

Southwark Children’s and Adults Services- Children Missing Education Protocol (2022)

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Introduction and Legal Context

Who are 'children missing education'?

1. Department for Education statutory guidance on Children Missing Education (2016) defines children missing education as 'children of compulsory school age who are not registered pupils at a school and are not receiving suitable education otherwise than at school'.
2. Children may come to miss education for a number of reasons, including the following:
 - they may never have started in a school;
 - they may cease to attend school, due to exclusion or parents withdrawing them;
 - they may have left primary school but not completed transition to secondary school;
 - they may have moved into a new area, including from abroad.
3. The following groups may be particularly at risk of becoming CME:
 - children with poor school attendance;
 - children permanently excluded from school, or at risk of permanent exclusion;
 - young people involved with the criminal justice system and/or being supported through the Youth Offending Service;
 - young parents of statutory school age;
 - children with episodes of missing from home or care;
 - children of homeless families living in temporary accommodation;
 - unaccompanied asylum seekers and refugees or children of asylum seeking families;
 - children living in refuges for women affected by domestic abuse;
 - children from a traveller background;.
 - children being Electively Home Educated where there are concerns about whether a suitable education is being provided;
 - children facing delay in being allocated a suitable school place through school admissions processes, or where parents decline places that are available.
 - new arrivals to the Borough who delay seeking a school place or are identified as "hard to place".
4. Children missing education are plainly at risk of educational under-achievement, with a potential long term impact on their opportunities. They may also be exposed to other risks: 'Keeping Children Safe in Education' (DfE, 2021) states that children missing education 'particularly repeatedly, can act as a vital warning sign of a range of safeguarding possibilities. This may include abuse and neglect, which may include sexual abuse or exploitation and can also be a sign of child criminal exploitation including involvement in county lines. It may indicate mental health problems, risk of substance abuse, risk of travelling to conflict zones, risk of female genital mutilation, 'honour'-based abuse or risk of forced marriage'.

Local Authority responsibilities

5. Section 436A of the Education Act 1996 states that Local Authorities 'must make arrangements to enable them to establish (so far as it is possible to do so) the identities of children in their area who are of compulsory school age but—
 - (a) are not registered pupils at a school, and
 - (b) are not receiving suitable education otherwise than at a school.

...“suitable education”, in relation to a child, means efficient full-time education suitable to age, ability and aptitude, and any special educational needs she/he may have’.

6. 'Children missing education: Statutory guidance for local authorities' (Department for Education, 2016) states that Local Authorities should:
- have 'robust policies and procedures in place to enable them to meet their duty in relation to these children, including ensuring that there are effective tracking and enquiry systems in place, and appointing a named person to whom schools and other agencies can make referrals about children who are missing education';
 - 'undertake regular reviews and evaluate their policies and procedures to ensure that these continue to be fit for purpose in identifying children missing education in their area';
 - 'consult the parents of the child when establishing whether the child is receiving suitable education';
 - 'have procedures in place to prevent children at risk of becoming CME';
 - ensure that 'those children identified as not receiving suitable education' are 'returned to full time education either at a school or in alternative provision'.
7. Local authorities also have other duties in relation to ensuring children access education, including:
- providing information to parents on applying for school places, and co-ordinating the application process for parents applying for schools in the normal admissions round (School Admissions Code, DfE, 2021);
 - having Fair Access Protocol to ensure that 'unplaced and vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible' (School Admissions Code, DfE, 2021);
 - arranging suitable full-time education to begin no later than the sixth school day of a permanent exclusion (Exclusion from maintained schools, academies and pupil referral units in England: statutory guidance, DfE, 2017);
 - arranging suitable full-time education for children of compulsory school age who, because of illness or other reasons would otherwise not receive suitable education (Alternative Provision: Statutory Guidance for Local Authorities, DfE, 2013; Ensuring a good education for children who cannot attend school because of health needs, DfE, 2013).

