



DETERMINATION

Case references: ADA2858, ADA2860, ADA2866 and ADA2867

Objectors: Southville Junior School, Bedfont Primary School, London Borough of Hounslow and Victoria Junior School

Admission Authority: The Aspirations Academies Trust for Rivers Academy, Feltham, London Borough of Hounslow

Date of decision: 28 August 2015

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objections to the admission arrangements determined by the Aspirations Academies Trust for Rivers Academy in the London Borough of Hounslow.

I have also considered the arrangements in accordance with section 88I(5) of the Act. I determine there are other matters as set out in this determination that do not conform with the requirements relating to admission arrangements.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of this determination.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), objections have been referred to the adjudicator by Southville Junior School, Bedfont Primary School, the London Borough of Hounslow and Victoria Junior School (the objectors), about the admission arrangements for September 2016 (the arrangements) for Rivers Academy (the school), an academy secondary school, which is part of the Aspirations Academies Trust (the trust).
2. The objections are to: the consultation on the admission arrangements which was said to be flawed; the reduction in the published admission number (PAN) from 215 to 180; the introduction of banding by ability using literacy tests; the lack of clarity for parents on the process of banding; the lack of clarity for parents on the testing process for children with special educational needs and disabilities or English as an additional language; and the naming of feeder schools based on being part of the trust rather than a historic or geographical link with the

school.

Jurisdiction

3. The terms of the academy agreement between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the trust, which is the admission authority for the school, on that basis. The objectors submitted their objections to these determined arrangements on dates between 29 April 2015 and 8 May 2015.
4. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

5. In considering these matters I have had regard to all relevant legislation and the School Admissions Code (the Code).
6. The documents I have considered in reaching my decision include:
 - a. the objectors' emails and forms of objection (received 29 April 2015 from Southville Junior School; 6 May 2015 from Bedfont Primary School and London Borough of Hounslow; and 8 May 2015 from Victoria Junior School); and further comments from the objectors in response to the information circulated;
 - b. the school's responses to the objections; supporting documents; and subsequent correspondence;
 - c. information on testing for ability and literacy testing;
 - d. the London Borough of Hounslow's (the local authority) composite prospectus for parents seeking admission to schools in the area in September 2015;
 - e. information on preferences and allocations made for the school for September 2014 and September 2015;
 - f. maps of the area identifying relevant schools; and where children live who expressed first preferences for the school in 2014 and 2015;
 - g. information on distances between schools;
 - h. information on the consultation on the arrangements including what was provided, to whom, what responses were received and what information was provided to the trust on those responses;
 - i. extracts from the minutes of the meeting at which the trust determined the arrangements;
 - j. a copy of the determined arrangements; and
 - k. a copy of amended determined arrangements agreed by the trust in July 2015 (the amended arrangements).
7. I have also taken account of information received during a meeting I

convened on 12 June 2015 at Rivers Academy with representatives of the school and the objectors (the meeting).

The Objections

8. There were four objectors and their objections were to the same matters. This one determination includes all the objections made. The numbers in brackets below refer to the main relevant paragraphs in the Code. The matters raised in the objections were:
 - i. The consultation process (15b and 1.44) was flawed as:
 - i. The consultation brought attention to the proposed reduction in the PAN but no other matters, such as the introduction of banding and the increase in the number feeder schools.
 - ii. There was no letter sent to the primary schools for distribution to parents and so parents were not properly consulted.
 - ii. The reduction in the PAN (1.3) from 215 to 180 when a shortfall in places is expected in the area.
 - iii. The banding approach is not clear, fair and objective (1.26 and 1.31);
 - iv. It is not clear to parents how banding will be applied (14);
 - v. It is unclear to parents how testing will be operated for children with special educational needs and disabilities or English as an additional language (1.31 and 1.32b);
 - vi. The establishment of feeder schools is based on being part of the trust rather than a historic or geographical link and this excludes a number of Hounslow schools that are physically closer to the school with the potential for there not being places for more local children (1.15).

Other Matters

9. In considering the admission arrangements for Rivers Academy the following matters came to my attention which may contravene the Code. Some of these matters have been addressed in the amended arrangements.
 - a. The admission arrangements for 2015 and 2016 were not clearly or consistently available on the school's website (1.47).
 - b. The date for the selection tests was December when parents should know the results before they have to apply for a place (1.32a).
 - c. The arrangements do not make it clear that a child who is looked after or has been previously looked after, does not have to take the banding test in order to be allocated a place (1.7).
 - d. The priority for children of staff in the oversubscription criteria is insufficiently clear (14).
 - e. The arrangements for post 16 admissions were not fully available on the website (1.47); the application form for post 16 education requests information in contravention of the Code (2.4c); and the oversubscription criteria for post 16 education appear to be incomplete.

Background

10. Rivers Academy, previously Longford Community School, became an academy on 1 August 2011. In 2013 it became part of the Aspirations Academies Trust which is a multi-academy trust and now includes two primary schools in the area. These primary schools are Oriel Academy and Oak Hill Academy. Each school has a local advisory body which is referred to as the governing body. The Aspirations Academies Trust Board is the admission authority and determines admission arrangements for each of its schools.
11. The school was judged outstanding by Ofsted in March 2015. An academy free school for students aged between 14 and 18 years is to open on the school site in September 2015. This is called the Space Studio and has a PAN of 75 for students from across west London. It is also part of the trust.
12. The school is in the London Borough of Hounslow in an area known as Feltham. It is one of three schools providing secondary education (two secondary schools and an all-through school for children aged between four and 18 years) which are less than two miles apart. There are also eight primary schools which are less than one mile from the school and more primary schools which are less than two miles away.
13. The school provided amended admission arrangements to me on 21 July 2015 following the meeting. The trust is permitted by paragraph 3.6 of the Code to make changes to its determined arrangements to comply with a mandatory requirement of the Code. I have taken the amended arrangements into account in this determination.

