

Warwickshire County Council Fair Access Protocol for Secondary Schools

1. Summary

- i) The School Admissions Code 2014, issued under Section 84 of the School Standards and Framework Act 1998, requires each local authority to have in place a Fair Access Protocol (FAP) agreed with the majority of schools in its area. The requirement is supplemented by further advice from the Department for Education (DfE) in 'Fair Access Protocols: Principles and Process' published in November 2012. This sets out principles to clarify the expectations on all state funded schools (including academies and free schools) as well as all other admission authorities to ensure that FAP's operate effectively at a local level.
- ii) The purpose of the Protocol is to ensure that, outside the normal admissions round, unplaced children, especially the most vulnerable, are offered a place at a suitable school as quickly as possible. The Protocol also seeks to ensure that no school - including those with available places - is asked to take a disproportionate number of children who have been excluded from other schools, or who have challenging behaviour.
- iii) Fair Access Protocols 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 for their child at any time, to any school outside the normal admissions round and is entitled to an appeal when a place is not offered, even if the reason for refusal is for FAP-related reasons.
- iv) All admission authorities **must** participate in the Fair Access Protocol in order to ensure that unplaced children are allocated a school place quickly. There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the Fair Access Protocol.

2. The Warwickshire context and statutory guidance

- i) The Fair Access Protocol (FAP) for Warwickshire has been written in accordance with paragraphs 3.9 – 3.23 of the School Admissions Code 2014, and the DfE's departmental advice November 2012 in partnership with the Protocol Steering Group (PSG), who review the process on a regular basis;
- ii) All admission authorities must participate in the Fair Access Protocol (including Academies, all types of Free Schools, University Technical Colleges and Studio Schools) in order to ensure that unplaced pupils are allocated a school place quickly. (SA Code 3.11 & DfE Guidance Nov 12)
- iii) The operation of the Fair Access Protocol is triggered when an eligible pupil has not secured a school place under normal in-year admission procedures. The Fair Access protocol is in addition to our In Year procedures. (SA Code 3.10, 2.21 and DfE Guidance Nov 12)

- iv) Fair Access Protocols 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 for their child at any time, to any school outside the normal admissions round and is entitled to an appeal when a place is not offered.
- v) Where a child has been permanently excluded from two or more schools there is no need for an admission authority to comply with parental preference for a period of two years from the last exclusion. 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 practicable to do so), and children with Statements of Special Educational Needs or Education, Health and Care Plans. (SA Code 3.8 & DfE Guidance Nov 2012).
- vi) Children allocated a place under the Fair Access Protocol will take precedence over those children already on the school's waiting list. (SA Code 2.14).
- vii) Schools cannot cite oversubscription as a reason for not admitting a pupil under the Fair Access Protocol. Year 11 pupils, unless falling into a relevant category within Chart 1, are not part of the protocol and **schools will be expected to accept Year 11 pupils in accordance with their published admission arrangements**. We do not advise that year 11 pupils transfer school as a pupil can be greatly disadvantaged by a change of school during their GCSEs, particularly when the same subjects and/or syllabi may not be available upon such a change. When deciding on whether to apply for a transfer out of the current school parents will be advised to consider that work is not transferable between schools and exam boards can rarely be matched and coursework is monitored and cannot be re-done.
- viii) All parents/carers should discuss any requests to transfer with the current school to see if any issues can be resolved and if the child can continue their education without interruptions to their GCSEs.
- ix) Any requests for placements under the Protocol will be made via School Admissions/Fair Access once an appropriate school has been identified. ABPs (Area Behaviour Partnership) will, once a child has received intervention work, refer all cases back to admissions to enable a school to be identified. It is not the role of ABPs to place pupils into schools via the Protocol.
- x) Warwickshire has in place Area Behaviour Partnership groups. All pupils, other than those assessed by Warwickshire County Council as not being suitable to attend a mainstream school, will be placed on the roll of a school identified via the protocol. Any child, who is assessed as not being suitable to attend a mainstream school will be placed on the roll of a registered alternative provider or, in exceptional circumstances, have another form of education provided. Funding has been devolved to ABP teams to meet these requirements. Any registered provision with which a child is registered will be expected to organise

and monitor the child's progress both in the school and in any alternative provision sourced for them.