School responsibilities

8. 'Keeping children safe in education: statutory guidance for schools and colleges' (DfE, 2021) states that 'Children missing from education, particularly persistently, can act as a vital warning sign to a range of safeguarding issues including neglect, sexual abuse and child sexual and criminal exploitation. It is important the school or college's response to children missing from education supports identifying such abuse and also helps prevent the risk of them going missing in the future. This includes when problems are first emerging but also where children are already known to local authority children's social care and need a social worker (such as on a child in need or child protection plan, or as a looked after child), where going missing from education may increase known safeguarding risks within the family or in the community'. All staff should be aware of the safeguarding risks associated with going missing and 'be aware of be aware of their school's or college's unauthorised absence and children missing from education procedures'.
9. All schools (including maintained, academy, free and independent schools) must inform the Local Authority when they are about to add or delete a pupil's name from the school admission register for any reason. This applies to all children with the exception of those starting or leaving school at standard transition points, i.e. at the start of the first year and completion of the final year of education normally provided by that school (DfE, Children Missing Education, 2016).
10. Schools must notify the local authority within five days when a pupil's name is added to the admission register, and must notify the local authority when a pupil's name is to be deleted from the admission register as soon as the ground for deletion is met and no later than the time at which the pupil's name is deleted from the register. Where a school notifies a local authority that a pupil's name is to be deleted from the admission register, it must provide the local authority with:

- the full name of the pupil;
 - the full name and address of any parent with whom the pupil lives;
 - at least one telephone number of the parent with whom the pupil lives;
 - the full name and address of the parent with whom the pupil is going to live, and the date the pupil is expected to start living there, if applicable;
 - the name of pupil's destination school and the pupil's expected start date there, if applicable; and the ground under which the pupil's name is to be deleted from the admission register
11. DfE School Attendance guidance (2016) also states that 'All schools (including academies) must agree with the relevant local authority, the regular interval that the school will inform the local authority of any pupil who fails to attend school regularly, or has been absent without the school's permission for a continuous period of 10 days or more'.

Identifying and tracking Children Missing Education

Notification of potential CME

12. Southwark's process for identifying and tracking children missing education is led through the Pupil Tracking and Licensing Team in the Education Access division in Southwark Children's and Adults' Services. The Pupil Tracking and Licensing Manager (cme@southwark.gov.uk) is the named person for CME to whom schools and other agencies can make referrals.
13. The majority of children missing education are identified by schools at the point that the school is removing them from the school register. Prior to this point, where a child is absent from school without authorisation the school will be following its own attendance procedures. London Child Protection Procedures on 'Children Missing from Care, Home and Education' (2020) state that from the first day that a child does not attend school and there is no explanation or authorisation of the absence, the following steps should be taken by the school:
- 'A trained staff member will make contact with the parents/carers (person with parental responsibility for the child) to seek reassurance that the child is safe at home;
 - The outcome of the contact should be assessed and if there are any concerns a consultation with the school/establishment/colleges designated safeguarding adviser should take place to consider the child's vulnerability.
14. All All schools, including academies, have access to the Family Early Help Service Education Inclusion Team (EIT) and should notify them of children who have been absent without authorisation for 10 days or more, or earlier if they have concerns. They can provide advice on statutory enforcement around attendance and whether a referral with consent for whole family support from FEH might be appropriate. The number for the Education Inclusion Team is 0207 525 2714 or email Earlyhelp@southwark.gov.uk
15. The legal 'grounds for deleting a pupil from the school admission register' are set out in Children Missing Education statutory guidance (DfE, 2016). This states that where a child has been absent from school for more than 20 days the school may have grounds from removing the child from their register. However this only applies if:
- The school does not have reasonable grounds to believe that the pupil is unable to attend the school by reason of sickness or any unavoidable cause; and
 - the school and the local authority have failed, after jointly making reasonable enquiries, to ascertain where the pupil is.

