use of the Fair Access Protocol should be unnecessary for a previously looked after child. We would expect the local authority to aim to secure a school place particularly promptly for a previously looked after child and for admission authorities to cooperate with this. The local authority may consider swift use of their general powers of direction or asking the Secretary of State to consider a direction to be the most suitable course of action if a school place for a previously looked after child cannot be agreed with an admission authority promptly.
<p>2. Identification of children and young people who meet the criteria for the Protocol</p>	
2.1	<p>Most children and young people will come to the attention of the Fair Access In Year Admissions team or the school as part of the in-year admission application process.</p>

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	<p>Where a parent of an eligible child has not secured a school place under in-year admission procedures (SAC - p.2.23 – 2.31) the child or young person will be referred to the Fair Access Panel.</p>
2.2	<p>Where a In Year Admission form (IYAF) is received directly by the Fair Access In Year Admissions team, they will assess the information on the IYAF to determine if the child or young person potentially meets one of the groups outlined in Paragraph 3.17 of the SAC.</p> <p>Admissions that are identified will be passed onto the Senior Access to Education Officer for further consideration as meeting the Fair Access Protocol and for potential presentation at panel.</p>
2.3	<p>Where an In Year Admission form (IYAF) is received directly by school, they will assess the information on the IYAF.</p> <ul style="list-style-type: none"> • Eligibility for the Fair Access Protocol does not limit a parent’s right to make an in-year application to any school for their child. Admission authorities must process these applications in accordance with their usual in-year admission procedures (as set out in paragraphs 2.23 - 2.31 of the SAC). They must not refuse to admit such children on the basis that they may be eligible to be placed via the Fair Access Protocol. The parent will continue to have the right of appeal for any place they have been refused, even if the child has been offered a school place via the Fair Access Protocol. (SAC - p3.18) • It is inevitable that there may be cases where a child’s / young person’s previous school history is not known to the school when they offer admission through the in-year admission process.
2.4	<p>Upon receipt of an in-year application, the admission authority, should aim to notify the parents of the outcome of their application in writing within 10 school days, but they must be notified in writing within 15 school days. (SAC - p2.30) Where an application is refused, the admission authority must also set out the reason for refusal and information about the right to appeal in accordance with paragraph 2.32. (SAC - p2.30)</p> <p>Where an admission authority manages its own in-year admissions, it must also notify the local authority of every application and its outcome as soon as reasonably practicable, but should aim to be within two school days, to allow the local authority to keep up to date figures on the availability of places in the area and to ensure they are aware of any children who may not have a school place. (SAC - p2.30)</p> <p>Where an applicant is offered a school place following an in-year application, and the offer is accepted, arrangements should be made for the child to start school as soon as</p>

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	<p>possible, particularly where the child is out of school. (SAC - p2.31)</p> <p>If following an admission, a school identifies that a child or young person meets the criteria for the Protocol, the school will notify the Panel Chair so that the admission may be recorded as a Fair Access Panel admission to the school and the placement noted at a future panel meeting.</p>
2.5	<p>If the school is unable to offer a place, but believe that the child meets the criteria of the Fair Access Protocol, they will refer the child or young person's IYAF to the Senior Access to Education Officer for their district and evidence their reasoning as to which part of the Fair Access Protocol the admission falls under.</p> <p>All such referrals will be made as soon as possible upon receipt of an in-year application being received by the school to enable the referral to be brought to the next Fair Access Panel meeting.</p>
2.6	<p>The IYFA panel decision is final and cannot be appealed.</p>
2.7	<p>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. (SAC - p3.21)</p>
<h3>3. Identification of children and young people who do not meet the criteria for the Protocol</h3>	
3.1	<p>This Fair Access Protocol will not apply to:</p> <ul style="list-style-type: none"> • A looked after child • A child with a statement of Special Educational Needs or Education, Health and Care Plan naming the school in question. <p>As these children / young people must be admitted. (SAC - p3.12)</p>
<h3>4. Grammar Schools</h3>	
4.1	<p>The Panel are expected to consider the case of each child / young person and to agree a placement at the most suitable school within the area of the panel in which they reside, it</p>

