

**Subject:** School Admissions Code 2021 –Updated guidance for headteachers and governors  
**From:** Bob Garrard, Schools Admissions Adviser **Date:** 19/07/2021  
**For:** To Headteachers and Governors of diocesan VA schools and academies **Reference:** ADM 4/20-21

## SCHOOL ADMISSIONS CODE 2021

### Updated guidance for headteachers and governors (Diocese of St Albans)

The School Admissions Code 2021 completed its passage through Parliament on 1<sup>st</sup> July 2021. There were no changes made to the draft document. **Therefore, the guidance and actions outlined in the diocesan briefing paper issued on 17<sup>th</sup> May 2021 need to be actioned and in place by 1<sup>st</sup> September 2021 when the revised code becomes law.**

Non-statutory guidance documents have been issued by the DfE regarding Internationally Adopted Previously Looked After Children (IAPLAC) and the Fair Access Protocol (FAP). They can be accessed here along with the Schools Admissions Code 2021:

[www.gov.uk/government/publications/school-admissions-code--2](http://www.gov.uk/government/publications/school-admissions-code--2)

### IAPLAC - Additional points

**Internationally adopted children include those who were previously looked after in Northern Ireland, Scotland and Wales.**

#### a) Key points from DfE Guidance document

- Responsibility for determining whether a child is eligible for IAPLAC priority rests with the admission authority. If an admission authority is in any doubt about whether evidence provided by a parent is acceptable, we recommend they request advice from their virtual school head (VSH).
- Where an IAPLAC child has previously been in an education or early years setting, it is possible a VSH will already know about them. If a VSH has been notified about a particular child, they may have already determined that the child is an IAPLAC (for

example by reviewing evidence provided by the parent). **If this is the case, we would not expect an admission authority to require documentary evidence from the parent.**

- Where an admission authority requests evidence from a parent about their child's IAPLAC status, it is the parent's responsibility to provide this. It is important that admission authorities are supportive and provide help and advice where appropriate.
- Some countries will have no official state care and the child will have been looked after by another provider of care, for example, a religious or charitable organisation. Different countries will have different systems of registering or recording adoptions. In some cases, very little formal documentation may exist, so admission authorities may need to be flexible and pragmatic in their approach. The admission authority should make clear the process by which the evidence will be assessed.

**b) For normal admissions round**

The Common Application Form (CAF) should include a section for parents to declare whether their child is an IAPLAC. We recommend that the CAF asks parents if a local authority or VSH has previously had any involvement with the child and request that they provide a relevant contact if possible.

**c) For in-year admissions**

Either the school or local authority must provide a suitable application form. This should include a section for parents to declare whether their child is an IAPLAC. We recommend that the application form should ask if a local authority or VSH has previously had any involvement with the child and request that they provide a relevant contact if possible. The form should state that it may be necessary for the admission authority to request evidence of IAPLAC status from the parents.

**d) Fair Access Protocols**

Previously looked after children (including those who have been identified as IAPLAC) can be referred to the FAP. This route can only be used to place a child where the parent has been unable to secure a place for their child at any suitable school within a reasonable distance.

**e) Documentary evidence of adoption:**

In all cases, parents should have one of these documents:

- (i) an adoption order from a UK court;
- (ii) an adoption certificate issued by the Registrar General for England and Wales, National Records Scotland, or the General Register Office for Northern Ireland;
- (iii) an Article 23 Certificate – this applies to Hague Convention adoptions, and will have been issued by a Central Authority; or

- (iv) official documentation from the relevant court or state authorities in the country of adoption, confirming that the child was adopted.

