

DETERMINATION

Case reference: ADA/002563

Referrer: The governing body of Langley Hall Primary Academy

Admission Authority: The Academy Trust for Castleview School

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 Castleview School 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 Castleview School (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 Castleview School, which is the admission authority for the school, on that basis in February 2013.

3. The referral questions the priority given in the school's oversubscription criteria for admission to the Reception Year (YR) 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). Having looked at the arrangements, I considered that there may be other matters that do not comply with legislation or 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 for Education dated 2011;
- a copy of the determined arrangements for 2014 approved by the academy trust in February 2013 for YR and for the nursery and the school's application form for the nursery;
- material on the school's website relating to admissions 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 provided by the school on 20 December 2013 giving details of the numbers of applications for places and the school's reasons for giving priority in YR to children who had attended its nursery; and
- a copy of the arrangements for YR for 2014 as varied by the academy trust in December 2013 and new arrangements for the nursery.

6. I have also taken account of information received during the meeting I convened at the offices of the LA on 12 December 2013 which was attended by the school's principal, the clerk to the academy trust and a representative 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 inclusion as fourth priority in the school's oversubscription criteria for YR for "Children on the roll of Castleview Nursery for 5 sessions per week prior to the closing date".

Other matters

8. At the meeting I raised other matters that did not conform to the Code. These matters were that:
- a. the arrangements for the admission of children with a statement of special educational needs (SEN) which names the school do not conform to the requirements of the Code;
 - b. the first oversubscription criterion does not include previously looked after children as required by the Code; the definition of looked after children is not accurate and the requirement that such children should have first priority in oversubscription criteria is ambiguous and hence not clear as required by 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. there is no final tie-break capable of separating two applicants who qualify equally for the final place available as required by the Code.

Background

9. Castlevew is a popular and oversubscribed academy primary school for 3 – 11 year olds. Before becoming an academy in 2012, the school was a foundation school and as a foundation school the governing body was the admission authority for the school. The admission arrangements for 2014 as determined by the academy trust in February 2013 differ from those for 2013 only by the reduction in the published admission number (PAN) from 90 to 60. The school and LA explained at our meeting that the PAN had been raised temporarily to 90 for four years in order to help accommodate the rising number of primary age children in Slough. The school said that it does not have enough space to continue to accommodate the progressively higher number of children generated by the increased PAN. The consultation on the proposed change required by The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the regulations) was carried out by the LA on behalf of the school and I have been informed that the school also displayed the proposed arrangements on its website during the consultation period.

10. The school's nursery offers 52 part-time places each year. The nursery provides the free to parents state funded provision of 570 hours per year offered as 15 hours each week during term time. The only other provision made by the nursery is full-time provision for a small number of children on the recommendation of a social worker or health visitor. No fees are charged to parents for this additional provision. The school explained at our meeting

that the nursery had been established in 1997 and that an element of priority for admission to YR for children who had attended the nursery has been in place since around 2000.

11. The school's admissions policies for YR and for the nursery are easy to find on its website. There is a tab "Key Information" on the site's homepage which leads to a drop down menu one of the options on which is a page headed "Admissions". This provides some information itself and links to documents headed: "Nursery Admissions Policy and 2014", "School Admissions Policy 2014" and "Appeals Information". It also includes a map of the school's catchment area. The arrangements on the website when I first reviewed them in late November 2013 contained the following section on oversubscription criteria for YR:

"If the number of applications exceeds the number of places available, priority will be given to applications in the order set out below:-

Children with a statement of Special Educational Needs, where Castleview School is named on the statement, and children in public care [Looked After] will be considered for a place above all other applicants

1. Children having a sibling attending the school at the date of admission and living within the area served by the school at the closing date for application and also at the time of the child's admission to the school
2. Children living within the area served by the school at the closing date for application and also at the time of the child's admission to school
3. Children living outside the area served by the school and having a sibling attending the school at the closing date for application and also at the time of the child's admission to school
4. Children on the roll of Castleview Nursery for 5 sessions a week prior to the closing date
5. Children who have strong medical or social grounds for admission. These reasons must be fully supported in writing from a professional person, such as a doctor or social worker, and returned with the application form. (Examples of strong compelling medical or social grounds could be serious domestic or family problems or the child having a chronic medical condition).
6. Proximity of the applicant's home to the school, to those living nearest distance using Slough Borough Council's Geographical distance system

Should there be too many applicants in a particular criteria the Governing Body will take the remaining criteria in ascending order

For example, if there are too many applicants in criteria 2, the Governing Body will take into consideration the following criteria in order

- those on the roll of Castleview Nursery for 5 sessions per week prior to the closing date
- those who have strong medical or social grounds for admission
- proximity of applicant's home to school. "

12. The nursery policy includes a similar section with the obvious difference that there is no priority for children already attending the nursery. 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.