- xi) A child without an Education, Health and Care Plan may be assessed as not being suitable to attend a mainstream school where at least two previous mainstream school placements have irretrievably broken down for reasons relating to behaviour, attendance, mental health or other related reasons. Final decisions will be taken by Warwickshire County Council, informed by all circumstances relevant to the case.
- xii) Warwickshire has a number of grammar schools, all of whom wish to participate in the operation of the protocol. If a grammar school is identified as the most appropriate setting for a pupil that is currently being placed via the protocol, the following process will be followed. If the pupil has not previously taken a test to identify their levels of ability then they will sit such test to determine whether they may cope with the academic structure and curriculum within grammar schools. The results will be compared to those of the cohort that they would be joining. If the child has been found to fall within a range consistent with the cohort for the relevant academic year at the grammar school in question then consideration will be given by the grammar school for a placement. Grammar schools are also encouraged to support the Fair Access Process in other ways where appropriate.

3. Overview of process

- i) The Fair Access Protocol's aim is to ensure every pupil residing within Warwickshire, eligible to be placed via the protocol, has access to the most appropriate education provision within a timely manner, thus avoiding time out of education. Once a pupil has had an application for a place refused on the grounds that the protocol applies, the process timeline will be followed as set out in appendix 2. **Parental preference does not need to be followed.**
- ii) The local authority must ensure that no school – including those with available places - is asked to take a disproportionate number of children who have been excluded from other schools, who have challenging behaviour, or who otherwise fall under the terms of the protocol. What amounts to a disproportionate number will be assessed by the use of the points system. The aim shall be that within any 12 week period no school will be asked to accept a number of pupils under the FAP for any particular year group which is in excess of 2% of the total number of pupils within that year group. (SA Code 3.9)
- iii) In selecting appropriate placements, the local authority will take account of the percentage of pupils who pose additional challenges currently on roll; assessment of the number currently on roll posing additional challenges will be assessed using the same criteria in use for allocating points.

- iv) When seeking to place a pupil under the Fair Access Protocol, all schools should be treated in a fair, equitable and consistent manner. (DfE Guidance Nov 12)
- v) All schools should work together collaboratively, taking into account the needs of the pupil and those of the school. (DfE Guidance Nov 12)
- vi) To ensure that outside the normal admissions round – unplaced children, especially the most vulnerable, are offered a place at a suitable school quickly, to ensure the amount of time any pupil is out of school is kept to a minimum. The use of the word unplaced within WCC protocol will also cover children who are unable, on assessment by the County Council, to attend a school that they are currently registered with, so long as they fit into one of the appropriate FAP categories. **All schools are expected to respond to requests by the local authority to admit a pupil under the Fair Access Protocol within 10 school days to state their intention.** (DfE Guidance Nov 12)
- vii) All known details of the pupil’s previous educational history, contact details etc. will be made available and passed to the identified school within the protocol letter sent to the identified school for their consideration. Schools must open dialogue with the County Council regarding their ability to meet the needs of the pupil as soon as possible following the first approach being made/receipt of letter. **It is expected that a school will, within 10 school days of the first approach, either agree a starting date for the pupil or set out its reasons for refusal in writing to the local authority.**
- viii) All schools are expected to accept and enrol pupils placed via the protocol, within the agreed timeframes set out. Additional funding requirements for pupils placed via the protocol are to be met by the school or accessed via Area Behaviour Partnerships. Additional funds will only be identified if a school is able to demonstrate the needs of the pupil in question exceed the funds available within the school’s budget. It is expected that the school has utilised all of its support mechanisms within school and engaged external partnerships as per the usual ABP procedure. Factors taken into account in identifying the most appropriate education provision will include, but are not limited to:
- *distance from home address,*
 - *year group,*
 - *pupil’s previous history,*
 - *available transport (including public transport links),*
 - *the points system showing the ranked order of schools within the local area,*
 - *local associations such as peer groups,*
 - *previous association with a particular school.*

4. Who will the protocol cover?

The difference between In Year Admissions and Fair Access Protocol:

- i) In Year Admissions (see appendix 1) relate to all admissions to school from reception to Year 11 which are not covered by phase transfer schemes. In most cases the admissions process is straightforward. A parent applies for a place in a school where there is a vacancy and the child is admitted to school if a place is available.
- ii) In other cases there may be extenuating circumstances as to why the child's admission should be treated as an exception and the child placed in a school via the Fair Access Protocol, despite places being available within the relevant year group. **See chart 1**

The circumstances can include;