16. London Child Protection Procedures (2020) recommend that a school's 'reasonable enquiry' into a child's whereabouts should include 'school staff checking with all members of staff whom the child may have had contact with, and with the pupil's friends and their parents, siblings and known relatives at this school and others. School staff should also make telephone calls to any numbers held on record or identified, sending a letter to the last known address, home visits by some school based staff and consultation with local authority staff'.
17. If a school removes a child from the register without due grounds they may be judged to be 'off-rolling,' defined by Ofsted 'as the practice of removing a learner from the provider's roll without a formal, permanent exclusion or by encouraging a parent to remove their child, when the removal is primarily in the interests of the provider rather than in the best interests of the learner' (Ofsted, Education Inspection Framework, 2019).
18. Schools should undertake an attendance and inclusion consultation with the Family Early Help Education Inclusion Team before removing a child from the school admission register on the grounds of absence to clarify if any action around attendance is required and to confirm whether the child's whereabouts are known to the Local Authority. Where a child is removed from the register and the local authority is subsequently able to confirm the child's whereabouts locally, the school may be asked to reinstate the pupil on the register.
19. As set out above, schools have a statutory duty to inform the LA when a child is being added to or removed from the admission register. Southwark has developed an electronic 'Change to School Admission Register Notification Form' for schools to use to submit this information:
https://forms.southwark.gov.uk/showForm.asp?nc=7E5F&fm_fid=1647
20. Upon receipt of this form, Southwark will either confirm that it has amended its records accordingly or will contact the school for further information if any clarification is required. Southwark expects that schools will have undertaken reasonable checks to confirm the destination school and/or address of a child leaving the school, including telephone calls, letters and where appropriate home visits to establish this information.
21. Schools should use the 'Change to School Admission Register Notification Form' to identify children believed to be at risk of missing education, and this will be acted on as a CME referral.
22. Children may also be identified as potentially missing education through a number of other sources, such as:
 - children may come into contact with other services such as health or the police who identify that they do not appear to have a school place;
 - other local authorities may inform Southwark that a child has moved into the area;
 - members of the public may notice that a child of school age does not appear to be in school.
23. Southwark positively encourages other agencies and members of the public to inform the Local Authority of children who they believe may be missing education by completing a CME referral form and sending it to cme@southwark.gov.uk. The CME referral form is available at:
https://forms.southwark.gov.uk/showForm.asp?nc=UOK9&fm_fid=1645

(Southwark schools, however, should use the 'Change to School Admission Register Notification Form' for CME referrals, as described above).
24. Southwark periodically audits notifications received from schools against school census returns. Where the school census indicates that a child has left a school and no notification has been received by the Local Authority, the school will be asked for an explanation.

Checking children potentially missing education

- 25.** Upon referral, in the first instance, checks are carried out by the Pupil Tracking and Licensing Team, on all children identified as potentially CME. These may include:
- contacting the parent(s) by telephone and/or email if available to determine whether the child is on roll at another school or is being home-educated;
 - sending a letter to parents at last known address requesting information on the school the child is attending.
 - checking on the Capita One education system and school census returns to identify if the child is on the roll of a school in Southwark;
 - checking Capita One, Mosaic and Synergy children's databases to identify what contact details are available for the family, and whether they are currently being supported by Family Early Help or Children's Social Care;
 - checking the Department for Education's Keys to Success system, which includes child level data from schools across the country;
 - contacting the social worker or Family Early Help lead professional, where a case is currently open, to identify if they have any information about the child's school;
 - checking the Council's housing and Council tax systems to identify current address;
 - requesting information from partner agencies, such as GP practices and other community health services;
 - requesting information from Department of Work and Pensions to help establish whereabouts of child;
 - requesting information from other Local Authorities if there are indications that the child may be elsewhere in the UK;
 - checking that any identified siblings are attending school.
- 26.** Information received from parents, professionals or data systems about a child's school will be verified by contacting the school to confirm whether or not child is attending.
- 27.** In many cases children identified as potentially CME will be found to be actually on the roll of a school or being home-educated. Details on systems will be amended, and referrers informed of the outcome. In other cases, parents will be contacted and supported through the in year admissions process to be allocated a school place.
- 28.** Where this is not the case, the Pupil Tracking and Licensing Team will continue to attempt to contact parents by telephone, email and letter, up to and including the issuing of a formal notice 'Under s.437(1) of the Education Act 1996 requiring parents to satisfy the LA within 15 days that the child is receiving a suitable education.
- 29.** If there is no satisfactory response and no evidence that the child has moved out of Southwark, the Family Early Help Service will be asked to undertake a home visit to last known address to establish if the child is in fact living at the address, whether the child is receiving an education and whether the child appears to be safe and well. If the child is living there and not in education the Family Early Help Service will encourage parent to promptly make arrangements for the child to receive education and, if required and appropriate, initiate statutory action including issuing a School Attendance Order to require child to attend a named school.
- 30.** Where following the actions set out above at 2.18 the Family Early Help Service have not been able to contact family of a child missing education, they will consult with the Multi Agency Safeguarding Hub about stepping up the case for further agency checks and action. As set out in London Child Protection Procedures advice on 'Children Missing from Care, Home and Education' (2020), 'In the following circumstances a referral to children's social care and /or the police should always be made promptly:
- The child may be a victim of a crime;

- The child is subject of a Child Protection plan;
- The child is subject of Section 47 enquiries;
- The child is looked after;
- There is a known person posing a risk to children in the household or in contact with the household;
- There is a history of the family moving frequently;
- There are serious issues of attendance.