Consideration of Factors

14. The first part of the objections is that the consultation on the admission arrangements was flawed as it did not meet all the requirements of the Code. The consultation for the arrangements commenced on 15 December 2014 and ended on 13 February 2015 which meets the time requirements for consultation in paragraph 1.43 of the Code. The consultation document stated:

"We are consulting with the following groups:

 - *Parents of children between the ages of 2 and 18 in the local area.*
 - *Other persons in the local area who in the opinion of the admission authority have an interest in the proposed admissions.*
 - *All other admission authorities within the local area.*
 - *The wider community including town and district councils.*
 - *The education local authority.*
 - *Schools in the area*

The groups are being consulted in the following way:

 1. *Statutory Notice placed in the local paper, December 2014.*
 2. *The three aspirations academies in the West London District will*

have a link to the consultation document on their website front pages for 8 weeks.

3. *The consultation document will be sent to all primary head teachers within the area, with a letter for distribution to parents.*
4. *The Local Authority will be informed."*

15. I have seen the email dated 15 December 2014 to local primary school headteachers bringing the consultation to their attention. There were difficulties for some primary schools in opening the email with the consultation letter and document attachments due to technical blocks. The email had a letter attached to headteachers, which explained the planned reduction in the PAN, and contained the full consultation document. The full consultation document included similar information to the letter on the proposed reduction in the PAN and its rationale; a copy of what was called a statutory proposal on the reduction in the PAN which was published in the local paper; and the arrangements for 2016.
16. The school provided me with a letter for parents. This contained the same material with regard to the reduction in the PAN and a link to the full consultation document. Rivers Academy said that they believed that this letter for parents had been sent to primary schools with a request that it should be circulated to parents. No evidence of this request has been provided. The primary school objectors said that they had not received any letter for parents or a request to circulate anything.
17. The only publicity of the consultation issued by the school for parents would have been the advertisement in the newspaper; the entry on Rivers Academy's website; and the entries on the other trust schools' websites. Paragraph 1.44 of the Code lists the parties with whom an admission authority **must** consult. This includes "*parents of children between the ages of two and eighteen.*" The school states in its consultation documents that it is doing so but I have not been provided with evidence that this was done effectively. The only potential information to parents with children under five years old, even if the letter to parents of children attending primary schools had been sent, was the advertisement in the newspaper unless parents happened to be browsing the trust schools' websites. This would not be a reasonable expectation.
18. The advertisement in the paper and the full consultation document stated, "*It is not intended to change the oversubscription criteria which will remain the same as at present.*" The school felt that it was reasonable for those interested to read the full consultation document rather than just the letter or the notice. The statement above, however, would make it a reasonable assumption that there were no changes planned other than the reduction in the PAN.
19. The full consultation document included proposals for 2016 headed "*Admissions Policy for Admissions in September 2016*" with no

explanation that these were proposals. There were various changes from the arrangements for 2015 which were not brought to the readers' attention. The changes from the arrangements for 2015 to 2016 included:

- a. The deletion of the sentence, '*There will be no discrimination on grounds of academic ability.*'
- b. The deletion of an over-subscription criterion based on the child's medical or social circumstances.
- c. The introduction of banding based on the national ability range using literacy tests.
- d. The introduction of an over-subscription criterion for children of staff who have worked at the school for two years.
- e. The addition of "*Oak Hill Academy West London*" to the list of feeder schools.
- f. A change to the definition of sibling.
- g. Further detail of how applications from parents of twins, triplets or other multiple births will be treated.
- h. A change in the over-subscription criteria for post 16 education to include only looked after and previously looked after children and siblings of students.

20. Some of these are material changes. The school explained at the meeting that these elements were in the consultation document as the arrangements for 2016. It would have been necessary for anyone looking at the document to access a copy of the 2015 arrangements and then to cross reference the 2015 arrangements with the 2016 arrangements to be aware of the differences. The 2015 arrangements were not on the school's website when I looked for them. If the arrangements were not on the website at the time of the consultation then no comparison could have been made. I have considered the lack of communications to parents; the use of the statement, "*It is not intended to change the oversubscription criteria which will remain the same as at present,*" in the letter and publicity; and the lack of information on the areas where changes were proposed (except with regard to the reduction in the PAN). The evidence is that this was a flawed consultation process in terms of informing the groups required to be consulted of the consultation; and providing them with relevant and accurate information. The consultation did not meet the requirements of paragraph 1.44 of the Code.

21. Some of the primary schools did write their own letters on the consultation which they sent home to parents from their school. Rivers Academy provided me with copies of the responses made to the consultation and, in some instances, its responses to the letters. The responses to the consultation included:

- seven communications from parents;
- four from individual primary schools and one representing 14 primary schools (including the four which also wrote individually) from a group called the West Area Partnership;
- six from individual secondary schools and one from the Hounslow Secondary Improvement Partnership (representing

14 secondary schools including the six which wrote individually);

- one from the local authority; and
- one from the Hounslow Admissions Forum (the purpose of Hounslow Admissions Forum is described as to enable consultation and discussion on admissions related matters in Hounslow).

22. One parent requested further information on admissions. All the other responses were opposed to one or more aspect of the proposals. There were no responses that supported any aspect of the proposals. The matters raised by parents were largely around concerns of living close to the school and fearing that their children would not be able to attend the school because of the reduced PAN and the use of feeder schools that were in areas that were further away. Two parents raised concerns over the use of banding.
23. The primary schools opposed the reduction in the PAN; the use of feeder schools that were members of the trust and limited places for children from more local schools and whose children traditionally attended the school; three schools objected to the introduction of banding; and one to the consultation process.
24. The secondary schools' responses included protests to the reduction in the PAN; the introduction of banding; the method of consultation; and the effect of the arrangements on hard to place children through the Fair Access Protocol. This last point is outside of my jurisdiction as it relates to admissions outside the normal round of admissions. There was also disappointment expressed that these proposals had not been discussed with neighbouring schools when the area had prided itself on its collegiate approach to meeting the needs of students with all secondary schools in the area having been judged good or better.
25. Additional points made included: the perceived lack of strategic planning when the Space Studio was developed on the site; and lack of conviction on the matters raised in the consultation on the traffic implications for the site. Similar points to those above were made by the local authority, including data to support the points made, and by the Hounslow Schools Admissions Forum. I will refer to the consultation responses when I consider each part of the objections below.
26. In March 2015 the Aspiration Academies Trust agreed a set of principles to shape the admission arrangements across all the schools within the trust with some amendments for local circumstances. These include, "*The overriding rationale for the admission of pupils and students to our academies is to encourage, wherever possible, all-through education from the ages of 2 until 19. The reasons for this are:*
- *Continuity of education, leading to much improved outcomes for individual students*
 - *Greater student and parent engagement*