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	<p>may be that a grammar school is identified by the panel as the most suitable especially in view of the points below:</p> <ul style="list-style-type: none"> • The child or young person presented at panel has attended a grammar school previously - a grammar school can be named by the Fair Access Panel. • A child or young person is presented at the Fair Access Panel and is considered to be of grammar ability as they were in a grammar stream at a previous school or CAT scores indicate they would be of grammar ability – the child or young person will be required to sit the entry test to assess their eligibility. In this instance the presenting officer will ask for an additional non-grammar school to be named to admit if the child or young person does not pass the entry test, this is to prevent further delay in the education of the child or young person. • Where a grammar school receives an in-year application they are required to test that young person and not to delay entry.
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5. Applying the Fair Access Protocol to Primary Aged Children

5.1	<p>In most instances the Fair Access Protocol will be applied to children and young people of secondary school age.</p> <p>It is expected that the need for a Fair Access panel to consider primary aged pupils will be an infrequent occurrence. The Fair Access Protocol, Framework and Common Principles will be the framework and guiding principles for any convened Fair Access Panel meeting for Primary aged children.</p>
5.2	<p>Where a child moves into an area and there are insufficient places in schools locally for the child to be accommodated, local schools have historically been contacted and in discussion with the Area Education Officer admitted over their admission number to absorb the pressures. This collaborative approach has reduced the need for Fair Access Panel meetings, the associated administration, and most importantly enabled children to access school with the minimum of delay.</p>
5.3	<p>Due to the infrequency of primary aged exclusions, in the event that a primary aged child is excluded, the inclusion and attendance advisor invites at least, but not restricted to, the five schools that are located nearest to the child's home, to attend a bespoke Fair Access Panel meeting. A chair will be appointed by the PIAS officer for the area.</p>
5.4	<p>The professionals present at the panel are able to offer advice and strategies to support the transition of the child into the new school. Including where appropriate a support package around the child to aid with transition into the new school.</p>

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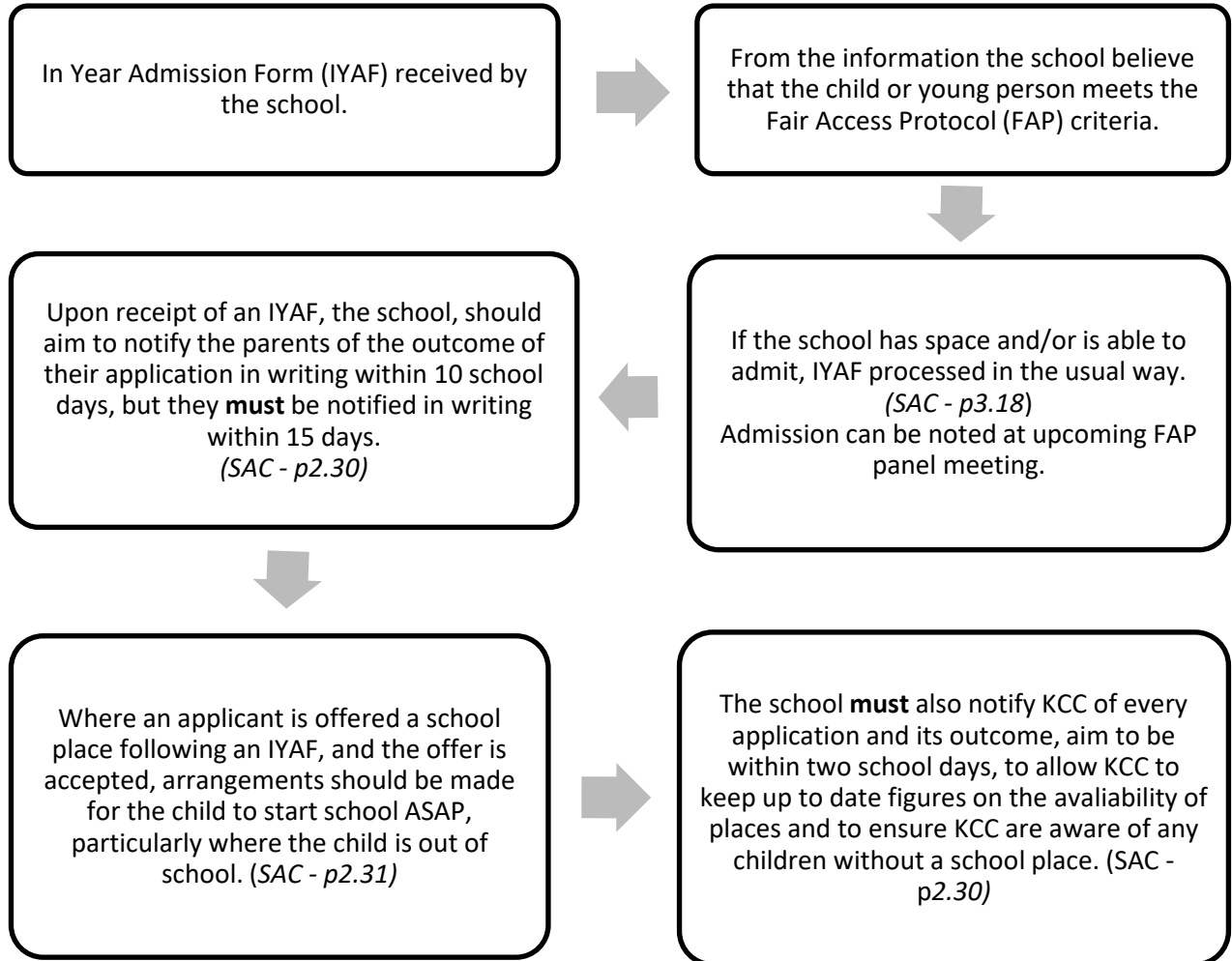
5.5	Failure of the panel or chair to identify education provision will trigger a referral to the Head of Fair Access (or in their absence, the relevant Area Education Officer) who will identify a school in accordance with the Fair Access Panel principles. Every effort must be made to identify a school during the panel meeting to avoid unnecessary delay in admission.
5.6	Admission authorities will not cite oversubscription as a reason for not admitting children and young people.