The answers to further questions could assist a judgement whether or not to inform LA children's social care and the police:

- In which age range is the child?
- Is this very sudden and unexpected behaviour?
- Have there been any past concerns about the child associating with significantly older young people or adults?
- Was there any significant incident prior to the child's unexplained absence?
- Has the child been a victim of bullying?
- Are there health reasons to believe that the child is at risk? e.g.
- Does the child need essential medication or health care?
- Was the child noted to be depressed prior to the child's unexplained absence?
- Are there religious or cultural reasons to believe that the child is at risk? e.g.rites of passage or forced marriage planned for the child?
- Has the child got a disability and/or special educational needs?
- Have there been past concerns about this child and family which together with the sudden disappearance are worrying? e.g. Is there any known history of drug or alcohol dependency within the family? Is there any known history of domestic abuse? Is there concern about the parent/carer's ability to protect the child from harm?

31. Where there is an indication that a child has moved to another part of the UK and may be missing education, details will be forwarded to the CME lead for the relevant local authority, using the list of CME contacts provided by the Department for Education.
32. Where all reasonable checks have been undertaken, including phone calls, letters, home visits and system checks, and there is nothing to suggest that the child is still living in Southwark the case will be closed as a Child Missing Education.
33. Children who are confirmed as being home-educated are not as classified as CME unless there are grounds for believing that the education provided is not suitable to the child's needs. Southwark's Elective Home Education protocol sets out the LA's approach to working with home educating families: http://southwark.proceduresonline.com/chapters/p_elective_home_edu_prot.html

Supporting children back into education

34. Children who do not have a school place will be supported in finding a place through the In Year Admissions process, details of which are set out here: <https://www.southwark.gov.uk/schools-and-education/school-admissions/in-year-admissions>
35. Where children are difficult to place, Southwark has a Fair Access Protocol to ensure that all children whatever their circumstances are able to access and secure a school place as quickly as possible.
36. Where parents are declining to engage with the Admissions process or may not otherwise be meeting the requirement to ensure that their child receives a suitable education, the case will be referred to the Family Early Help Service for follow up case work and where appropriate enforcement action, such as the issuing of a School Attendance Order.

- 37.** Southwark monitors children at risk of missing education through its monthly Children at Risk of Missing Education Monitoring Group meetings, the main purpose of which is to ensure that there is no drift, delay or avoidance in following up cases where there are concerns. This meetings include managers from the following services:
- Education Access (Admissions, Pupil Tracking and Licensing and Alternative Provision Teams);
 - Family Early Help Service;
 - Children’s Social Care;
 - Southwark Inclusive Learning Service;
 - SEND team;
 - Youth Offending Service.
 - Southwark Participation, Education and Training (16-19).
- 38.** As part of the preparation for each meeting, all current CME cases are checked against Children’s Services systems to identify any additional risk factors, including current Children’s Social Care and SEND status.