- *Providing parents with a stress free education provision - all students in Aspirations Academies are virtually guaranteed a place in the next academy*
- *Seamless transition between phases.”*

27. The principles agreed by the trust have a specific section for secondary schools which is closely reflected in the arrangements determined for the school. I asked to see the information provided to the trust on the consultation responses. The school provided me with the following: *“Rivers Academy West London has also had its admissions policy out for consultation as from 2016 it is reducing its PAN for Year 7 in line with the Trust’s policy to 180 students. This has prompted all local schools and Hounslow LA to object, particularly to the fact that in the oversubscription criteria pupils attending an aspirations academy have priority of entrance, and the issue of using literacy tests for the banding. All aspects of the admissions policies we believe do meet the requirements of the new school admissions code 2014 but no doubt Rivers will also have to meet with the Schools Adjudicator!”* This brings the scale of the objections to the attention of the trust and that there were objections to the reduction in PAN; the use of members of the trust as feeder schools; and the use of literacy tests for banding.
28. The trust agreed the admissions policy largely as proposed in the consultation document at its meeting on 13 March 2015. The minutes do not record that the detailed responses made to the consultation were considered by the trust. The trust did acknowledge and note the responses to consultation, but the minutes provide very limited evidence that serious consideration was given to the responses.
29. The school has referred to the statement on admissions made by the trust which is to apply to all schools in the trust and specifically to Rivers Academy. It is valid for a multi-academy trust to wish to have principles that it follows on admissions on all its schools. Such principles, however, have to be consulted on locally and the board agreeing the principles does not replace mandatory local consultation which has to be more than a token process.
30. The evidence shows that the consultation did not meet the requirements of the Code in respect of all those to be consulted and the consultation information was misleading. I therefore uphold this part of the objections
31. The second part of the objections is to the reduction in the PAN from 215 to 180 when there is a shortfall in places in the area anticipated. Paragraph 1.3 of the Code says that *‘All admission authorities **must** consult...where they propose a decrease to the PAN.’* The consultation did highlight in some detail the proposal to reduce the PAN from 215 to 180. The reasons the school gave for this reduction were:
- a. The site would become too crowded to be educationally effective because:

- i. The incoming year 7 admissions to the school were likely to be fully subscribed leading to 1075 students aged between 11 and 16 years. This could create a total of 1275 students with 200 post 16 students.
- ii. The Space Studio, opening September 2015, had a PAN of 75 and over time this would lead to an additional 300 students on the site.

The combination of these factors could lead to a student population of 1575 on a “*tight site*” which would be to the detriment of the teaching and learning environment and in these circumstances the school would find it harder to maintain the judgement of outstanding made by Ofsted.

- b. 1575 students on one site would create significant traffic issues at the start and end of the day.
- c. Year groups of 180 were more conducive to smaller classes with eight groups of 22 or 23 students as it was easier to timetable effectively.
- d. The trust considers 900 students aged between 11 and 16 years with 200 post 16 students, making a school of 1100, to be the most educationally and economically efficient school size.

32. In addition to these points I will consider the points raised by the consultation and the objectors:

- a. the need for places in the area; and
- b. the effect of the reduction in numbers on parental preference.

33. The Hounslow Admissions Forum said in response to the consultation, *“The need to increase secondary school places has been the subject of much discussion for some time through the collaborative work with Officers in the Local Authority, Secondary Head Teachers and the Secondary Place Planning Group. The need for at least 29.5 forms of entry in Secondary Schools by 2019 has been widely documented and evidenced through the projections data. Your proposal to reduce the Published Admission Number from 215 to 180 does not support the strategic approach being taken to address the projected shortage of places in Hounslow Secondary Schools....The Borough’s projections show a need for additional year 7 places beginning in September 2017 and continuing well into the future. Any reduction to the overall provision of secondary places is a cause for concern and will have an impact on parental preference.”*

34. The local authority also said in their response to the consultation, *“Data from the London Schools Atlas (GLA) shows that Rivers Academy intake is composed of significant numbers of pupils from Southville Junior (29%), Bedfont (16%) and Fairholme (16%). With the proposed preference for pupils from the two AAT (Aspirations Academies Trust) primary academies and a reduced PAN, local families (including those nearest the school), could be left without access to their local secondary school. This is unacceptable as it restricts choice for local families in an unreasonable manner. It could also significantly increase*

pupil travel times and traffic due to the unnecessary journeys made by pupils beyond their local area...The benefits of the proposed changes for Rivers Academy would be achieved at the expense of the choices available to families; the balance of the intake of other local schools with the consequent impacts on their pupils and outcomes.” Similar points were made in other responses.