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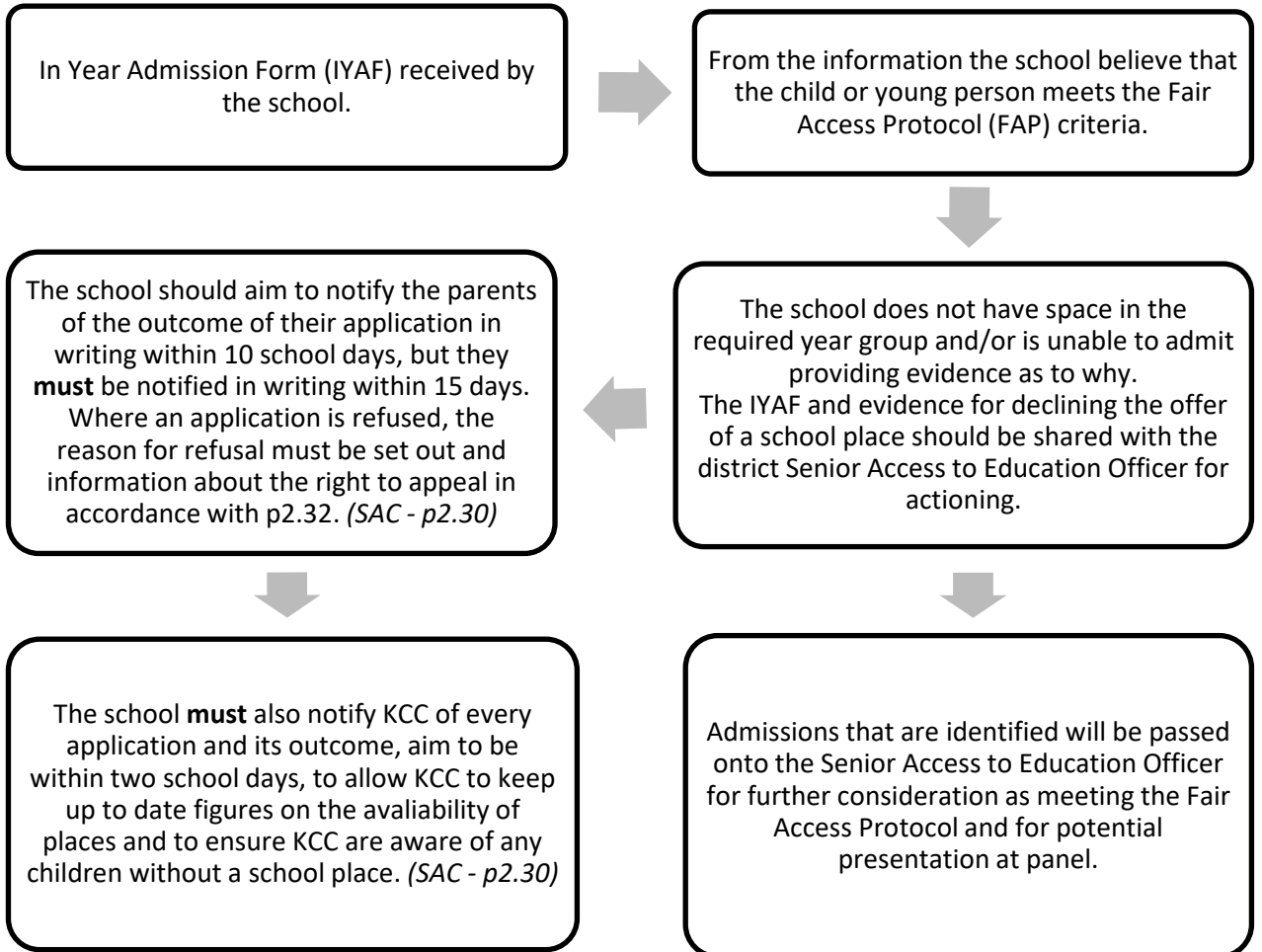
Fair Access Protocol Timeline