- an unplaced child who was not previously permanently excluded but who was attending a Pupil Referral Unit (PRU).
 - an unplaced child whose parent/carer states that the child has medical or educational needs but does not have an Education, Health and Care Plan (All information will be explored to determine the best possible route for admission. (WCC officers may refer to the Headteacher Protocol Steering Group members for advice)
 - an unplaced child who has not previously attended a mainstream school or who has not attended a mainstream school for more than 1 school term (possible home educated or persistent non-attender)
- iii) All applicants are required to complete an In Year Common Application Form and return the forms direct to the Local Authority.
 - iv) The County Council will take all reasonable steps to ensure that admission authorities are provided with relevant information to ensure that decisions can be made by the admission authority as to whether the Fair Access Protocol applies. If an application is deemed to fit the criteria for placement under the Fair Access protocol, see Chart 1, a school **may** refer the case back to the Local Authority and refuse admission, even if they have places available. Parents retain the right to appeal this decision through the usual admission appeal route.
 - v) The Admissions Team will undertake appropriate due diligence on all Fair Access cases to ensure that as full as possible an understanding of each child involved is available both to itself and to relevant schools. The Admissions Team will then process the application via the protocol and identify the next school that is able to accept a protocol placement. It may be a school will accept a pupil even though they are not next on the points system to be considered, in which case they will be given the points for the child as if placed via the protocol.

- vi) The groups of children and young people placed via the protocol are in many cases likely to be vulnerable. If after admission, a school identifies that a child presents issues of concern, they should take appropriate steps to engage other agencies, for example through initiating an Early Help Assessment.
- vii) If a child's circumstances are not covered in Chart 1 then the child does not form part of the FAP, and they therefore cannot be refused a place by a school on that basis. It is acknowledged however by the local authority that some other groups of children admitted to a school do pose some additional challenges, and therefore points will be awarded for admitting pupils fulfilling the criteria set out in Chart 2, so long as these are notified appropriately to the local authority
- viii) The list of children to be included in a FAP is to be agreed with the majority of schools in the area but **must** as a minimum, include the following children of compulsory school age who have difficulty securing a school place: each of these categories is weighted as agreed by the steering group. SA Code 2014, 3.15.

Chart 1 – FAP applies and admission can be refused

	Weighting priority	Points
a) children from the criminal justice system or Pupil Referral Units who need to be reintegrated into mainstream education	1	50
b) children who have been out of education for two months or more	7	30
c) children of Gypsies, Roma, Travellers, refugees and asylum seekers;	3	50
d) children who are homeless;	9	20
e) children with unsupportive family backgrounds for whom a place has not been sought;	8	20
f) children who are carers; and	10	20
g) children with special educational needs, disabilities or medical conditions (but without an Education, Health and Care Plan).	4	50

In addition to the minimum requirements listed in the SA Code 2014, Warwickshire's protocol includes the following:

h) Children who have been permanently excluded and who have no school place as a result	2	50
i) Unplaced children known to other professional agencies as 'vulnerable' but with no obvious behavioural problems; (including persistent non-attenders)	11	10

j) children whose permanent exclusions have been quashed by an Independent Review Panel, but who have no school place;	5	40
k) Unplaced children presenting with significant behavioural problems, who have been identified as being at risk of permanent exclusion, including those who had left the country, and who were previously attending a Warwickshire school within the same academic year or within one term.	6	40

Chart 2 – FAP does not apply but points awarded for admission

Children who have been accepted permanently into a school following a successful managed move	40
Children whose managed moves broke down or ended after a minimum of six weeks	20
Looked After Children	30
Year 11 pre January census;	40
Year 11 post January census;	10
children who have been removed by their parents from a school roll to be educated 'otherwise' and are now seeking another school place.	20
Children with an Education, Health and Care Plan	25

5. Further considerations

i) In order to take into account the needs of the pupil and those of the school, the following considerations will also be taken into account by Warwickshire County Council when placing pupils via the FAP. Whilst the points system indicates which schools are next able to accept a pupil via the protocol, the following factors are also considered before making a final decision as to where the child should be placed:

- Parental preference – **although we no longer have to comply with this**, the wishes of parents should be taken into account to avoid possible non-attendance (everything will be done to manage expectations).