35. The local authority provided me with more detailed and updated figures on its projections for the area dated May 2015. Projections are complicated because this is an urban area with a highly transient population and there is development of new provision including that to meet the projected demand. The figures are based on the place requirements for year 7 students and show the need for 59 places or an additional two forms of entry for September 2016 taking into account the decrease determined by the school. The projections then show capacity in the system for two years followed by a significant shortfall in places from 2019 onwards. The need for school places in 2016 is very significant as children cannot be educated if there are insufficient places available. Parents in Hounslow can make up to six preferences and in 2015 there were 444 preferences expressed for the school. Of these 168 were first preferences and 214 places were allocated. Not all first preferences were allocated a place. When the information was provided (12 June 2015) some late applications had yet to be allocated. Given all the circumstances it is likely that the school will be fully subscribed for each new September intake for the foreseeable future and this is likely to be a pattern across Hounslow.
36. Parents expressed concerns about attending their local school if there were to be a reduction in places. The distance between Rivers Academy and Feltham Community College is 1.45 miles by road. The distance between Rivers Academy and the Reach Academy, an all through school, is less than a mile. There are therefore two other schools in close proximity. Parents have been used to their children being able to attend the school that is very close to their home and not to be able to do so may feel unreasonable. This may not be sufficient justification to uphold objections to reducing the PAN but when this is combined with the lack of places across the whole area, the particular geography and the introduction of feeder schools then this may be more significant and I refer to this below when I consider the aspect of the objections relating to feeder schools.
37. The school explained that the development of the Space Studio restricts the space available on site and that this could have an impact on teaching and learning if the number of pupils is not reduced. Several responses to the consultation expressed the view that the effect of the development of the Space Studio on the school site had not been raised during consultation on the development of the Space Studio and that there had not been much strategic forethought if the site was being made too crowded when there was a known demand for places for year 7 children.

38. The development does increase capacity in years 10 and 11. The school explained to me that the potential reduction in the capacity for Rivers Academy was discussed with the Department for Education when the bid for the Space Studio was considered. If the school were to be full in all years (with 200 post 16 students) then if its PAN remained at 215 and the Space Studio were full then there would be 1575 students on site. If the PAN were reduced to 180 (with 200 post 16 students) and the school and the Space Studio were full in all years then there would be 1400 students on site. This is an overall reduction of 175 places on the school site.
39. The school has capacity for 1300 and there are sufficient teaching spaces. Pressure for space is created by the Space Studio which is a separate school. The opening of a new school on the same site is a separate matter to the provision of places for year 7 students and so is not justification to reduce the PAN.
40. The second aspect of the case to reduce the PAN was the impact of 1575 students on traffic. The school is situated on a residential street, with on-street parking, which could become congested. The school day starts at 8.35 and ends at 15.10. The Space Studio will operate between 8.30 and 17.00. The majority of the school's students live within easy walking distance and there is public transport. I am not convinced that the traffic situation is justification for reducing the year 7 PAN.
41. The school also feels that smaller class sizes are more conducive to good quality teaching and learning. The school agrees that reducing the PAN is not required in order to reduce class sizes but that it is more efficient in timetabling terms to have two blocks of four class groups of about 22 students (based on 180 students). In an ideal world the size of the school would create the greatest efficiency. Here, where there is a risk of insufficient places for children needing them, then this is less significant. It is a matter of priorities and to reduce the PAN by 35 places to create greater efficiency in timetabling would not be reasonable in these circumstances.
42. There is educational research that supports the view, as stated by the school, that schools that are around 900 students (aged between 11 and 16 years) tend to be the most effective. There are also many examples of very effective schools which are larger or smaller than this. The school has reasons for wishing to reduce its PAN but the local situation is a need for places for 2016. I have taken all factors into account and have found insufficient justification to reduce the PAN for 2016 and I therefore uphold this part of the objections.
43. The third part of the objections was that the ability banding planned by the school was not clear, fair and objective. The legislative context is that banding is permitted by the Code and is described in paragraph 1.25 as "*a permitted form of selection used by some admission*

authorities to ensure that the intake for a school includes a proportionate spread of children of different abilities.” The school has chosen to use banding to produce an intake that is representative of the national ability range as permitted by paragraph 1.25c of the Code.

44. The school referred to the Sutton Trust at the meeting in support of its introduction of banding. The Sutton Trust’s report, *“Banding and Ballots: Secondary school admissions in England: Admissions in 2012/13 and the impact of growth of Academies,”* describes how banding can prevent schools being socially selective and can be used in order to create *“balanced school intakes.”* The report recommends the approach, particularly when it is undertaken in partnership with other schools across an area.
45. The arrangements describe how, *“Applications will be considered against the ability band in which the applicant is placed by the literacy test score. The number of places available in each ability band will be determined by GL Education (who administer the New Group Reading Test) by matching the percentage of places in each band to the ability profile of the applicants for places that year.”* This does not make clear that the number of places in each band is calculated by using the national ability range although this is referred to elsewhere in the arrangements.
46. In its response to my question requesting an explanation of the purpose and anticipated effect of the banding the school said, *“The current intake to Rivers Academy increasingly mirrors the national profile so it is anticipated that the introduction of banding will not cause a major change in the profile of students admitted to the Academy, in terms of their ability, and thus will have minimal, if any, impact on the ability profile of students admitted to other schools locally.”*
47. In an answer to a parent who responded to the consultation expressing concern that the school was, *“trying to cherry pick high achievers,”* the school explained that *“The literacy test is absolutely not to select high achievers...we want to ensure that we do not begin to show a bias towards children of a higher ability level and so are ensuring, through the banding process, that we have equal proportions of children who are low ability, middle ability and high ability.”* However, this description of equal proportions does not reflect the proportions based on the national profile provided by the school.
48. The local authority’s view in its consultation response was that, *“Whilst pupil banding is a permitted form of selection under Section 101 of the SSFA 1998, its impact in a geographical area with a disproportionately greater number of pupils with low prior attainment and a smaller proportion of those with high prior attainment will skew the intake of other local schools.”*
49. The local authority then provided the data and comment below in its consultation response to the school to support this view. *“Over the last*

5 years, RAISEonline data indicates that the cohorts vary from national as follows:

Table 1: comparisons provided by the local authority

% of cohort over last 5 years (simple average)			
Prior Attainment	Rivers	National	Difference
<i>Low</i>	21.8	15.1	+6.7
<i>Middle</i>	51.8	50.0	+1.8
<i>High</i>	26.4	34.9	-8.5

In other local schools the distribution is as follows:

Table 2

% of cohort over last 5 years (simple average)			
Prior Attainment	Feltham Community College and Reach Academy	National	Difference
<i>Low</i>	19.9	15.1	+4.8
<i>Middle</i>	58.6	50.0	+8.6
<i>High</i>	21.5	34.9	-13.4

Although, a small minority of pupils access Feltham schools from beyond the immediate locality, the three schools identified serve the majority of Feltham and Bedfont families. Prior attainment as a proxy for ability suggests that if banded admissions are made against the national distribution, Rivers could admit a significantly higher proportion of more able students (+8.5%), with a consequent reduction in this part of the cohort at other local schools, specifically Feltham Community College and Reach Academy. The reduction in the PAN and the increased pressure of pupil numbers from 2017, suggests that the school is likely to fully recruit 180 pupils per year, providing the scenario where this impact is realised as banding relies on oversubscription.