IYAF received by school where an offer is made:



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IYAF received by school where an offer is not made:



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Roles and Responsibilities for Kent’s Fair Access Protocol (FAP) Attendees	
1.	<p>Compulsory Attendees</p> <p>Chair of Fair Access Panels</p> <ul style="list-style-type: none"> • The Chair is to ensure comprehensive meeting minutes and panel decisions are recorded and shared with panel members, Fair Access & PIAS Officers. • The Chair is to plan Fair Access Panel meetings a year in advance and share dates with all panel members Fair Access & PIAS Officers. • The Chair supported by the Senior Access to Education Officer, will ensure that no one school, including those with available places, is asked to take a disproportionate number of children or young people who have been excluded from other schools, or who have challenging behaviour. <p>It is the Chair’s responsibility to:</p> <ul style="list-style-type: none"> • Ensure that all Fair Access Panel meetings are planned at the beginning of the academic year and are, as a minimum, to be held once within each of the Kent six terms. • In the unlikely event that a panel date falls later than the required 20 school days, the Chair will work with the KCC Senior Officer to mediate a school placement ahead of the panel meeting where necessary. The outcome will be recorded in the following meeting minutes. • In the situation where panel members are unable to reach a decision, the Chair must make a firm decision and identify a school even if the identified school refuses on the day and detail in the minutes all schools present refusing admission. • Ensure that comprehensive minutes of meetings are taken at each Fair Access Panel and circulated to panel members, Fair Access & PIAS (PRU, attendance and Inclusion) officers • To ensure IYFAP referral forms and minutes are securely received and distributed to the panel members. Ensuring that appropriate email systems are fully secure.

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	<p>Failure of the Chair to identify education provision will trigger a referral to the Head of Fair Access (or in their absence, the relevant Area Education Officer) who will identify a school in accordance with the Fair Access Panel principles.</p>
	<p>Panel Members</p> <ul style="list-style-type: none"> • Panel members are to identify a panel Chair – preferably independent of the school’s represented but not essential. • Chair and panel members are to contribute to rational decision making at panels which maintains an equitable distribution of fair access pupils among schools. • The panel are expected to consider the case of each child / young person and to agree a placement at the most suitable school within the area of the panel in which they reside. They must make a decision to identify a school based on the information received at panel.
	<p>Senior Access to Education Officers</p> <ul style="list-style-type: none"> • Officers will identify children and young people eligible for referral to the Fair Access Panel, either through direct in-year applications or referrals received directly from a school where the school can evidence the admission request fulfils the Fair Access protocol criteria. • Senior Access to Education Officers will prepare referrals and collate as much background information as is available to them to present to the panel using the generic template (IYFAP referral) provided by the local authority. • Officers will monitor the placements to ensure children and young people are placed on roll and record a start date. • Officers will maintain statistics on number of fair access placements agreed for each school. • In the unlikely event that children and young people are unplaced at panel, officers will facilitate discussion between the Chair and the Head of Fair Access in order to identify the school and adopt the process for admission.
	<p>Inclusion and Attendance Service</p> <p>Children and young people who are already known to Kent County Council and who are recently excluded will be referred to the panel by the Inclusion & Attendance Adviser. All other children and young people identified by the In Year Admissions Team will be referred to the panel by the Senior Access to Education Officer</p>

