

## DETERMINATION

**Case reference:** ADA/002564

**Referrer:** The governing body of Langley Hall Primary Academy

**Admission Authority:** The Academy Trust for Lynch Hill School Primary Academy

**Date of decision:** 29 January 2014

### **Determination**

**In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Lynch Hill School Primary Academy for admissions in September 2014. I determine that they do not conform to the requirements relating to admissions in the ways set out in this determination.**

**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 as quickly as possible but no later than 15 April.**

### **The referral**

1. The admission arrangements (the arrangements) of Lynch Hill School Primary Academy (the school), an academy primary school in Slough, for pupils aged 3 - 11, for September 2014, have been brought to the attention of the Office of the Schools Adjudicator (OSA) in a letter dated 25 November 2013 from the governing body of Langley Hall Primary Academy.

### **Jurisdiction**

2. The terms of the academy agreement between the academy 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 academy trust for Lynch Hill School Primary Academy, which is the admission authority for the school, on that basis.

3. The referral questions the priority given in the school's oversubscription criteria for the Reception (YR) year to children who have attended the school's nursery. I am satisfied that it is within my jurisdiction to consider the referral under section 88I of the School Standards and Framework Act (the Act) and that I should do so. Having looked at the arrangements, I considered that

there may be other matters that do not comply with the School Admissions Code (the Code) and I have therefore also used my power under section 88I of the Act to consider the arrangements as a whole.

### **Procedure**

4. In considering the arrangements for admissions in September 2014, I have had regard to all relevant legislation and to the Code.

5. The documents I have considered in reaching my decision include:

- the referral dated 25 November 2013;
- a copy of the funding agreement between the academy trust and the Secretary of State;
- a copy of the determined arrangements for 2014 approved by the academy trust on 25 March 2013;
- material on the school's website relating to admission to the nursery and to YR;
- the composite prospectus for admission to Slough schools in 2014 produced by Slough Borough Council which is the local authority (the LA) for the area;
- information from the school and the LA about applications and admissions to the school; and
- the "admission form" and "waiting list form" used by the school.

6. I have also taken account of information received during the meeting I convened at the offices of the LA on 13 December 2013 which was attended by the school's Principal, a member of the academy trust and representatives of the LA. I want to record my thanks to the LA for hosting the meeting at short notice and to the representatives of the school for their willingness to attend at short notice and to travel to the LA offices to do so at what is a very busy time for schools.

### **The Referral**

7. The referral concerned the third priority in the school's oversubscription criteria for YR given to children on roll in the school's nursery class.

### **Other matters**

8. At the meeting I raised other matters that did not conform to the Code. These matters were that:

- a. the definition of looked after children is not accurate;

- b. the priority given to children of staff does not conform to the Code;
- c. the arrangements do not meet the requirements of the Code as they do not make clear that parents can request deferred entry for a child who is below compulsory school age and can also request that such a child attend part-time, and
- d. the arrangements for the waiting list for the first term of YR do not comply with the Code.

### **Background and consideration of factors**

9. Lynch Hill Primary Academy School is an academy primary school for 3 – 11 year olds. Before becoming an academy in 2011, the school was a foundation school and its governing body was the admissions authority for the school. The school has a published admission number (PAN) of 120 for YR and the nursery has 120 part-time places.

10. The school's admissions policies for YR and for nursery are easy to find on its website and are also available in the LA's composite prospectus. Unfortunately, there are differences between the arrangements as they appear in different places. On the school's website one version (which I am calling version A) can be found via the tab headed Parents, the drop down menu for which includes admissions and via the tab headed About Lynch Hill and then via the option Policies and Procedures. A different version of the arrangements (version B) can be found in the school brochure which is accessed via the tab headed About Lynch Hill. A further version (version C) is in the LA's composite prospectus.

11. I outline the differences between versions A, B and C below. However, the minutes of the governing body meeting of 25 March 2013 which determined the arrangements for 2014 provide enough detail for me to be confident that the set of arrangements I should treat as the properly determined arrangements for that year is version A.

12. Version A of the admission arrangements for YR for 2014 includes the following:

“Pupils will be admitted to the school into the Reception year in September following their 4<sup>th</sup> birthday (ie four before 31 August) without reference to ability or aptitude. ....

There is one intake into Reception in September.....

The law requires the school to admit pupils with a statement of Special Educational Needs where a Local Authority has specifically named Lynch Hill as the most appropriate placement. These

applications will usually be agreed in advance of the main allocation process. Where they are a late application, the school can be required to admit even if the admission number has been reached.