13. The school has since our meeting varied its arrangements. Regulation 19 of the regulations allows admission authorities to vary their determined arrangements in a number of specified circumstances, one of which is to comply with a mandatory requirement of the Code. I shall in this determination make clear where the new varied arrangements conform to the Code and where, on the other hand, they do not. Where the school's arrangements do not comply with the Code, the Code requires the school to amend its arrangements as quickly as possible but no later than 15 April.

Consideration of Factors

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

14. 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.

15. The school has provided me with a document in which it sets out its reasons for its approach. The school explains that it became concerned many years ago that parents were moving temporarily into its catchment area in order to secure a place in YR for their child and then moving back to their permanent residence outside the catchment area soon after admission. This meant that some children who lived permanently in the catchment area but further from the school were failing to gain a place. Against this background, the school (in its former incarnation as a foundation school) consulted on and, in due course, adopted new admission arrangements including priority for YR for those who had attended the nursery. The school argued that this ensured

that children had to live in its catchment area prior to admission to nursery and then if the child moved on to the school's YR he or she would have lived in their catchment area for at least 18 months. The school also believed that if they could not give priority to children who had attended the nursery, the situation would soon return to one where people moved temporarily into the catchment area to gain a place.

16. The school also argues that continuity from nursery to YR leads to improved attainment for children with those who have not attended the nursery taking around two years to close the gap with those who have. They point out that the nursery children are full members of the school and take part in whole school activities. The school is concerned that not giving them priority for YR would be detrimental to their education.

17. I take full account of the points made by the school. Castleview has been judged by Ofsted to be an outstanding school and I am certain that those who attend benefit from their time there. Because it is such a good school it is not surprising that it is significantly oversubscribed and this means that every year parents who would like their children to go there will be disappointed. This will be the case, of course, whatever the admission arrangements; admission arrangements only decide who is offered a place and not the overall number of places available.

18. Attending any nursery provision is voluntary. Parents do not have to send their children to nursery at all and should not feel that they have to do so in order to have a reasonable chance of securing a place in YR for their child in their catchment area school. In addition, the provision made by Castleview's nursery (or, indeed, by any other provider) will not meet the needs of all parents. Some parents may need provision which lasts all day; others may have the option to use provision near to where they work.

19. I consider that, in the in the case of Castleview, parents may feel that sending their child to the nursery – especially their oldest child – will be the only way to have a reasonable chance of securing a YR place. I draw this conclusion in part because of the way the school's admission arrangements are structured. At first glance, the nursery criterion appears quite low down - fourth after looked after and previously looked after children, siblings and children living in the school's catchment area. However, attendance at the nursery is also used in effect as a tie-break should the PAN be reached in a higher criterion. As the arrangements themselves explain, if the school reaches its PAN among children living in the catchment area, it will then give first priority among those children to children who have attended the nursery.

20. The school told me that all the children who progressed from the nursery to YR in 2012 and 2013 lived in the school's catchment area. The school and the LA also confirmed that over the past two years the school has been able to accommodate all of its catchment area children who would like a place. The number of children from the catchment area who joined the school in September 2012 was 83 in September 2012 and 88 in 2103. Three children

with statements of SEN were admitted in 2012 and two in 2013. In 2012 the school also admitted four children who lived outside its catchment area but had siblings at the school.

21. For September 2014, as noted above, the PAN will reduce to 60. I have seen nothing to suggest any expectation that the number of children living in the catchment area and seeking a place in YR will dramatically reduce; indeed, the demand from in catchment for nursery places in 2013 has remained at the same level as for 2012. I consider it most likely therefore that the school will not be able to accommodate in YR all of its catchment area children who would like a place, but rather that the school will reach and exceed its PAN among catchment area children. The way the arrangements currently work will then put a higher premium on nursery attendance with those children who live in the catchment area and who have attended the nursery having a greater priority than those who live in the catchment area but do not attend the nursery. Given that the nursery has 52 places and that the school must also admit any children with statements of SEN that names the school and give first priority to looked after and previously looked after children, there are likely to be few places available to catchment area children who do not attend the nursery.