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	<ul style="list-style-type: none"> • For recently permanently excluded children and young people (Primary & Secondary) schools will complete and submit referrals to the Fair Access Panel. The Inclusion and Attendance Adviser will ensure the case is presented at panel. • Inclusion and Attendance Advisers will consider whether a managed placement can be arranged with a school for children and young people in a Pupil Referral Unit or in alternative provision ready for mainstream reintegration, or whether the child / young person needs to be placed via the Fair Access Protocol. • Inclusion and Attendance Advisers will facilitate the placing of permanently excluded children and young people and those requiring a fresh start school to be identified at the area Fair Access Panel. • Where a placement breaks down, Inclusion and Attendance Advisers will work with the school to identify an alternative solution. • Inclusion and Attendance Advisers will identify an onward route school for Primary excluded children receiving education through the local authority Education Programme (except those with an EHCP).
	<p>Pupil Referral Units (PRUs) / Inclusion Service</p> <ul style="list-style-type: none"> • The Head of the PRU/ Inclusion Provision will present referrals for children and young people identified as being ready for reintegration into a mainstream school. • The Head of the PRU will receive referrals from the Fair Access Panel for recently permanently excluded pupils. • The Head of the PRU will provide written information on the children and young people's progress at the PRU / Inclusion Provision for the home school. • The Head of the PRU or a suitable representative will attend the area panels as appropriate. • They will provide reintegration support as required to the onward school.
	<p>Schools</p> <ul style="list-style-type: none"> • The school are to ensure the Headteacher of each school in the locality or delegated colleague attends every meeting, has autonomy to make a decision on

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	<p>behalf of the school and reads all paperwork in advance of the panel meeting.</p> <ul style="list-style-type: none"> • The schools are to process all In Year Admission Forms (IYAF's) and respond within 10 school days but they must be notified in writing within 15 school days to the parent giving a full written explanation if unable to admit and offer the parent the right of appeal. • Schools are to forward every processed IYAF to: kentinyearadmissions@kent.gov.uk • Schools are to identify fair access cases from in-year applications received. Where the school has a valid case for refusing admission due to the children / young people meeting the Fair Access Protocol criteria, complete a Fair Access Panel referral outlining their reason for refusal and forward to their assigned Senior Access to Education Officer to present to the Fair Access Panel. • Once a fair access placement is agreed at panel, the school are to make contact with the family within 5 school days and arrange for the child / young person to start within a further 5 school days. • Schools must enter pupils on the admission register and attendance register from the beginning of the first day on which the school has agreed, or been notified, that the pupil will attend the school. School attendance guidance 2020, page 6. • If a pupil fails to attend on the agreed or notified date, the school must establish the reason for the absence and mark the attendance register accordingly.
<p>2.</p>	<p>Additional Roles and Responsibilities relating to Admissions</p>
	<p>Fair Access - Access to Education In Year Admissions Team</p> <ul style="list-style-type: none"> • The In Year Admission team to identify in-year admission queries that may meet the Fair Access Protocol criteria's and forward those requests to the Senior Access to Education Officer for that locality. • The Fair Access team will send offer letters from the local authority following Fair Access Panel confirming the place at the identified Education provision, unless the panel has an independent Chair, and this is part of their agreed role.

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Children Missing Education

- Where a child / young person has not taken up the place identified at the Fair Access Panel and remains without an education to which they are legally entitled, the school must contact the Child Missing Education (CME) team: CME@Kent.gov.uk / 03000 416969. The CME team will advise the school if a CME referral via the digital front door is needed.
- The school should also update the relevant SAEO who will also be monitoring the child / young person's return to education.
- KCC Officers may look to raise a School Attendance Order (SAO).

Education Programme (Primary aged pupils only)

- The Education Programme will receive referrals for permanently excluded primary aged pupils through the designated Inclusion and Attendance Advisor.
- The Education Programme will complete an assessment of the pupil's needs and allocate hours and staff.
- Allocated staff will arrange and deliver an interim Education Package which includes both wellbeing and academic content.
- Allocated staff will provide written information on the pupil's progress for the panel and share with the identified onward school.
- Allocated staff will support integration of the pupil (for up to 6 weeks), working in partnership with the identified onward school to assist transition.