*It is the view of the London Borough of Hounslow that banded admissions are only in the interests of all pupils and their schools, where agreed across a local area. In this case, it would only be appropriate where banding reflected the **local ability profile**, and not the national profile as proposed."*

50. At the meeting I asked the school to comment on this data provided by the local authority. The school told me, "*Prior attainment is changing due to the success of the Academy.*" Following the meeting the school provided the data and comment below in relation to this.

Table 3: Rivers Academy and national attainment by year groups

	"Percentage by Prior Attainment Band					
	Rivers Academy			National		
	Low	Middle	High	Low	Middle	High

Year 11	19.5	55.2	25.3	14.6	52.5	32.9
Year 10	25.9	52.3	21.8	16.3	49.1	34.7
Year 9	30.1	46.6	23.3	17.5	51.7	30.8
Year 8	19.0	50.6	30.5	13.6	48.1	38.3
Year 7	14.4	54.3	31.3	13.5	48.7	37.8

The table above (table 3) is from the 2014 RAISE report. Year 8 and Year 7 show an increasing alignment with national averages. Year 10 has 12.9% fewer high ability than national whereas Year 7 it is just 6.5% which equates to 12 students. This would suggest that the banding would have minimal impact on other local schools.”

51. I have considered the potential tension between the permission to use banding as a permitted form of selection and paragraph 1.26 of the Code which prohibits the introduction of banding arrangements which favour high ability children. The figures provided by the school show a clear trend towards parity with national attainment with regard to the proportion of children in the low ability band. This is shown in table 4 below.

Table 4: comparison of Rivers Academy and national and percentage in low band

	Rivers Academy	National	
	Low	Low	Difference
Year 11	19.5	14.6	+14.6
Year 10	25.9	16.3	+9.6
Year 9	30.1	17.5	+12.6
Year 8	19.0	13.6	+5.4
Year 7	14.4	13.5	+0.9

52. The differences with high ability students are less clear as can be seen in the figures below in table 5 with the difference between year 11 and year 7 being only 1.1; year 10 is a group with a significant difference to all other years.

Table 5: comparison of Rivers Academy and national: percentage in high band

	Rivers Academy	National	Difference
	High	High	
Year 11	25.3	32.9	-7.6
Year 10	21.8	34.7	-12.9
Year 9	23.3	30.8	-7.5
Year 8	30.5	38.3	-7.8
Year 7	31.3	37.8	-6.5

53. The school's arrangements are that *“If at the end of this process there are unallocated places in any band these will be filled by unallocated applicants from the next nearest band(s) using the same allocation criteria set out above.”* The allocation criteria are the over-subscription criteria. On the basis of the trends indicated above then it is likely that

the low band will be largely in line with the current intake and the high band will be filled by applicants from the middle band. There is therefore unlikely to be a significant effect on the intake of the school and therefore on the intake of neighbouring schools based on the current intake even with parents being able to state six preferences. I am assured on the basis of this data that the use of banding as described by the school is not an approach which risks introducing a banding arrangement which unreasonably favours high ability children. It remains likely that any high ability child who applies, from wherever they live, is likely to be offered a place. This will not be the case for low or middle ability children. There may be an effect on the other schools in the area but the use of banding to produce an intake that is representative of the national ability range is permitted by the Code.

54. The school intends to use literacy tests to measure ability. The school initially said that it was measuring aptitude rather than ability by using literacy but it was clarified at the meeting that aptitude could only be used for selection in certain subjects, not including literacy, and only where the school has selected on that basis continuously since school year 2007/08. Furthermore only 10 per cent of the intake can be selected using aptitude. This is laid out in paragraph 1.24 of the Code and the school would not fulfil these requirements.
55. Several of the responses to the consultation raised concern about the appropriateness of using literacy as a measure by itself without any other test such as non-verbal testing; the concern was that this was not a fit measure of ability, but rather of attainment in literacy. In addition it was questioned why tests the children were already taking, such as statutory attainment tests could not be used. The school explained that it wanted the results of the tests so that the new students could get the right support from the moment that they started school. The school felt that the Key Stage 2 test results were insufficient because it was very late in the school year that these became available.
56. I asked the school for evidence that literacy tests were an appropriate measure of ability. The school provided me with evidence which detailed the need for a school to be able to understand and support the literacy skills of every student as follows, *“It is worth underlining, however, the importance of the effective use of assessment so that any gaps in achievement can be spotted early and the progress of these children tracked to ensure they receive appropriate and sustained support.”* This excerpt comes from the Rose Report of 2006 which was commissioned by the Literacy Trust. This does not provide evidence of literacy as a measure of ability, but evidence of the need to use assessment to support children’s progress. The other evidence given to me by the school provided similar messages. This may be educationally sound but is testing for a different purpose.
57. One response to the consultation said, *“The synonymous use of ‘literacy’ with ‘ability’ does not seem consistent with the concept of ‘fair banding’ as the two terms mean different things.”* Section 99 of the Act

in paragraph 5b defines “ability” as “either general ability or ability in any particular subject or subjects.” In one of its responses to my questions on this area the school explained, “Literacy tests are widely used by schools to assess the aptitude of a student with a view to providing the support required. Literacy is an essential cross-curricular tool required for students to fully access the wider curriculum. Literacy is not a specific subject but is an aptitude that covers all curriculum areas.” I have not been persuaded that testing for literacy provides a measure of ability as defined by the Act and therefore banding on the basis of literacy alone does not meet the requirement of paragraph 1.31 of the Code that the tests used must give an accurate reflection of a child’s ability. I uphold this part of the objections.

