



DETERMINATION

Case reference:	ADA2754
Objector:	Plymouth City Council
Admission Authority:	The Academy Trust of Oreston Community Academy, Plymstock
Date of Decision:	3 October 2014

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Oreston Community Academy for admissions in September 2015 and I determine that they do not conform with the requirements relating to admission arrangements in the way set out in this determination.

By virtue of section 88K(2) of the Act 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.

The referral

1. Under section 88I of the School Standards and Framework Act 1998, (the Act), the admission arrangements (the arrangements) for September 2015, for admission to Oreston Community Academy (the school), in Plymstock, Plymouth, a primary academy school for children aged 4 to 11 years have been brought to the attention of the Office of the Schools Adjudicator (OSA) by Plymouth City Council, the local authority (the LA). The referral concerns the priority given to children attending the nursery that is linked to the school.

Jurisdiction

2. The terms of the academy agreement between the Oreston Community Academy Limited, (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 governing body of Oreston Community Academy, which is the admission authority for the school, on 27 March 2014, on that basis.

3. There was an objection dated 24 June 2013, to the school's arrangements for admission to the school in September 2014. The objection, which was upheld, also related to the oversubscription criteria which prioritised children who had attended the school's nursery provision. Regulation 22 of the School Admissions (Admission Arrangements and Co-ordination Arrangements) (England) Regulations 2012 says, "For the purposes of section 88H(5)(d), where the adjudicator has determined an objection to the admission arrangements of a school or Academy, no objection may be referred to the adjudicator raising the same or substantially the same issues in relation to those admission arrangements within 2 years of the decision by the adjudicator." I am therefore not considering the arrangements under s88H of the Act.

4. The determined arrangements for 2015 were brought to the attention of the adjudicator on 28 June 2014, after the school reintroduced a priority for children who attend the nursery. As the arrangements for 2015 have been brought to my attention I have considered them using my power under s88I of the Act. I am satisfied that it is within my jurisdiction to consider the school's arrangements.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the School Admission Code (the Code).

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

- the referral from the LA dated 28 June 2014 and a further submission dated 6 August 2014;
- the school's responses dated 17 July and 21 August 2014, with supporting documents;
- minutes of the governing body's meeting held on 21 January 2014 at which the outcome of the objection published in September 2013 was considered and details of the consultation were discussed;
- the principal's report to the governing body dated 21 January 2014;
- minutes of a meeting of the governing body held on 27 March 2014 at which feedback from the consultation was considered and the arrangements for 2015 were determined;
- a copy of the determined arrangements for admission to the school in 2014 and in 2015;
- the admissions policy and information for parents about the operation of the nursery;
- a copy of the funding agreement dated 1 January 2011; and
- the determination, case reference ADA 2475 dated 10 September 2013.

The referral

7. The referral cites paragraph 12 of the Code which says, “*The purpose of the Code is to ensure that all school places for maintained schools.....and Academies are allocated and offered in an open and fair way.....*” The LA contends that as the arrangements for admission to the nursery lie outside the remit of the Code, if parents gain admission to the school on the basis that they had previously been admitted to the nursery, under criteria that could not be used by the school, this is unfair because:

- the nursery admission policy allows families to purchase additional hours or sessions and LA data indicates that nearly 50 per cent of families choose to do this. Thus priority is given on the basis of financial support to the school which is forbidden by paragraph 1.9e;
- children living outside the catchment area but who may live closer to the school than children attending the nursery, may be disadvantaged if the arrangements for admission to the school afford priority to children who attend the nursery. Paragraph 1.8 of the Code says, “Oversubscription criteria **must** be reasonable, clear, objective and procedurally fair, and comply with all relevant legislation.....”
- The referrer also asserts that it is not possible for parents to determine from the school’s arrangements, on what basis children are admitted to the nursery.

The background

8. Oreston Community Academy is a primary academy opened on 1 January 2011, replacing the previous community school. The school is located in a suburb of Plymouth about 3 miles from the city centre. It has capacity to accommodate up to 315 children, has a published admission number (PAN) of 45 and has approximately 320 pupils on roll. The arrangements for admission to the school in September 2014 were subject to an objection to the oversubscription criteria which prioritised children who had attended the school’s nursery provision. The objection was upheld and the arrangements amended accordingly.