Safeguarding

- 39.** Should there be concerns that a child believed to be missing education may be at risk of harm, a safeguarding referral to the Multi Agency Safeguarding Hub should be considered in line with ‘Working Together to Safeguard Children’ (2018) and with reference to Southwark Safeguarding Children Board’s ‘Multiagency threshold guide’ (2019):
- https://southwark.proceduresonline.com/pdfs/threshold_booklet.pdf
- 40.** Within the Southwark multiagency thresholds, a parent not ensuring ‘that their child receives suitable formal education’ is a potential indicator of a need for Tier 3 Children in Need services. Where a parent ‘disregards the needs for their child to engage in education, and will not engage with services’ this may be a factor in assessing that a child is in acute need (Tier 4).
- 41.** Where children missing education are also identified as missing from home or care, Southwark’s protocol for Children missing from home or Care must be followed
- https://southwark.proceduresonline.com/pdfs/protocol_child_missing.pdf
- 42.** Where children identified as potentially missing education are currently open to Children’s Social Care, details of the CME enquiry will be sent to the relevant social worker to consider any impact on risk.
- 43.** Young people who are missing education may be at increased risk of child sexual exploitation (CSE) and child criminal exploitation. The Pupil Tracking and Licensing Team is represented at the monthly Multi Agency Sexual Exploitation/Criminal Sexual Exploitation meeting and checks before each meeting if any children to be discussed are believed to be missing education. Where there are CSE concerns, Southwark’s CSE Protocol (2018) is followed:
- https://southwark.proceduresonline.com/pdfs/southwark_cse_protocol.pdf
- 44.** Where children who are missing education are identified as being at risk of involvement in extremist activity, ‘Southwark Children’s Services Practice Guidance on Safeguarding Children from Extremism’ (2016) is followed:
- https://southwark.proceduresonline.com/chapters/p_sfgd_children_exp_extrem.html

Review

45. The CME protocol has been reviewed and revised in May 2022 to reflect most recent statutory guidance and organisational changes. It will be further reviewed in 12 months time or earlier in the event of any significant changes in policy or legislation.

Dissemination

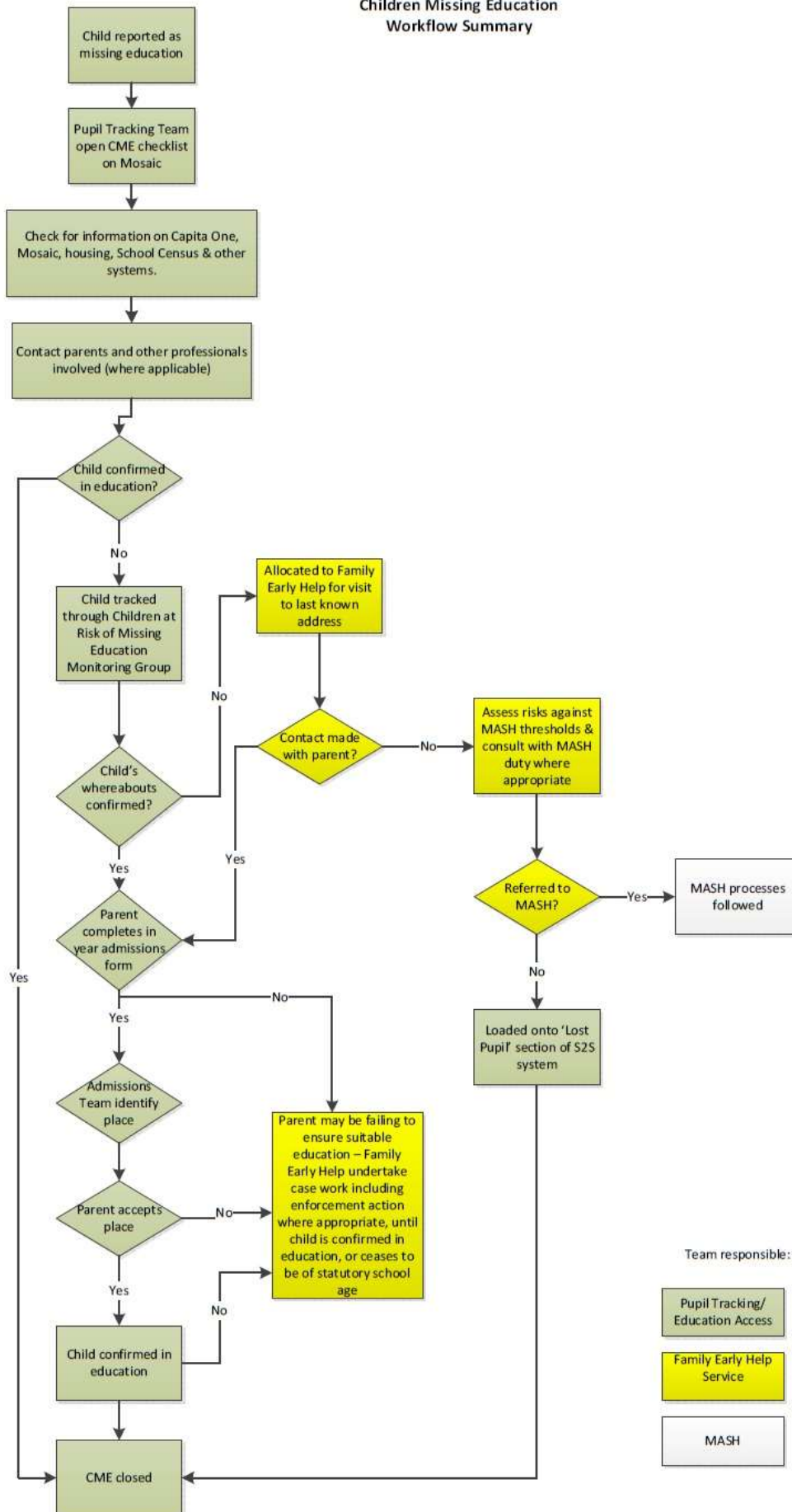
46. This protocol is for distribution to:
- Headteachers of Southwark schools;
 - Managers and staff in Children's & Adults Services
 - Southwark Safeguarding Children's Board members and partner agencies for dissemination to their staff.