In the event of there being greater demand for admission than there are places available, places will be offered using the following criteria in the order given:

1. Children in public care [Looked After] will be considered for a place above all other applicants. This includes a child who as previously looked after but, immediately after being looked after, became subject to an adoption, residence or special guardianship order.
2. Children of staff, in the interests of recruitment and retention.
3. Children on roll in the Nursery class prior to the admission date.
4. Children who have siblings attending the school [This is followed with a definition of sibling].
5. Children who have strong medical or social grounds for admission for which supporting evidence is supplied by their doctor, health visitor or relevant professional.
6. All other children ranked according to the proximity of the applicant's home to the school measured from home to school using the GPS software."

13. The arrangements also include a distance tie-breaker which explains both how distance is to be measured using the GPS software and that in the event that two children live exactly the same distance from the school and tie for the final place available, random allocation will be used to determine which child will be offered a place.

14. Version B of the arrangements does not include the material about the admission of pupils with a statement of special educational needs (SEN) where the school is named on the statement. Version C does include material about the admission of children with statements but this is brigaded with material about looked after and previously looked after children into a single first priority. Version C is missing the final tie-break and the information about how distance will be measured; these are both present in versions A and B. Version C includes an additional criterion positioned between the two final criteria set out above and which is:

"Children who have strong connections with the school for which

supporting references are supplied.”

15. Paragraph 1.46 of the Code requires admission authorities to determine their arrangements by 15 April each year. Paragraph 1.47 then requires schools which are responsible for determining their own admission arrangements to send a copy of their determined arrangements for the LA for their area by 1 May. This is essential to allow the LA to meet its duty under the School Information (England) Regulations 2008 to publish a composite prospectus of the admission arrangements of all publicly funded schools in its area.

16. At our meeting, the LA explained that its process for securing admission arrangements from schools involved it sending a copy of the arrangements it held from the previous year to schools and asking them to notify the LA of any changes. Clearly, the process has not worked properly in this case but I have not been able to ascertain the point at which it went wrong and thus how the discrepancies between the versions of the arrangements published by the school and by the LA arose. It is extremely unhelpful to parents – the most important readers of admission arrangements – to be faced with such discrepancies and when this happens it can only undermine confidence in the admissions system.

17. As explained above, I am satisfied that the determined arrangements for 2014 for the school are those in version A and they are therefore the arrangements under consideration in this determination. However, I think it worth noting that an oversubscription criterion such as that in version C which gave priority on the basis of an unspecified strong connection with the school would not conform to the requirements set out in paragraph 14 and 1.8 of the Code that arrangements be clear and objective.

#### Giving of priority for YR to children who attend the school’s nursery

18. The Code does not address whether schools may or may not give priority in YR to children who have attended a particular nursery provision. I must therefore consider the question of this school giving priority for admission to YR to children who have attended its nursery by reference to the requirements of paragraphs 14 and 1.8 of the Code that arrangements must be clear, objective and fair. I have also considered whether the school’s arrangements breach any of the provisions of paragraph 1.9 of the Code which prohibits certain criteria.

19. At the meeting, the school explained that its nursery had been established before 1990 and that they believed some element of priority had been included for admission to YR for children who had attended the nursery since the establishment of the nursery. The school told me that the nursery itself provides generally only the state-funded provision which is free to parents for 570 hours a year available as 15 hours per week during school terms. A few children each year – on the recommendation of a health professional or social worker – are offered full time places in the nursery. No

fees are charged for this and the additional cost is borne from the school's budget.

20. In addition to the nursery, but run separately from it, the academy trust provides part-time child care, known as its Extended Nursery. This offers further part-time provision in the afternoon for children who already attend the nursery and whose parents or carers wish or need them to have additional early years provision. The school explained that this provision does not make a profit; it is intended to offer low cost childcare to help support the school community. Parents put down a deposit for a place in the Extended Nursery.

21. The oversubscription criteria for the nursery are similar to those for version A for YR with the obvious exception that there is no priority for children already attending the nursery. Parents can ask to attend either morning or afternoon sessions at the nursery. The Extended Nursery provision is available only in the afternoon, so the school gives priority for morning sessions to children whose parents are also applying for them to attend the Extended Nursery and who have paid a deposit for this purpose.

22. The nursery and YR both have 120 places. Figures provided by the LA show that in 2012 and 2013 every child whose parent wished them to attend Lynch Hill secured a place at the school. At our meeting the school said while the nursery was usually fully subscribed, places came free regularly so that the great majority of children who wanted a place would get one. Figures provided by the school show that 101 children who had attended the school's nursery 2012 moved on to YR in 2013. This was an increase from the previous year when 89 nursery children joined YR in 2012.