In the case of (iv), it may be difficult for an admission authority or VSH to establish whether the documentation provided is genuine. In these cases it may be appropriate to ask the parent for further information, examples may include:

- a certified document obtained from the embassy of the country of origin;
- a letter from an adoption agency; or
- a letter from another agency or organisation that has been involved with the child.

f) **Documentary evidence that a child was previously looked after**

In most cases, evidence will be in the form of a report or letter, which either states that the child was in care or describes the child's pre-adoption circumstances. If the child was looked after by private foster parents, evidence should show that the care was arranged by or authorised by an organisation which meets the definition: **A child is regarded as having been in state care outside of England if they were in the care of or were accommodated by a public authority, a religious organisation, or any other provider of care whose sole or main purpose is to benefit society.**

Examples may include:

- an Article 16 report – this applies to Hague Convention adoptions and will have been issued by the Central Authority;
- information provided by an adoption agency, either in the UK or overseas;
- information provided by an organisation that provided care for the child (for example, a charity or religious organisation);
- a report or letter from another agency or organisation that has been involved with the child.

## Fair Access Protocol – Additional points

a) **Key points from the DfE guidance document**

- FAPs **must not** be used in place of the usual in-year admissions process. A parent can make an in-year application at any time and is entitled to have their preference met wherever possible, as well as the opportunity to appeal a decision when a place is not offered;
- FAPs **must** only be used for unplaced children that meet the prescribed categories set out in paragraph 3.17 of the Code;

- There is no duty to comply with parental preference when allocating places through the FAP, but parents' wishes should be taken into account;
- When seeking to place a child through the FAP, no school (including those with places available) should be asked to take a disproportionate number of children who have been permanently excluded from other schools, who display challenging behaviour, or who are otherwise being placed via the FAP;
- Admission authorities **must** admit children when asked to do so in accordance with the FAP. Where an admission authority fails to comply with the FAP, they may be directed to do so.

#### **b) Revised list of children eligible for the Fair Access Protocol**

- (i) 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 FAP;
- (ii) children living in a refuge or in other Relevant Accommodation at the point of being referred to the FAP;
- (iii) children from the criminal justice system;
- (iv) 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;
- (v) children with special educational needs (but without an education, health and care plan), disabilities or medical conditions, including those at risk of serious illness from coronavirus;
- (vi) children who are carers;
- (vii) children who are homeless;
- (viii) children in formal kinship care arrangements;
- (ix) children of, or who are, Gypsies, Roma, Travellers, refugees and asylum seekers;
- (x) children who have been refused a school place on the grounds of their challenging behaviour and referred to the FAP in accordance with paragraph 3.10 of the Code;
- (xi) children for whom a place has not been sought due to exceptional circumstances;
- (xii) children who have been out of education for 4 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; and
- (xiii) previously looked-after children for whom the local authority has been unable to promptly secure a school place.

**Note that it may be possible that a child refused a place because the school is full could be eligible to be referred for consideration under FAP if they meet one of the above criteria.**

### c) **Children with challenging behaviour**

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 (but they have not met the threshold for the twice excluded rule), it may refuse admission and refer the child to the FAP.

Admission authorities may only do this if:

- the school has a particularly high proportion of children with challenging behaviour or previously excluded pupils on roll in comparison to other schools; and
- it believes admitting another child with challenging behaviour would prejudice the provision of efficient education or the efficient use of resources.

### d) **What is challenging behaviour?**

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 or other pupils' education or jeopardise the right of staff and pupils to a safe and orderly environment.*

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

### e) **Powers of Direction**

Admission authorities **must** admit children when asked to do so in accordance with the FAP, including where the school is operating a waiting list. Where an admission authority has failed to admit a child in accordance with the FAP, they may be directed to do so.

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Do read the Non-Statutory Guidance documents, as they should help explain more fully the requirements of the revised code.

There are two actions/decisions that governors **must** address in order to remain fully compliant with the code. These are:

- a) Agree to vary policies for 2021/22 and 2022/23 to include IAPLAC children in the first over-subscription criterion. Policies need to be amended and on websites by 1<sup>st</sup> September when the new Code comes into force.

- b) Determine whether or not to manage their own in-year admissions arrangements and inform the LA of their decision (by 1<sup>st</sup> October this year). Policies must explain clearly how parents make an in-year application and a suitable application form must be made available if the school is managing the process.

I shall be available throughout the summer until 31<sup>st</sup> August if you require any further help, clarification or guidance.

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