References and further information

- Department for Education (2013), Alternative Provision: Statutory guidance for local authorities
- Department for Education (2013), Ensuring a good education for children who cannot attend school because of health needs: Statutory guidance for local authorities.
- Department for Education (2021), School Admissions Code.
- Department for Education (2016), Children Missing Education: Statutory Guidance for Local Authorities
- Department for Education (2021), Keeping Children Safe in Education: Statutory Guidance for Schools and Colleges.
- Department for Education (2019), Elective home education: guidelines for local authorities.
- Department for Education (2019), School Attendance: Guidance for maintained schools, academies, independent schools and local authorities
- Department for Education (2019), School to School (S2S) guide
- Her Majesty's Government (2018), Working Together to Safeguard Children: a guide to inter-agency working to safeguard and promote the welfare of children.
<https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>
- London Safeguarding Children Board (2020), London Child Protection Procedures: Children missing from care, home and education
- Ofsted (2019), Education Inspection Framework

Workflow summary

Children Missing Education Workflow Summary



Appendix A: In Year Fair Access Protocol (Secondary Schools)

1. Introduction

1.1 The School Admissions Code 2021 requires each local authority to have a Fair Access Protocol. The Code states that “*each local authority must have a Fair Access Protocol to ensure that unplaced and vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible*”.

1.2 Paragraphs 3.14 to 3.22 of the School Admissions Code 2021 alongside non-statutory guidance published by the Department for Education provide the basis for this Fair Access Protocol.

1.3 The Protocol is designed to:

- Be fair and transparent
- Reduce the time that vulnerable young people who are seeking a school place spend out of school
- Ensure that schools admit children including those with challenging educational needs on a fair and equitable basis

1.4 Southwark Council’s Fair Access Protocol has been developed in partnership with and been agreed by the Headteachers of maintained secondary schools and academies in Southwark. All admission authorities (Academies, Community, Voluntary Aided, and Voluntary Controlled schools) must participate in the Fair Access Protocol.

1.5 This protocol applies only to children resident in Southwark who are seeking a place at a Southwark school. It does not apply to special schools and education support centres.

1.6 The School Admissions Code states that Fair Access Protocols may only be used to place prescribed groups of vulnerable and/or hard to place children, where they are having difficulty in securing a school place, and it can be demonstrated that reasonable measures have been taken to secure a place through the usual in-year admission procedures. The Protocol must not be used to circumvent the in-year admissions process.

1.7 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 not refuse to admit such children on the basis that they may be eligible to be placed via the Fair Access Protocol. Referrals under this Protocol will not be accepted unless families 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.

1.8 Parents 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.

1.9 There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol, but parents’ views should be taken into account.

2. Main principles

2.1 Schools will continue to admit all pupils falling outside this Protocol who apply for an available place under normal admission arrangements.

2.2 The Fair Access Protocol does not apply to:

- Children with Education, Health and Care Plans - they must not be referred to the Fair Access Panel as their admission will be in accordance with the appropriate legislation managed by the SEND team; and
- Looked after children as they must be given the highest priority for admissions.