23. While this pattern of parental preferences continues, there are some places available in YR for children who have not attended the nursery. However, the nursery has as many places as YR and the nursery criterion is high up the list of oversubscription criteria. The school must also admit any child with a statement of SEN which names the school and give first priority to looked after and previously looked after children. These factors combined mean that if the parents of more nursery children sought places for them in YR, there could be very few or no places left for siblings or other children who had not attended the nursery. In addition, because of the way the oversubscription criteria are structured, a child who had attended the nursery would have priority over siblings of children already at the school and children who live close to the school.

24. Attendance at nursery is voluntary and parents do not have to send their children to nursery at all. Where they do so, Government policy – recognising that no one type of provision can meet the needs of all families – is that parents should be able to choose from a range of provision. I consider that in the case of Lynch Hill a parent might look at the school's admission arrangements and the size of the nursery and conclude that the only way to have a reasonable chance of gaining a place in YR was to send their child to the nursery.

25. The school gives priority for morning sessions at the nursery to children whose parents propose to send them to the school's Extended Nursery in the afternoon and have paid a deposit for the Extended Nursery. This reduces the chances for parents who – for whatever reason – cannot make use of afternoon sessions to secure a morning place for their child.

26. There is no requirement for the admission arrangements to a school's nursery to conform to the Code. That said, when securing a place at a nursery can affect the chances of gaining a place in YR at the school, it is appropriate to consider whether the admission arrangements for nursery are in conformity with the legislation and regulations relating to admissions and the Code. In the case of Lynch Hill, and as noted above, the arrangements for admission to the nursery are similar to those for YR. There is, however, no mention in the arrangements of an independent appeal should a child be refused a place in the nursery equivalent to that for a child refused a place in YR. The school said that they had never had to consider an appeal, but they did have a process in place and this mirrored the arrangements for YR.

27. An application form for the nursery is necessary as the school administers admissions to the nursery itself whereas admissions to YR are – as for all publicly funded schools – administered by the LA. The school has provided me with a copy of the form which it uses for nursery admissions. This is a lengthy form. Its main purpose is to record and hold information which the school needs about children who have already been admitted, such as emergency contacts and details of any allergies. The school has, however, also chosen to use the form for admission to nursery. The form asks for a large amount of information which could not play any part in deciding who should be admitted to YR, either because the Code specifically prohibits its use or because it is not necessary to apply the oversubscription criteria. This is illustrated in the following table:

Information	Reasons why this could not be used for admission to YR
Parents' national insurance numbers	Not necessary to apply oversubscription criteria; personal information so breaches paragraph 2.4a
Medical information about child	Not necessary to apply oversubscription criteria unless the application is being made under criterion 5;
Doctor's details	Not necessary to apply oversubscription criteria; personal information so breaches paragraph 2.4a
Whether the child has any special needs	Not necessary to apply oversubscription criteria; breaches paragraph 2.4c

Ethnicity	Not necessary to apply oversubscription criteria and could not be used as part of admission process for any school
Religion	Not necessary to apply oversubscription criteria and as school is not a school with a designated religious character could not be used as part of admission process
Travel to school arrangements	Not necessary to apply oversubscription criteria
Reason for leaving any previous school/pre-school (including exclusion)	Not necessary to apply oversubscription criteria and could breach paragraph 3.8 of the Code which prohibits refusal of admission on grounds of behaviour at other schools or exclusion from other schools except in certain circumstances
Details of siblings who do not already attend the school	Not necessary to apply oversubscription criteria; personal information about the family so breaches paragraph 2.4a

28. The form also invites parents to provide any further information they think would be helpful. This is acceptable in relation to children who have already been offered and accepted a place at a school. However, it would not be acceptable as part of the admission process for YR as it could suggest that decisions about who should be offered a place will take account of any information provided. This would be a breach of paragraph 2.7 of the Code which provides that places **must be** allocated solely on the basis of the published oversubscription criteria.

29. The deadline for applications for admission to nursery is 1 March each year for the following September which is some six weeks after the deadline for applications for YR. No account is taken of when applications are submitted so long as this is by the deadline. In this respect, the arrangements are similar to those that apply to YR and this is helpful to parents.

30. I have noted above that the school runs an Extended Nursery. Paragraph 1.9 e of the Code prohibits giving priority for admission on the basis of “any practical or financial support parents may give to the school or any associated organisation”. The Extended Nursery is run by the academy trust for the school and I am confident that it is an associated organisation of the school. I consider further that the fees paid by parents for their children to attend the Extended Nursery amount to financial support of that associated organisation. I conclude, therefore, that giving priority to children who have attended the Extended Nursery is a breach of paragraph 1.9e of the Code.