- Where a parent names a preferred school, if this school is not deemed the most appropriate option and does not fall in the points system as the next school eligible to accept a pupil, officers will inform parents. Officers will identify a school by use of the points system. If parents wish to pursue their preferred option, officers will make contact with that school and share all relevant details regarding the placement via the protocol. However officers will not pursue a placement with the school, if the school refuses to accept the pupil. Parents will still have the right to appeal the decision of the admission authority not to admit the child, as admission authorities are not obliged to refuse to admit when the FAP applies.
- The ranked order of schools in an area in accordance with the protocol points based system operated by the County Council.
- The number of children allocated previously to a particular school in an area under the FAP during the current term/academic year, or who have had points allocated to them.
- The distance to the identified school from the home address and availability of transport (including public transport links).
- Schools previously attended by the child – consideration will be given to any previous serious breakdown in relationships between a school and the family to include failed managed moves and peer relationship breakdown.
- The number of children in the same year group at the preferred/identified school with significant challenging behaviour who also fall into one or more of the following categories:
 - Looked After Child;
 - Children with an Education, Health and Care Plan;
 - Children without an Education, Health and Care Plan but who are in receipt of at least £6,000 per year of special educational needs support; and
 - Children admitted following a successful managed move.

Please note: it is the responsibility of all schools to inform the School Admissions/FAP team when a managed move is taking place to ensure we are able to collate this information. It is important for the Fair Access team to recognise additional resources are being utilised to help assist a successful Managed Move. This may require placement to the next school identified on the points spreadsheet to avoid placing undue pressure on one school.

- ii) Schools are responsible for presenting any cases listed above to the Lead Officer for Fair Access. The Lead Officer for Fair Access may utilise the local representative from the Protocol Steering Group for guidance and reference; however, the County Council reserves the right to start the formal process of direction to a school, if a school refuses admission and no local agreement can

be reached. If schools have Academy status, referral to the EFA will follow.

- iii) Where necessary for a child with significant challenging behaviour, the Area Behaviour Partnership and the identified school will then work together to ensure the pupil is ready for admission, looking at risk assessments, continued support required, and where applicable, additional funding support via presentation at high needs/behaviour partnership meetings.

6. Refusal to Admit Children and Direction to Admit

- i) Admission authorities **must not** refuse to admit children in the normal admission round on the basis of their poor behaviour elsewhere. (SA Code 3.8)
- ii) Where a pupil has been permanently excluded from two or more schools there is no need for an admission authority to comply with parental preference for a period of two years from the last exclusion. 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 practicable to do so), and children with Education, Health and Care Plans.' (SA Code 3.8). It also does not apply to any exclusion which has been quashed by an Independent Review Panel.
- iii) Where a admission authority does not wish to admit a pupil with challenging behaviour outside the normal admissions round, even though places are available, it can refuse to admit the child if the Fair Access Protocol applies, but **must** refer the case to the local authority for action under the FAP. This will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children. The points system will confirm or otherwise and support the case for any school found to have a disproportionate number of pupils with challenging behaviour.
- iv) If the situation above applies, the case must be referred to the Lead Officer for Fair Access for consideration. The Lead Officer will expect to see evidence in such circumstances of the:
- particularly high proportion of children with challenging behaviour, and/or,
 - particularly high proportion of previously excluded children, and/or
 - Implications of the admission of an additional pupil with challenging behaviour.
- v) The Lead Officer will then consider the case made by the school. The Lead Officer may consult with a member of the Protocol Steering Group for the area in deciding whether the FAP does apply.
- vi) This provision will not apply to a looked after pupil, a previously looked after pupil or a pupil with an Education, Health and Care Plan naming the school in question, as these children **must** be admitted. (SA Code 3.12).

- vii) Having concluded that the FAP does apply to a child, the Lead Officer will consider which school within the relevant Area Behaviour Partnership to refer the child to, taking into account points currently held by schools in the relevant area as a result of the application of Chart One and Chart Two, and also the Further Considerations listed in Section 5.
- viii) **Admission authorities in Warwickshire are required to comply with the terms of this Fair Access Protocol and, as a result, should therefore admit any pupil referred to the school under the FAP.** If an admission authority refuses to admit a child, but the County Council remains of the view that it is the most appropriate school for the child, then the County Council will follow statutory steps under the School Standards and Framework Act 1998, either to direct admission or to make an application for direction to the Education Funding Agency, as appropriate.
- ix) It is usual for Admission Authorities to delegate authority concerning aspects of admissions to Head Teachers. Letters will however be addressed to both, to ensure that a timely response is received to correspondence in order to avoid delays.