58. Part of the objections above was also about whether the banding arrangements were clear as well as fair and objective. Paragraph 14 of the Code says that “In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.” I will therefore consider the aspect of clarity with the fourth part of the objections which was that is it not clear to parents how the banding will be applied. The arrangements say, “All applicants to the Academy will be required to sit a Literacy Test in December 2015. Applicants will be allocated to an ability band on the basis of their literacy test score. There will be 3 ability bands - the percentage of places available in each band will be determined by the profile of the national distribution of ability.”

59. The arrangements for oversubscription are: “Applications will be considered against the ability band in which the applicant is placed by the literacy test score. The number of places available in each ability band will be determined by GL Education (who administer the New Group Reading Test) by matching the percentage of places in each band to the ability profile of the applicants for places that year. After the admission of students whose statement of Special Educational Needs (SEN) or Education, Health and Care (EHC) plan names the school, the following criteria will be applied to determine those children who will be offered places within each band. The criteria are listed in priority order:

1. Looked after children (Note 1) and all previously looked after children. Previously looked after children are children who were looked after, but ceased to be so because they were adopted, (Note 2) (or became subject to a child arrangements order (Note 3) or special guardianship order (Note 4)). Such students will be given top priority in each band before the oversubscription criteria is applied.
2. Children with a sibling already at the Academy, ordered by shortest distance between home and Rivers Academy West London (see Note 5, Note 6 and Note 7)
3. Children who currently attend a Primary Aspirations Academy, currently Oriel Academy West London and Oak Hill Academy West

London, ordered by shortest distance between home and Rivers Academy West London (see Notes 6 and 7).

4. *Children of staff in the following circumstances:*

a. where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made

and/or

b. children of newly appointed staff, filling a post with a “demonstrable skills shortage” (School Admissions Code 2012)

5. *Children who have the shortest distance between home and Rivers Academy West London (see Notes 6 and 7).*

If at the end of this process there are unallocated places in any band these will be filled by unallocated applicants from the next nearest band(s) using the same allocation criteria set out above. Following this process all remaining places in each band will be allocated based randomly through the use of an electronic random sorter.”

60. The description of unallocated places does not make it clear what would happen if there are unallocated places in the middle band and this matter is picked up in the amended arrangements. The amended arrangements include, *“If the middle band has unallocated places and there are unallocated pupils in both the two other bands then each alternate place will be filled by either the low band or the high band, starting with the low band.”*
61. Banding is not a simple concept to explain. The responses to the consultation by parents demonstrated some confusion as to the purpose and the effect of banding. The school itself has described the use of banding severally: to make sure that the right support for children is put in place; to make sure that as it is judged by national standards that it has an intake that matches the national profile; and that it does not think that it will have an effect on its profile. These are not entirely consistent and this does not assist clarity.
62. It is possible that a banding test would put a child in the low band and that child will not be allocated a place at the school when the over-subscription criteria are applied against the low band when they would have been offered a place if the whole cohort applying were assessed as one group. This is one possible outcome and it will be difficult for parents to understand the chances of their child being offered a place at the school. This does not meet paragraph 14 of the Code that *“Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated,”* or the requirement of paragraph 1.8 and others that the arrangements should be clear.
63. The school has amended its arrangements following the meeting. The amendments includes some further clarification over how the banding will work, which is welcomed although some confusion over what type of banding will apply needs to be addressed as the amended

arrangements refer to banding on the basis of those who took the test in one place and elsewhere on the basis of the national ability range.

64. I asked for clarification of what was meant by the final part of the oversubscription criteria which reads, *“If at the end of this process there are unallocated places in any band these will be filled by unallocated applicants from the next nearest band(s) using the same allocation criteria set out above. Following this process all remaining places in each band will be allocated based randomly through the use of an electronic random sorter.”* The random sorter is often only used as a tie-breaker in the circumstances of two students living exactly the same distance away where distance from the school is the final oversubscription criteria. The school’s response was, *“Say there are two students who are live exactly the same distance away....then the random sorted would be used.”* This is rational but not consistent with the wording used in the arrangements. The arrangements remain unclear in this regard. The explanations in the arrangements are not clear and more could be done to assist parents in understanding the approach and how places will be allocated. I therefore uphold this part of the objections.
65. The fifth part of the objections is that it is unclear to parents how testing will be operated for children with special educational needs and disabilities (SEND) or English as an additional language (EAL). I asked the school how parents of children with SEND or EAL can be assured that their ability will be recognised. The school responded, *“All students regardless of ability, SEN or EAL will be placed in a band dependent on the literacy test result. Specific support will be put in place for students when they join the Academy. From our experience SEN and EAL students have been placed across all bands as a result of the literacy test.”*
66. The company that provides the testing for literacy also describe other testing products on their website and their description includes, *“An assessment of reasoning that helps identify pupils’ developed abilities and likely academic potential. (The product) is not about knowledge recall and requires no preparation, offering all pupils the same opportunity to show their underlying ability. With three ability batteries that do not depend on language, it is highly suitable for EAL students.”* This is in contrast to the description of the literacy tests which are about assessment to assist learning.
67. Children with SEND will have a range of needs, some physical, some emotional and some related to learning needs. Children with EAL will vary between those with fluent English language skills to those with none. I would expect that children with SEND and EAL would be placed in all three bands but the evidence does not give me confidence that this would be consistently reflective of their ability if, for example, they had just arrived from another country and spoke no English or had dyslexia. I was therefore not assured that the use of literacy for banding would be reflective of the ability of each child with SEND or

EAL.