9. The arrangements determined for admissions to the school in September 2015 include a criterion that affords priority to children who attend the school’s nursery provision. The governing body has been concerned about the admission of local children. To resolve this issue the governing body has determined arrangements that now include priority for children living within the school’s catchment area in a criterion which affords a higher priority than the criterion relating to attendance at the nursery.

10. In summary the school's arrangements for admission in September 2015 are as follows:

- “1.Children in Care or those who have ceased to be in Care because they were adopted or made the subject of a residency order or made the subject of a special guardianship order.
2. Children living in the designated area for the Academy, with a sibling on roll at the time of application.
3. Other children living in the designated area for the Academy.
4. Children attending the Nursery:
 - i) with a sibling on roll at the time of application.
 - ii) whose parent is a member of staff employed for more than two years by the Academy or recruited within the past two years to fill a vacancy for which there was a skills shortage.
 - iii) other children attending the Nursery.
5. Children living outside of the designated area for the Academy, with a sibling on roll at the time of application.
6. Children whose parent is a member of staff employed for more than two years by the Academy or recruited within the past two years to fill a vacancy for which there was a skills shortage.
7. Other children. “

11. The school has a 30 place nursery unit which actually provides education for up to 40 children in each of two daily sessions. The number on roll at the nursery at the end of the summer term was 60. It was projected to be 50 in September 2014, then increasing to 58 in January 2015 and to 62 in April 2015. Parents can take up places in the nursery at the beginning of the term in which their child becomes three years of age but have to pay the standard fees until the child becomes eligible for the Early Years Entitlement (EYE) funding, that is, not until the start of the term after the child has his/her third birthday. Parents also have the option to pay for additional sessions over and above those provided by the EYE funding for supervision and lunch between sessions and for a place in the extended day provision at the Lighthouse Club which runs before and after school for children of the school and the nursery.

12. A general information sheet about the nursery sent to me by the school states, *“Our Nursery is open to children from their third birthday however children are eligible to receive their funding the term after their third birthday. We believe it is the ideal preparation for those children who will continue on through their primary education at Oreston. The main school admissions policy now reflects this and children registered at our Nursery are given priority for entrance to the Main School Foundation Classes”*.

13. The nursery provides options for parents to choose to attend either the morning or afternoon sessions which are of three hours duration, to add the half hour lunch session to either session, or to link both sessions with a period of half an hour for lunch. These sessions are available with and without using the EYE funding. Staying for the lunch session is an optional extra. A session cost is £6.50 and the lunchtime session cost is £3.30 which includes a school dinner. The cost for the lunchtime session without a school dinner is £1.30.

14. The admission arrangements for the nursery may be summarised as follows:

1. Children who are between the ages of three and four.
2. Children who have a sibling who is already on roll in the nursery or the school.
3. Other children.

If it is necessary to prioritise between children, those who live closer to the nursery will have higher priority.

Consideration of factors

15. There are three concerns about the arrangements. Citing paragraph 12 of the Code which says, *“The purpose of the Code is to ensure that all school places for maintained schools.....and Academies are allocated and offered in an open and fair way.....”*, it is argued that the arrangements for admission to the nursery lie outside the remit of the Code; and therefore it is unfair if parents gain admission to the school on the basis that they had previously been admitted to the nursery, under criteria that could not be used by the school. The referrer asserts that the nursery enables parents to purchase additional hours and using headcount data from May 2014 provides evidence that nearly half of parents purchased additional sessions during the last academic year. Paragraph 1.9e of the Code says, *“It is for admission authorities to formulate their admission arrangements but they **must not** give priority to children based on any practical or financial support parents may give to the school or any associated organisation.....”*

16. The LA also contends that children who live outside the catchment area, but who may live closer to the school than children attending the nursery, may be placed at a disadvantage and that the arrangements for the school are not fair and contravene paragraph 14 of the Code which says, *“.....admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.....”*

17. Finally it is suggested that the nursery arrangements should be published alongside the school’s arrangements and that the fact that they are not contravenes the Code in another part of paragraph 14 which says, *“Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”*

18. The school puts forward arguments in support of its case using an analysis of the Codes for 2010, 2012 and the proposed 2014 Code. My consideration must be based on the law as it stands now and this includes the regulations thereunder and the current Code. I cannot look back to the previous Code of 2010 that has been replaced. Nor can I anticipate any changes that may be agreed in the future. For these reasons I have confined my consideration to the issue of whether the priority given for admission to children who attend the nursery complies with the requirements of the current Code.