7. Managed Move Process

- i) Individual Area Behaviour Partnerships operate Managed Move processes, designed to transition pupils who are at risk of permanent exclusion into new school settings. These processes are not operated by Warwickshire County Council, but are supported where they offer an opportunity for a fresh start for a pupil with challenging behaviour, and where both schools involved, as well as the parent / carer of the child in question, are supportive of such a move.
- ii) Such processes operate independently of the Fair Access Protocol and this section is provided as guidance only.
- iii) All managed moves should initially be for a maximum period of no more than 12 school weeks, extendable by one period of six school weeks in exceptional circumstances.
- iv) If a managed move process breaks down, the child will be expected to return to their original school placement.

Brief History to aid admission and induction:

XXXXXX

Timings

Please make arrangements to ensure that xxxx is placed on the roll of your school. You should notify the County Council as to whether you agree to admit the child as soon as possible, and at the very latest within **10 school days**, with a start date notified to the child's parent / carer and the County Council within a further 5 school days.

If you feel that the school cannot admit xxxx you will be required to send further information in writing, stating your reasons and evidence for refusal within **10 school days**. Any information you provide will be considered as a matter of urgency by the Lead Officer for Fair Access and, where necessary, further advice will be sought from a member of the Protocol Steering Group to achieve a speedy resolution.

Thank you for your co-operation in this matter. I look forward to receiving a response from the school within **10 school days** and confirmation that a start date has been arranged for the child within a further 5 school days. I would be grateful if you would complete the reply slip on the bottom of this letter and return it to the email address stated below.

If you need any further information about placements made under the Fair Access Protocol please do not hesitate to contact me on the number above.

Yours sincerely

Lead Officer for Fair Access

CC:

Area Behaviour Partnership advisor for the area

Governors / Trustees

Protocol Steering Group Member (if applicable)

REPLY SLIP

Please complete this slip and return it to the Lead Officer for Fair Access within **10 school days** from receipt of this letter. Alternatively forward electronically to xxxx email for the attention of the Lead Officer for Fair Access stated on the letter.

Re:

DOB:

NCY:

We confirm that the above mentioned child will be admitted to xxxx School under the agreed Fair Access Protocol.

The planned start date for this child is _____

Signed _____ Date _____

Position in school _____

Example parent letter

Dear parent

RE: **DOB:** **NCY:**

Warwickshire County Council has been seeking a school place for and we would like to take this opportunity to keep you informed of the progress we are making, and seek your views on our proposals.

We are considering naming [School Name] and asking them to admit your child. Before doing so however we are seeking your views on this proposal. Any comments that you have to make will be of benefit to the County Council in reaching its final conclusion. We should be grateful if you would let us know any thoughts that you have by no later than [X].

Please note that there is no duty for the Local Authority (WCC) to comply with parental preference when allocating places through the Fair Access Protocol, as we must ensure that no school is asked to take a disproportionate amount of children who have been excluded from other schools, or who have challenging behaviour. The school we have approached might not necessarily be your preferred school.

Enclosed is a leaflet explaining the Fair Access Protocol in more detail. Please be assured we are committed to finding the most appropriate setting for your child at this time.

Yours sincerely

Lead Officer for Fair Access

Example letter parent no preference

Dear,

RE: DOB: NCY:

Further to our previous letter notifying you that a school place had been identified for under the Fair Access Protocol (FAP), we are now in a position to inform you that we do intend to name [School X].

We regret that this is not one of the schools stated on your application; however, when allocating places via the FAP, there is no duty for the Local Authority to comply with parental preference. The purpose of the FAP is to ensure that no school in an area, including those with available places, is asked to take a disproportionate number of children who have been excluded from other schools or who have challenging behaviour.

In accordance with the School Standards and Framework Act 1998 you have the right to appeal against the decision to refuse your preferred school. To request an appeal pack *to be completed in regards to where the parent has to obtain an appeal pack from dependant on the school parent has applied for.*

If the school have not yet made contact with you to arrange admission, you will need to contact the school direct on xxxx. This offer is subject to documentary evidence confirming your child's date of birth.

Please complete the reply slip and return to the school by the date specified below.