68. At our meeting the school explained that there would be support to help those with SEND or EAL with the tests. I also asked how the process for banding for children with SEND or EAL is described to parents and the school told me that this is explained at open evenings in advance of application and that children would get support as appropriate in the tests. This is not sufficient because it depends upon the parents attending an open evening.
69. Paragraph 1.31 of the Code says, "*Tests for all forms of selection **must** be clear, objective, and give an accurate reflection of the child's ability or aptitude, irrespective of sex, race, or disability.*" It is likely that a child for whom English is an additional language may be of another race. The sole use of a literacy test to measure ability is likely to be a form of discrimination on the grounds of race and therefore not compliant with the Equality Act 2010.
70. The school does state that children with a statement of educational need which names the school will be allocated a place before other children if there are more applications than there are places. The combination of this and the offer of help when taking the tests do not meet the requirements of paragraph 1.31. The amended arrangements make it clearer that children with a statement of SEND do not have to take the tests in order to be allocated a place at the school and will have support for the tests. This is welcomed.
71. I conclude from the evidence that a literacy test alone is not a fit test to band by ability and that it is likely to be a particularly inappropriate measure for those for whom English is an additional language. Furthermore the help and support for those with SEND or EAL are not properly explained to parents. I uphold this part of the objections.
72. The final part of the objections is that the arrangements define feeder schools because they are part of the trust rather than a historic or geographical link and this reduces the number of places available to children who live closer to the school and attend Hounslow schools that are physically closer to the school. I will first consider whether it is appropriate for feeder schools to be based on the membership of a trust and then on the effect on local children.
73. Paragraph 1.15 says, "*Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.*" It is not sufficient to name a school as a feeder school because it is a particular type of school. It is therefore not sufficient reason to name a school as a feeder school only because it is a member of the same trust. At the meeting the school gave an explanation of its partnership with the named feeder schools which included sharing teachers, training and joint activities as part of being members of the same trust. These are credible grounds.

The amended arrangements describe the joint working with the named feeder schools and the principles behind their naming.

74. The motivation for naming these schools as feeder schools is described in the trust's principles for admissions document, which covers all the trust's schools as, "*The overriding rationale for the admission of pupils and students to our academies is to encourage, wherever possible, all-through education from the ages of 2 until 19. The reasons for this are:*
- a. *Continuity of education, leading to much improved outcomes for individual students*
 - b. *Greater student and parent engagement*
 - c. *Providing parents with a stress free education provision - all students in Aspirations Academies will generally progress to another Aspirations Academy should they so wish.*
 - d. *Seamless transition between phases"*
75. These are worthy educational aspirations. I am also aware that more schools may become members of the trust; at the meeting the school said that any primary school would be welcome to join the trust. Schools named as feeder schools on this principle would quickly become unreasonable simply on the basis of the numbers concerned; if another school of similar size became a member of the trust and therefore automatically a feeder school then there would be more children in the feeder schools than places available at the school. The principles underpinning this approach are flawed in this respect while the joint working described supports the view that these are good reasons to determine these schools as feeder schools.
76. I now consider the local circumstances. Oriel Academy was part of the 2015 admission arrangements. Oak Hill Academy, a junior school, was added to the 2016 arrangements. In September 2014 two children from the Oriel Academy (PAN 60) and 12 children from the Oak Hill Academy (PAN 120) joined the school. For September 2015 five children from Oriel Academy and 30 children from the Oak Hill Academy have accepted places at the school. The numbers do not indicate strong links between Oriel Academy and the school through a pattern of children moving onto Rivers Academy. For 2015 the numbers moving from Oak Hill Academy to the school have increased to about 25 per cent of the PAN of the feeder school. The numbers would not justify naming these schools as feeder schools at this stage but the intention and expectation is that these numbers will increase due to the partnership working.
77. Oak Hill Academy is one mile from the school in a direct line and 1.4 miles by a safe walking route. Oriel Academy is 1.7 miles from the school in a direct line and 2.1 miles by a safe walking route. The current combined PAN is 180 which is the same number as the school determined for its PAN. In its responses to the objections on this matter the school explained that the combined PANs of these two feeder schools potentially created 150 children with a higher priority for

the school which left 30 places for more local children. The rationale for this number is unclear. The school also explained that the trust intends to consult on reducing the PAN of Oak Hill to 60 from 120 which would create additional places for more local children; this would have an impact on admissions to Rivers Academy in 2020. The school also felt that it was extremely unlikely that all the children from Oriel Academy would apply for Rivers Academy because of distance and a railway line in between.

78. The primary schools and parents who raised concerns about the named feeder schools did so because there were nearer schools whose children had traditionally taken places at Rivers Academy and there were parents who lived right by the school who felt that their children may now not get into what they considered their local school. In response to one anxious parent who responded to the consultation and had social and medical reasons as well as community reasons for wishing for a place at their nearest school, the school wrote, *“Given that you live very close to Rivers Academy I really don’t feel that you are greatly at risk of not securing a place for your son at Rivers. We will certainly not have sufficient children that fulfil the first four criteria to put children who live close to Rivers at risk of not securing a place.”* This may be reassuring to a parent but does not support the naming of the trust primary schools as feeder schools.
79. The PANs of the eleven local primary schools combine to a total of 900. They are not feeder schools for the school. Some of them have no or very few children choosing to express a first preference for the school. Southville Junior School, which is 0.2 miles from the school, had 42 children express a first preference for the school for 2015 with 43 being allocated places of which 38 expressed a first preference for the school. The junior school’s PAN is 90. This illustrates that nearly half of the children moved onto Rivers Academy but that a significant proportion chose other schools. I understand that the number of children in each year being allocated a place at the school from Southville Junior School has reduced over the last three years from 57 to 43. If all the children from the named feeder schools applied (with a PAN of 180) then there would not be any places in 2016 for any other child including the children from this one close school with very local children.
80. There are eight primary schools that are less than one mile from the school. One of these is a Catholic school with very few if any children seeking places at Rivers Academy. The other seven provided 151 of the 215 places allocated for September 2015 which is a significant proportion. This is excluding consideration of children from the named feeder schools which are both more than a mile away. It is a requirement of the Academies Act (2010) that academies provide places for children of all abilities the majority of whom are from the area although ‘area’ is not defined in law and will be dependent on local circumstances. It would be reasonable to assume that over 50 per cent of children at a school should be local to that school and the figures for

2015 are in line with that. If the purpose of the named feeder schools were achieved then it is possible that none of the places would be available for local children. This figure is based on a PAN of 180; 16 per cent of places would be available based on a PAN of 215. The take-up by the children from the feeder schools is hard to forecast but the expectation that not many would apply for a place weakens the justification for the schools being named feeder schools.