19. I will now consider the responses of the school to each aspect of the referral against the requirements of the Code. The school provided copies of the advice it received from an officer from Devon County Council, its adviser on admissions policy; and copies of the email exchanges between the school's adviser and the Department for Education (the DfE). This provided the context for the subsequent decisions of the governing body to determine arrangements for admission to the school in 2015 that include priority for children attending the nursery.

20. The DfE advice was that the Code does not specifically prohibit admission arrangements which give priority to children who attend a particular nursery. *"However, in practice, such admission arrangements may breach paragraph 1.9 a) of the Code - because the level of priority given to children attending the nursery means that children whose parents choose a different (or no) early years provider are unable to access a place at the school (so attendance at the nursery is effectively a condition of admission to the school); or 1.9 e) of the Code – because the parents pay for some or all the nursery provision they receive.....Where they buy additional provision to top the early years entitlement, at the moment that would definitely contravene 1.9 e."*

21. The school's adviser notes that care should be taken where the capacity of the nursery (40 per session) approaches the PAN for the Reception year (YR) which is 45 and confirms his understanding that there would be no breach for EYE funded sessions but there could be a breach if that parent pays for any additional sessions. Notes to the oversubscription arrangements of the school clarify that *"Children will be prioritised on the grounds that they attend the Nursery if attendance is for the majority of their Early Years Entitlement. There will be no priority based on the purchase of additional hours or other services."*

22. The nursery arrangements advise parents that a child is entitled to 15 hours provision per week from the start of the term following their third birthday and that this entitlement is for 38 weeks per year, generally available in five sessions of three hours but on a flexible basis that could include two and a half 'full days'. The school says in one of its responses *"The criteria we wish to use specifically prioritise children whose parents take up nursery places as part of their statutory entitlement. No child attending the nursery solely for voluntary, paid sessions would have priority."*

No child attending the nursery for a minimum funded session, potentially to increase admissions priority, would have priority. Only those who attend for the majority of their funded hours, free to the parent, would have priority for admission to Reception. We have deliberately prevented any parent from having admissions priority on the grounds that they make any additional payment for hours or services at the nursery. Priority is only for state-funded EYE hours.”

23. However, while I acknowledge the intention of the school is to offer priority in its arrangements only where “payment” is made for sessions in the nursery through the EYE funding, an information sheet says that the nursery is open to children from their third birthday and parents are advised that standard fees will apply for children not yet eligible for EYE funding. *“Our nursery is open to children from their third birthday however children are eligible to receive their funding the term after their third birthday. We believe it is the ideal preparation for those children who will continue on through their primary education at Oreston.”* A parent reading this might well assume that there would be an advantage in paying fees to enrol a child as soon as they reach three years of age, so that a place is secured in the nursery and then as the statement above implies they would then be assured of a place in the school or at the least be more likely to be offered a place.

24. Yet not all parents will want their child to start nursery education at a younger age and not all will have the funds required to secure a place. In this instance a parent who is able to afford to pay standard fees and who wants a child to start at the nursery before the term after their third birthday would gain an advantage when it came to admission to the nursery. Although the payment of the fees is discounted by the school in its arrangements, nonetheless a place may be secured because fees are paid and a child starts at the nursery before the EYE funding is available. It is also possible that not all parents in receipt of EYE funding will be able to gain admission to the nursery.

25. This approach may not seem fair to all applicants but then the admission policy of the nursery does not have to meet the requirements of the Code. However, as the arrangements for the school give priority to children who attend the nursery it is possible that some parents may be disadvantaged in having to wait until their child is eligible for the EYE funding and may not gain admission to the nursery because they are unable to pay the standard fees. These parents would also lose the priority given to children attending the nursery. If this were the case, then the arrangements would contravene paragraph 1.9e as the DfE advised the school.

26. The second concern raised, is that children who live outside the catchment area but who may live closer to the school than children attending the nursery, may be placed at a disadvantage. In May 2014, 11 of the children on roll at the nursery lived outside the catchment area that is about to be re-introduced for admissions in 2015. Other children who live outside the catchment area and do not attend the

nursery, either because parents do not wish them to or because places are not available will be disadvantaged.