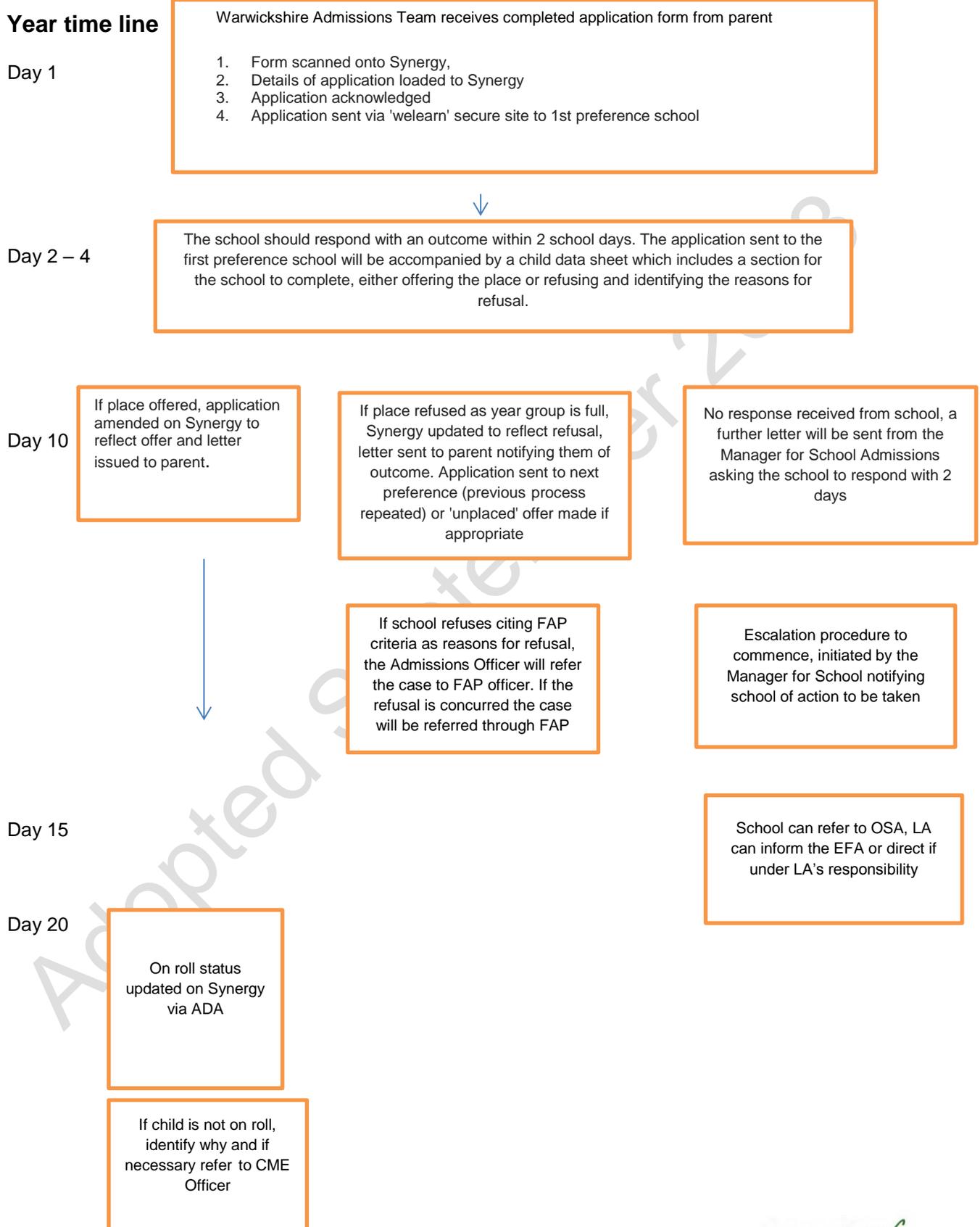
We hope that will be happy and successful at this school.

Yours sincerely

Lead Officer for Fair Access

Appendix 1

In Year time line



Appendix 2

Fair Access time line

Day 1

In Year Application made by parent/carer

Day 2

'Fair Access (FAP)'

Admissions Officer begins case work to assist placement process – to be completed within 5 school days

'In Year' (see In Year flow chart)

Application sent to preference school for consideration, cycle should be completed within 10 school days

Day 6

FAP Officer confirms next school in area to take student, school approached and given 10 school days to respond

School refuses to admit, escalation process begins

School agrees to take student, start date confirmed – to be completed within 5 school days.

Checks made on ADA to confirm student on roll

Child on roll, case closed

Child not on roll, investigate and if necessary inform CME Officer