2.3 In most cases, use of the protocol should be unnecessary for a previously looked after child as they are given the highest priority for admissions. As a local authority, Southwark Council is expected to secure a school place promptly for such children and admission authorities are required and expected to co-operate with this. However, where children have other vulnerabilities, the protocol may provide an effective mechanism for discussing their needs and the best way to meet them.

2.4 In most instances parents are able to secure a mainstream school place but there may be occasions where parents are not successful. This is a situation which is only acceptable where:

- Admitting the child would prejudice the provision of efficient education or the efficient use of resources e.g. the school is full.
- The governing body do not wish to admit a child with challenging behaviour via the in year admissions process even though there are places available. This is only appropriate where the school already has a disproportionate number of children with challenging behaviour or previously excluded children. This provision cannot apply to looked after children, previously looked after children or children who have an Education, Health and Care Plan (paragraphs 3.10 and 3.12, School Admissions Code 2021)

2.4 Schools cannot cite oversubscription as a reason for not admitting a pupil under the Protocol.

2.5 Pupils seeking a school place under the Protocol will be given priority over pupils on waiting lists or awaiting an appeal.

2.6 For all admissions under the Protocol it is essential that the allocated school is provided with relevant information from the previous school so that appropriate provision can be made.

3. Children who display challenging behaviour

3.1 Admission authorities must not refuse to admit a child on behavioural grounds in the normal admissions round (Nursery to Reception, Infant to Junior transfer and Year 6 to 7 transfer) or at any point in the normal year of entry (Reception, Junior, Year 7), except where the twice excluded rule applies.

3.2 Additionally, 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.

3.3 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 behaviour, it may refuse admission and refer the child to the Fair Access Protocol.

3.4 An admission authority should only refuse admission on these grounds 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.

3.5 For the purposes of this Protocol, 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 and which would significantly interfere with the pupil's or others education or jeopardise the right of staff and pupils to a safe and orderly environment.

3.6 The School Admissions Code 2021 further states, *“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 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); [2019] AACR 10 - GOV.UK (www.gov.uk) 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.”*

3.7 All schools have a duty to make reasonable adjustments for students with disabilities and should be aware that a child who displays challenging behaviour may do so as a result of their disability or any unmet needs. Consideration must be given as to whether any reasonable adjustments can be put in place to support the needs of a particular child when deliberating whether admission should be refused on these grounds.

3.8 The impact and effectiveness of these adjustments must also be taken into account in managing presenting behaviours. For example, where a school would have to provide teaching assistant support and put in place an agreed behaviour plan for a pupil with autism, the impact of these arrangements must be factored into a decision over whether the child's behaviour would meet the criteria to be considered challenging.

4 Identification of Fair Access children

4.1 A child placed under the Fair Access Protocol is not necessarily a challenging child. Any child considered under the Protocol is however potentially a vulnerable child as long as an appropriate educational placement has not been secured.

4.2 The School Admissions Code states that 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, 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 been subject to one 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 (*identified as children recorded as SEN Support at their current or previous school; or in the case of medical conditions, children with an individual health care plan at their current or previous school*),
- 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 section 3 of this Protocol,
- k) Children for whom a place has not been sought due to exceptional circumstances (*determined by the local authority based on the circumstances of the case*),
- 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*),

m) Previously looked after children for whom the local authority has been unable to promptly secure a school place (see *paragraph 4.5*).

4.4 Looked after children and children with Education, Health and Care Plans

The Protocol does not apply to looked after children or children with Education, Health and Care Plans.

4.5 Previously looked after children

In most cases, use of the Fair Access Protocol should be unnecessary for a previously looked after child as the local authority will aim to secure a school place particularly promptly and admission authorities are required and expected to cooperate with this. The local authority may consider following processes for direction if a school place for a previously looked after child cannot be agreed with an admission authority promptly.

5. Process

5.1 If a school place cannot be secured for a child under the normal in year admissions processes the School Admissions team will consider whether an in-year application falls within one of the categories listed in paragraph 4.2. Appropriate applications will be referred to the local authority's Fair Access Panel for consideration. Information will be provided along with the application which demonstrates that reasonable measures have been taken to secure a place through the usual in-year admission procedures. As such the local authority will exhaust attempts to place the child before it will refer or allow a school to refer a child to the Fair Access Protocol.