27. In its response the school says that the arrangements for 2015 include an oversubscription criterion that affords priority for local children before children in the nursery. The school has introduced a designated area for the school, the catchment area that was previously used by the LA when it was a community school, and feels strongly that priority for children who attend the nursery is permissible, as long as the appropriate safeguards are in place, which the school says it has secured. Many nursery children will be allocated places at the school because they live in the designated area. Making reference to out-of-catchment area children, the school says it is legitimate to operate oversubscription criteria to prioritise groups of children over others. While the purpose of oversubscription criteria is, by their very nature, to give higher priority to some children over others, the key issue is whether or not they do so fairly.

28. The head teacher contends that the LA is suggesting that it must provide places for children across the city and beyond and that to require that of a school with a PAN of 45 is unrealistic and unreasonable. I do not believe that the LA is making such a suggestion, but rather it is considering the impact of the school's arrangements on a group of children who may be affected by them, should the school have space, after the admission of those children within its catchment area who have expressed a preference for the school.

29. The arrangements will give a higher priority to the children living in the catchment area than to children who attend the nursery. After this the intention is to give priority to other children attending the nursery. The school says, "*It is entirely correct that priority for nursery children advantages them over other out of area children who choose not to take a place at the nursery or are unable to do so. It is the intention of this school to do exactly that: to give priority for out of area children over other out of area children.*" The school's position is that where it can offer places to out of catchment children it will, but if it is oversubscribed, "*...we wish to prioritise out of area children on the basis of whether the children have an established link with the school through the nursery. We feel that the benefits for stability through transition justify this approach*".

30. It is possible that within the group of children living outside the catchment area there will be at least two sub-groups, those who have a place at the nursery and will gain priority in the school's arrangements and others who may live closer to the school than children attending the nursery but who will not be admitted to the school if places have already been allocated to those attending the nursery but live further from the school. A map provided by the LA shows the addresses of children currently attending the nursery and indicates that 11 children live some distance outside the catchment area. The school acknowledges that this will be the case and

that the arrangements are designed to achieve this because it wants to prioritise those children who already have links to the school, having attended the nursery. In my view parents who wish their children to attend the school and live close to the edge of the catchment area are placed at a disadvantage because the school wishes to give priority to children who may live further away but who for whatever reason have chosen to attend the school's nursery provision and have been successful in gaining a place. For children living outside the catchment area, parents should not feel that they must first seek a place in the school's nursery in order to increase their chance of gaining a place in the reception year.

31. Nursery education is not a compulsory phase of education and parents are free and must remain free to decide what is best for their child. If they choose not to send their child to the nursery or would like to but do not gain a place, they will find themselves at a disadvantage when they come to express preferences for entry into compulsory education, that is, into the reception year. This is neither reasonable nor fair and for these reasons I must conclude that that the arrangements do not conform to the requirements of the Code.

32. Finally, the LA refers to the fact that parents will not find the admission policy for the nursery alongside that of the school and that it would therefore not be possible for parents to ascertain the basis on which children have been admitted to the nursery. The school says: *".....parents can access the nursery policy through the school office or from the same page of the school website as they access the Reception admissions policy. We support the principle that parents accessing information online should not have to make extensive searches and feel that access from the same page to different policies is reasonable and proportionate."*

33. If parents are seeking admission to the nursery, they are provided with information on the school's website. If parents are looking at the school's arrangements for the reception year on its website they will readily find information about the nursery too. I am not persuaded that the nursery and school policies must be published together, but I am concerned that under "Oreston Community Academy Admissions" in the "Key Information" section on the school's website there is the statement "Children registered at our Nursery are given priority within our policy for entrance into the Main School but you must still apply for a place in Foundation". Some children in the nursery may gain priority in arrangements of the school other than on grounds of attending the nursery, but as presented this does not have the clarity expected for statements about admissions.

Conclusion

34. There are three elements to the referral that brought the arrangements to my attention. I find for reasons detailed above that the priority given to children who

attend the nursery, in the arrangements for admission to the school in September 2015, does not conform to the requirements of the Code.

35. There is no requirement for the nursery and reception admission arrangements to be published together. However, arrangements for admission to the reception year must be clear and the statement on the school's website about priority for attending the nursery could be confusing for parents.

Determination

36. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Oreston Community Academy for admissions in September 2015 and I determine that they do not conform with the requirements relating to admission arrangements in the way set out in this determination.

37. By virtue of section 88K(2) of the Act 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.

Dated: 3 October 2014

Signed:

Schools Adjudicator: Carol Parsons