22. 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 a school, it is appropriate to consider whether the admission arrangements for nursery would be lawful if used for admission to YR.

23. In the case of Castleview, and as noted above, the arrangements for admission to the nursery are similar to those for YR. There are, however, some differences. The nursery is full and oversubscribed. The school has provided me with figures for 2012 and 2013. These show that in 2012 the nursery was able to accommodate all catchment area children who sought a place. However, in 2013, two children who lived in the catchment area did not gain a place in the nursery.

24. I asked the school at our meeting if there was any appeal mechanism should a child be refused a place at the nursery and the school said that there was not. There is no requirement for there to be an appeal process whereas there is a requirement for an independent appeal in the case of admission to YR. As there is no appeals process, it is possible that a child who did in fact meet the oversubscription criteria for nursery but was erroneously denied a place might then also fail to gain a place in YR as he or she would not meet the nursery attendance criterion. In other words, there is potential for double disadvantage.

25. I have noted above that the school needs its own application form for the nursery as it administers the admissions process itself and cannot therefore rely on a common application form as it does for YR. However, the form used by the school until now seeks a range of information which includes

elements that are both unnecessary to apply the arrangements (and would thus not be allowed for YR in accordance with paragraph 2.4 of the Code) and/or are proscribed either by paragraph 2.4 or paragraph 1.9 of the Code. The varied arrangements include a new form and many of the elements listed below have been removed and do not feature in this new form as indicated below:

26. The elements which are proscribed for YR are:

- a. Occupations of both parents (prohibited by paragraph 1.9f and not on new form);
- b. Home Language (this is synonymous with first language which is prohibited by 2.4b and not on new form).

27. The elements which are not necessary for the application of the admission arrangements are:

- a. The name of the family doctor (not on new form);
- b. The child's ethnic group and religion (not on new form);
- c. The country or origin of the child and the parent/carer (not on new form);
- d. The family structure and details of other children in the family.

28. The form also includes the statement: "It is a condition of entry to Castlevue School to support the school's policies on uniform/homework/behaviour/home school agreement." The parent or carer is then asked to sign and date the form. This statement remains on the new form. It would not be lawful to include such a statement on a form relating to admission to YR for two reasons. First, Paragraph 1.9a of the Code provides that admission authorities must not place any conditions on the consideration of any application other than those in the oversubscription criteria and the oversubscription criteria for the school's nursery do not include a requirement to support these school policies. Second, section 111 of the Act specifically prohibits basing a decision about admitting a child to the school on assumptions about whether his or her parents are or are not likely to sign the parental declaration which accompanies the home school agreement which all schools must have.

29. Because the school is oversubscribed and because nursery attendance is relatively high in the oversubscription criteria for YR, attendance at the nursery has a significant effect on a child's chances of gaining a place in YR. Nursery attendance is not compulsory and the way in which places at this nursery are allocated contains elements would not be permitted for YR. I therefore determine that the criterion and element of the tie-break which give

priority for admission to YR to children who have attended the school's nursery are not fair and hence do not conform to the Code. The Code requires the school to amend its arrangements as quickly as possible but no later than 15 April.

Children with statements of SEN

30. I want now to deal with the admission of children with statements of SEN which name Castlevew. The initially determined arrangements grouped such children together with looked after children and stated that they "will be considered for a place above all other applicants."

31. At the meeting, I drew the school's attention to the provision of paragraph 1.6 of the Code which states that: "All children whose statement of special educational needs (SEN) names the school **must** be admitted." A provision in the arrangements that such children will be considered for a place above all other applicants does not meet this requirement. Children with statements of SEN are not admitted to school through the normal admissions process but through a different and separate process. They should not, therefore, feature in the oversubscription criteria, although it is important that it is made clear in the arrangements overall that children with a statement of SEN that names the school will be admitted. In addition, the formulation used by the school could suggest that the school has an element of discretion about whether or not to admit a child with a statement of SEN that names the school and this is not the case.