81. About one third of the children attending the schools that are closest to Rivers Academy are making it their first preference and a similar proportion have been allocated a place. The arrangements for the school would give the two trust primary schools a higher priority for a place at the school as feeder schools and any remaining places would be allocated on the basis of home to school distance. The children in the local primary schools would therefore be most likely to be seeking places under criterion 5 of the oversubscription criteria although those with siblings attending would meet criterion 2.
82. Travel to school and school choices are complicated in an environment like Hounslow where there are many schools. The pattern of choice and take-up is a changing one. The likelihood is that there will continue to be places for those who live closest to the school albeit fewer places. For children living to the north and west of Feltham, Rivers Academy is their nearest school and it is possible that their travel to school distances would be doubled if they were not allocated a place at Rivers Academy. A child living in Spinney Drive, for example, has Heathrow Airport to their north and would have a journey of 2.2 miles to the Reach Academy or 2.7 miles to Feltham Community College. Places at another school would be subject to the oversubscription criteria of that school as more places are needed than the secondary schools in the area provide. As distance is the main criterion then a child at this distance may be unlikely to secure a place at any of their nearest schools.
83. The rationale of a feeder school is that the majority of the children *'feed into'* the secondary school. The naming of two trust schools as feeder schools has the rationale of the curriculum, staffing and training links and the increasing number of children choosing to attend Rivers Academy for continuity. The principle of the trust is that if more primary schools join the trust then they will also be feeder schools and this principle is unsustainable because there would not be sufficient places for them all. If a large proportion of children from the feeder schools do not choose to apply to the school then there is reduced rationale for their priority as feeder schools. As named in the arrangements the places taken by the named feeder schools is disproportionate to the number of more local children; some of whom who will be unreasonably disadvantaged because of their geographical situation and the lack of places across the whole area. I therefore uphold the objections.

Other matters

84. The admission arrangements for 2015 and 2016 were not clearly available on the school's website. Paragraph 1.47 of the Code says that they must be published once determined and then be available for the whole of the offer year. The school has not met the requirements of the Code in this regard.
85. The arrangements determined by the trust on 13 March 2015 said that the date of the literacy test for banding would be December. This would not have complied with paragraph 1.32a of the Code which requires that admission authorities **must**, "*take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on 31 October so as to allow parents time to make an informed choice of school.*" The amended arrangements now say that the tests will be in the September. This revision meets the requirement of paragraph 1.32a.
86. The arrangements do not make it clear that where the school is oversubscribed then children who are looked after or have been previously looked after will have the highest priority and this is not dependent upon them undertaking a banding test. Looked after and previously looked after children cannot be required to take the test and the arrangements should make this clear. The arrangements do not conform to paragraph 1.7 of the Code in this regard.
87. One of the over-subscription criteria is a priority for the children of staff. This is permitted by the Code in paragraph 1.39. The word '*staff*' without any differentiation implies that this includes every member of staff, in whatever role and whether full or part-time including temporary.
88. The wording of paragraph 1.39 is, "*Admission authorities may give priority in their oversubscription criteria to children of staff in either or both of the following circumstances:*
a) *where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made, and/or*
b) *the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage.*"
89. The wording in a) and b) above has been copied exactly in the arrangements. The school does not appear to have decided if it is giving priority to "*either or both.*" A parent who is also a member of staff may not know whether they would meet this priority because of the use of '*and/or*' implies choice as to which is used at any given time. Previously, in its 2015 arrangements, the school had determined to use just "*Children of newly appointed staff, filling a post with a demonstrable skills shortage.*" This clearly excluded children of staff who had worked at the school for more than two years.
90. Paragraph 14 of the Code says, "*In drawing up their admission arrangements, admission authorities **must** ensure that the practices*

and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.” If a parent, who was also a member of staff was considering whether to apply or not, it is not clear whether they have to be in a shortage subject and employed for two years or just one of the criteria. This lack of clarity does not conform with the requirements of the Code.

91. The arrangements for post 16 admissions were not fully available on the school’s website. For external candidates the school uses an application form. The application form is not on the website and should be in order to conform with paragraph 1.47 of the Code.
92. The application form for post 16 education asks questions that are not permitted by the Code. Paragraph 2.4c prohibits asking for detail of special educational needs; this is because such information is not required to apply the oversubscription criteria. The school does not conform with the Code in this regard.
93. There were two oversubscription criteria for post 16 admissions in the arrangements determined by the trust in March 2015. The first was for looked after children and previously looked after children and the second was for siblings of current students at the school. This would not be sufficient to prioritise applicants when there were more applications than places available. The amended arrangements have added a third criterion based on distance and accordingly the oversubscription criteria appear reasonable.

Conclusion

94. The arrangements do not conform with the Code and I uphold the objections to them in the following matters:
 - a. The consultation on the 2016 arrangements did not meet the requirements set out in the Code.
 - b. The reasons for the reduction in PAN for 2016 are insufficient to justify the decision in the context of the need for places in secondary schools for 2016.
 - c. The banding approach is not fair or objective as it is based on literacy tests alone which is not a fair test of ability.
 - d. The information for parents on banding is not sufficiently clear.
 - e. There is insufficient explanation of how children with SEND or EAL will be supported to take the tests.
 - f. The naming of trust schools as feeder schools does not meet the requirements of the Code and disproportionately disadvantages children who live more locally.
95. I have also considered the arrangements as a whole for admission to the school in September 2016 and have concluded that several aspects of the arrangements detailed above do not comply with the Code. With regard to all matters of non-compliance the Code requires

the admission authority to revise its admission arrangements within two months.

Determination

96. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objections to the admission arrangements determined by the Aspirations Academies Trust for Rivers Academy in the London Borough of Hounslow.
97. I have also considered the arrangements in accordance with section 88I(5) of the Act. I determine there are other matters as set out in this determination that do not conform with the requirements relating to admission arrangements.
98. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of this determination.

Dated: 28 August 2015

Signed:

Schools Adjudicator: Mrs Deborah
Pritchard