31. I have also considered the broader question of giving priority for YR to children who have attended only the school's nursery provision which is free to parents. I think it is unfair in the case of Lynch Hill that the chances of gaining a place in YR could be so heavily affected by whether a child has attended nursery, attendance at which is voluntary and admission to which is unregulated and would not meet the requirements for admission to YR. I therefore conclude that the giving of priority for admission in YR to children who have attended the nursery at the school is not fair and so breaches paragraphs 14 and 1.8 of the Code. The Code requires the school to amend its arrangements as quickly as possible.

#### The definition of looked after children

32. The definition of looked after children used by the school in its arrangements is not quite accurate. Footnote 17 to paragraph 1.7 of the Code provides a definition of a looked after child. It states that:

“A “looked after child” is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions.”

33. The school's arrangements refer to “children in public care [Looked After]”. A child in public care is not the same as a looked after child as the former does not include children who are being provided with accommodation by an LA. I have no doubt that the school fully intends to comply with the requirement of the Code in relation to looked after children. This is a technical breach of the Code and the school is required to amend its arrangements as quickly as possible.

#### The priority given to children of staff

34. The school's arrangements give a significant element of priority to children of staff in – in the school's words – “the interests of recruitment and retention”. At our meeting the school told me that it has not actually admitted any children under this criterion.

35. Paragraph 1.37 of the Code provides that priority may be given 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.”

36. The school's arrangements at Lynch Hill go beyond what is provided

for in paragraph 1.37 and are therefore not in conformity with the Code. In addition, the arrangements are not clear as to which members of staff are intended to be covered by the criterion and to this extent the arrangements are not clear as required by paragraphs 14 and 1.8 of the Code. I have checked the school's funding agreement and it does not contain any provision for the school to derogate from these requirements of the Code. At the meeting, the school undertook to amend its arrangements as soon as possible in order to comply with the requirements of the Code.

#### Admission of children under compulsory school age and deferred entry

37. Paragraph 2.16 of the Code provides that admission authorities **must** provide for the admission of all children in the September following their fourth birthday. It also provides that they **must** also make it clear in their arrangements that parents can request that their child's admission is deferred until later in the academic year or until the term in which the child reaches compulsory school age and that parents can request that their child takes up the place part-time until reaching compulsory school age. Compulsory school age is defined in law as the beginning of the term after the term in which the child reaches the age of five.

38. The school's arrangements state that there will be one intake into the Reception year in September. The arrangements thus comply with the requirement to provide for the admission of all children in the September following their fourth birthday. However, they do not comply with the requirements in relation to making clear parents' rights to request deferred entry or a part-time place for their children until the children reach compulsory school age. At the meeting the school agreed to amend its arrangements and the Code requires that it does so as quickly as possible.

#### Waiting list arrangements

39. For in-year admissions and admission to the beginning of years other than YR and nursery, the school uses a form which is described on its website as an application form and is headed "Application Form for Waiting List". The form asks for the expected information such as the child's name and date of birth and for contact details for parents. However, it also asks for some information which is not necessary to apply the school's oversubscription criteria. This includes details of siblings and the schools they attend (the only information relating to siblings which the school could need to apply its oversubscription criteria is whether there are one or more siblings already attending Lynch Hill). The form also includes a section which is headed "Strong Connections with School" and which says: "If you feel your child has strong connections with the school, please provide references as this could determine your child's position on the waiting list."

40. Admissions other than to normal years of entry (YR in the case of Lynch Hill) are not bound by the Code. However, paragraph 2.14 of the Code requires each admission authority to maintain a clear, fair and objective

waiting list for at least the first term of the academic year of admission for a normal year of entry and to consider any child who applies during this period against the published oversubscription criteria. The school must accordingly use its published oversubscription criteria in the case of any child seeking to join YR in the first term of the academic year. The school's oversubscription criteria do not include a strong connection with the school and I have early in this section of my determination set out why such a criterion would not meet the requirements of the Code. To ask for and take account of any strong connection with the school in these circumstances is accordingly a breach of the Code. The school assured me at our meeting that it did, in fact, use its published oversubscription criteria for all applications whenever they were made. The Code requires the school to amend its arrangements as quickly as possible.

### **Conclusion**

41. With regard to the priority for admission to YR of children who attend the school's nursery I have concluded that the arrangements of the school do not conform to the Code. I have also concluded that the arrangements do not conform to the Code in relation to the definition of looked after children, the priority given to children of staff, the arrangements for the admission of children under compulsory school age and the waiting list arrangements

### **Determination**

42. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Lynch Hill School Primary Academy for admissions in September 2014. I determine that they do not conform to the requirements relating to admissions in the ways set out in this determination.

43. 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 as quickly as possible but no later than 15 April.

Dated: 29 January 2014

Signed:

Schools Adjudicator: Ms Shan Scott