32. The school's original arrangements do not conform to the requirements of the Code. The school indicated at our meeting that it would change its arrangements. The varied arrangements have gone some way to bringing the arrangements for the admission of pupils with statements of SEN into line with what is required. They state that:

"If the school is oversubscribed priority will be given to applications in the order set out below:

Children with a statement of Special Educational Needs where Castlevew School is named on the statement".

33. This is then followed by a numbered list of oversubscription criteria. This formulation is still not satisfactory. The school needs to say that children with a statement of SEN that names the school will be admitted. It should then go on to refer to what happens if the school is oversubscribed and list the oversubscription criteria. The Code requires the school to amend its arrangements as quickly as possible.

Looked after and previously looked after children

34. The school's initially determined arrangements provide for "children in public care [Looked After] children" to be considered for a place above all

other applicants. At the meeting with the school I expressed my concern that their arrangements did not in this regard meet the requirements of the Code. There are three reasons for this.

35. First, the arrangements do not refer to previously looked after children. Paragraph 1.7 of the Code is clear that it is both looked after and previously looked after children **must** be given highest priority in oversubscription criteria. The Code offers a comprehensive definition of previously looked after children. Second, the form of words “children in public care [Looked After] children” used by the school is not clearly compliant with the Code. The Code explains in a footnote to paragraph 1.7 that a “looked after” child is a child who is either in the care of a local authority or is being provided with accommodation by a local authority in the exercise of their social services functions. Notwithstanding the use of the wording “looked after” in square brackets by the school, I consider that the wording currently used could well be interpreted as limited only to children in the care of a local authority and not to include children who are being provided with accommodation. Third, the phrase “be considered for a place above all other applicants” could be taken as suggesting that the academy trust has some discretion in deciding whether or not to offer such a child a place at the school. This is compounded by the fact that the reference to looked after children is not included in the numbered oversubscription criteria as noted above in the background section of this determination. The academy trust has no such discretion; having determined its oversubscription criteria, it must then apply them to all applicants and use only the oversubscription criteria to rank applicants. Furthermore, it is a key requirement of the Code set out in paragraphs 1.4 and 1.8 that admission arrangements be objective. Oversubscription criteria which allow for the exercise of discretion are not objective and hence do not conform to the Code.

36. At the meeting, the school emphasised that its practice and intention was always to give the highest priority to all looked after and previously looked after children. The school agreed to change its arrangements in order to conform to the Code. The varied arrangements contain different wording in the section about looked after and previously looked after children. The wording “being considered for a place above all other applicants” has been replaced by a much clearer formulation “priority will be to applications in the order set out below” and the document refers to looked after and previously looked after children.

37. Unfortunately, the document also contains a reference in square brackets immediately after “looked after child” to “in LA care”. As explained above, this could be interpreted as not including children who are being provided with accommodation by an LA. The Code requires the school to amend its arrangements as quickly as possible.

Deferred entry and part-time provision

38. 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 the child reaches 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.

39. The school's initially determined arrangements state that there will be one intake into the YR 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. The varied arrangements do include the statement required by paragraph 2.16 and thus conform to the Code.

Tie-break

40. Paragraph 1.8 of the Code requires that admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated. At Castleview, the tie-breaker is distance from the school to the applicants' homes. However, the initially determined arrangements contain no provision for separating two applicants in the – albeit rare – event that two applicants who tie for the final available place live exactly the same distance from the school. The school agreed at the meeting that it would amend its arrangements to include a final tie-break and the varied arrangements include allocation as a final tie-break.

Conclusion

41. The matter which first brought the arrangements of this school my attention was the giving of priority for admission to YR to children who attended the school's nursery. I have concluded that in this regard the arrangements both as initially determined and subsequently varied do not conform to the Code. The initially determined arrangements also did not conform to the Code in a number of other ways, namely that: the arrangements in relation to the admission of children with statements of SEN that named the school and looked after children and previously looked after children were not in compliance with the Code; the arrangements did not provide for parents to request deferred entry and part-time provision for children below compulsory school age and there was no final tie-break. Some of these matters have been rectified in the varied arrangements, but these still contain breaches of the Code in relation to the admission of children with statements of SEN and looked after and previously looked after children. The Code requires the school to amend its arrangements as quickly as possible but no later than 15 April.

Determination

42. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Castlevew School 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