5.2 The Fair Access Panel meet on a termly basis in term time and is made up of the Headteachers of each maintained school in Southwark and relevant representatives from the local authority. Where a Headteacher is unable to attend, or chooses to delegate representation for their school, they are expected to arrange attendance of a representative who has the authority to make decisions without reference to the Headteacher.

5.3 The following process will be applied by the Fair Access Panel:

- a) The Fair Access Panel will determine whether the application meets the Fair Access Protocol criteria. Where it is agreed that the application will be considered under the Fair Access Protocol, the family will be notified of the decision by the local authority and a school place must be allocated within 20 school days of this decision.
- b) Re-integration referrals from SILS or AP (via the LA) will be presented to the panel at each meeting.
- c) The School Admissions team will send confirmation of the Fair Access Protocol allocation by email to the Headteacher of the allocated school.
- d) The allocated school is encouraged to send an introductory/welcome letter to the family as soon as possible after the allocation has been made.
- e) The allocated school will be expected to arrange for the child to start at the school as soon as possible. This date will be communicated by the allocated school to the family.
- f) The allocated school will be expected to confirm the date on roll at the earliest opportunity with the School Admissions team.

5.4 Whilst parental preference will be considered, there is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.

5.5 Parents have the right to appeal following a decision to refuse their child a place at any school for which they have applied and this also applies to refusals made under the Fair Access Protocol.

5.6 Where there is clear and confirmed evidence that mainstream education is not be suitable for a child, the local authority will consult parents and other agencies and seek to provide appropriate alternative provision where appropriate/available.

6. Allocation of Schools

6.1 Fair Access Protocol admissions to schools will be managed on a 'fair share' basis. The Fair Access Panel will determine which school should be allocated a Fair Access placement, taking account of parental preference and the number of pupils each school has already admitted in the relevant year group and in total through the Fair Access Protocol. Consideration will also be given to other in-year admissions, including those of Looked After Children and children with Education, Health & Care Plans at each school.

6.2 Consideration will also be given to what the most appropriate school might be in terms of the needs of the pupil where possible.

6.3 The size of each school is an important factor and the School Admissions team and Fair Access Panel aims to achieve a similar percentage of pupils admitted via the Fair Access Protocol across each of the maintained schools in the local authority area. Data will be provided to the Fair Access Panel by the School Admissions team.

6.4 Whilst children can be admitted to schools above the published admission number under the Fair Access Protocol, consideration will be given to identifying an alternative school if a school is significantly oversubscribed in the relevant year group.

7. Powers of direction

7.1 Local authority powers of direction

The local authority has the power to direct the governing body of a maintained school for which they are not the admission authority to admit a child in their area even when the school is full. The local authority can only make such a direction in respect of a child in the local authority's area who has been refused entry to, or has been permanently excluded from, every suitable school within a reasonable distance. The local authority must choose a school that is a reasonable distance from the child's home and from which the child is not permanently excluded.

7.2 Before deciding to give a direction, the local authority must consult the governing body of the school, the parent of the child 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 Headteacher of the school.

7.3 The governing body can appeal by referring the case to the Schools Adjudicator within 15 days. If it does this, the governing body must inform the local authority. The local authority must not make a direction until 15 days have passed and the case has not been referred.

7.4 If referred to the Schools Adjudicator, the Schools Adjudicator may either uphold the direction, determine that another maintained school must admit the child or decide not to issue a direction. The Adjudicator's decision is binding.

7.5 Local authorities also have powers of direction relating to looked after children, which are detailed in the School Admissions Code 2021.

7.6 Secretary of State's power of direction (Academies)

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

8. Monitoring and Review

8.1 The Fair Access Panel will coordinate the admission of all children under the Protocol. All data will be maintained by the School Admissions team.

8.2 Rolling data on the number of pupils admitted to each school via the Protocol will be collated by the local authority and, reported to Headteachers at Fair Access Panel meetings and at other agreed intervals.

8.3 The Fair Access Protocol will be reviewed annually before the start of each academic year and following every revision of the statutory School Admissions Code to ensure it adequately meets the needs of children and schools in the area. As the Protocol must be agreed by the majority of schools within the area, Headteachers may also initiate a review at any time.

For further information about Southwark Council's Fair Access Protocol, please contact our School Admissions team by email schools.admissions@southwark.gov.uk

Fair Access Protocol Last Updated: October 2021

