



## **DETERMINATION**

<b>Case reference:</b>	<b>ADA2825</b>
<b>Referrer:</b>	<b>A member of the public</b>
<b>Admission Authority:</b>	<b>The governing body of The Moriah Jewish Day School, Harrow</b>
<b>Date of decision:</b>	<b>12 November 2014</b>

### **Determination**

**In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the arrangements determined by the governing body of The Moriah Jewish Day School in Harrow for September 2015. I determine that they 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 as quickly as possible.**

### **The referral**

1. The admission arrangements (the arrangements) of The Moriah Jewish Day School (the school) for September 2015 have been brought to the attention of the Office of the Schools Adjudicator (OSA) by a member of the public (the referrer) in a referral dated 21 July 2014. The school is a voluntary aided (VA) primary school for children aged 3 to 11 in the London Borough of Harrow and has a Jewish religious character. The matter brought to my attention concerns the inclusion in the school's arrangements of priority for admission to reception (YR) for children who attend the school's nursery class.

### **Jurisdiction**

2. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the school's governing body which is the admission authority for the school. Objections to admission arrangements for admission in September 2015 had to be made on or before 30 June 2014. However, as it appeared to me that the arrangements may not conform with the requirements relating to admission arrangements I am using my power under section 88I(5) of the Act to consider the matter brought to my attention and the arrangements as a whole.

## Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
  - i. the referral dated 21 July 2014;
  - ii. the school's response to the referral dated 15 September 2014 and supporting documents;
  - iii. the composite prospectus published by the London Borough of Harrow which is the local authority (LA) for the area for parents seeking admission to schools in the area in September 2015;
  - iv. the LA's response to the referral dated 26 August 2014;
  - v. copies of the minutes of the meeting of the governing body at which the arrangements were determined; and
  - vi. a copy of the determined arrangements.
5. I have also taken account of information received during a meeting I convened on 13 October 2014 at the United Synagogue attended by representatives of the school, the LA and of the Chief Rabbi of the United Hebrew Congregation of the British Commonwealth/United Synagogue which is the Rabbinic Authority body for the school according to schedule 4 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012.

## The Referral

6. The reason given for bringing the arrangements to the attention of the adjudicator is that a number of Jewish primary schools in north-west London had included in their admission arrangements priority for admission to YR for children who had attended that school's nursery. The referrer said that in several previous rulings by the OSA this practice had been found not to comply with the Code and argued that *"It is only fair that all Jewish schools in the same geographic area have to live by the same rules and interpretations of the Code as determined by the OSA."* The referrer pointed out that fairness is required by paragraphs 14 and 1.8 of the Code.

## Other Matters

7. In the school's response to the referral it appeared that the arrangements for 2015 had not been determined.
8. While considering the arrangements I became concerned that they were not as clear as they might be in a number of places. Paragraph 14 of the Code requires arrangements to be clear.

9. The Code in paragraph 2.4 prohibits admission authorities from asking certain questions on their supplementary information forms (SIF). It appeared to me that the school's SIF included questions which should not be asked.

## **Background**

10. The school offers 26 places in its nursery to children who are aged 3 on 1 September each year. These 26 children all attend morning sessions funded by the early years grant. Up to 16 of these children also attend optional afternoon sessions which parents pay for.
11. The nursery class is oversubscribed and the oversubscription criteria are the same as those for YR with the exception of the criterion referring to the nursery.
12. There are 30 places available in YR. The school is sometimes oversubscribed and oversubscription criteria are:
  1. Children who are looked after by a local authority, or a child who was previously looked after, with a completed and validated certificate of religious practice (CRP);
  2. Children who are currently attending the Moriah Nursery, with a completed and valid CRP;
  3. Siblings of pupils attending the school on the date of admission, with a completed and valid CRP;
  4. Siblings of former pupils of the school, with a completed and valid CRP;
  5. Other children who have a completed and valid CRP;
  6. Other children who are looked after by a local authority, or a child who was previously looked after; and
  7. Any other children.
13. Footnotes clarify the terms in these criteria and the tie-breaker is based on distance with children living nearest to the school having priority. Random allocation is used if two children live the same distance from the school

## **Consideration of Factors**

14. Although the referral made reference to previous cases considered by the OSA concerning priority for admission to YR for children attending a particular nursery, all determinations are made in the light of the circumstances of the school, relevant legislation and the Code .
15. The argument set out by the referrer was that schools which had been required to stop using attendance at their nursery to give priority for YR

had seen their nurseries “*placed at a disadvantage in relation to other Jewish schools*”. The referral said this was “*unfair as parents who want to send their children to one of those nurseries will have a disincentive to do so because if their children don’t get into that school’s reception class they will have little or no chance or be extremely unlikely to get a place at one of the other Jewish schools*”.

16. This appears to me to be saying that linking admission to YR to attendance at the nursery is an incentive or in practice a requirement for parents to send their child to the nursery. It also identifies the link between nursery and YR as reducing the likelihood of a child obtaining a place in YR if he or she did not attend the school’s nursery.
17. The school has put forward the case that there is little interaction in admissions between themselves and other Jewish schools because of their geographical location and differences in ethos.
18. The school argued that the policy has not prevented any child from attending the school because there are 26 places in the nursery with 30 in reception and the school and nursery are not always full.
19. The school also drew my attention to the benefits of continuity through the early years foundation stage and how the school is organised to maximise this. The school considered it important for parents to feel secure that when their child starts at the nursery they will be able to continue into YR.
20. The LA said that it had raised the issue of nursery priority with the school and that the school had considered the matter carefully before deciding to continue with the practice. The LA had never had any complaints about admissions to the school. There was pressure on primary school places in the area and three non-Jewish children had been offered places at the school.
21. The representative of the Rabbinic Authority endorsed the comments made by the school and pointed out that the arrangements make it clear to parents that there is no automatic transfer from the nursery to YR and an application process must be followed.
22. The Code neither specifically permits nor prohibits giving priority for places in YR to children who attend a school’s nursery class. It does however make it clear in paragraph 15d that “*a separate application **must** be made for any transfer from nursery to primary school*”. Prioritising children at the nursery for places in YR must therefore be tested against the Code as a whole and, in particular, against the key provisions of paragraphs 14 and 1.8.
23. 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.*” Furthermore paragraph 1.8 says “*Oversubscription criteria must be reasonable, clear, objective, [and] procedurally fair*”.

24. I have considered the data provided by the school on the pattern of admissions in recent years. The nursery has been full in each of the last five years and the parents of just two nursery children did not apply for a place in YR during that time. Of those applying very few did not in the end take up the place.

	2014	2013	2012	2011	2010
Children in nursery	26	26	26	26	26
How many of these applied for YR	25	25	26	26	26
How many of these started in YR	25	25	22	22	23
Other children admitted to YR	3	5	4	5	7
Total	28	30	26	27	30

25. From the figures above it would appear that in some years the number of applications for children who did not attend the nursery is less than the number of places available when all nursery children who want places have been accommodated. In other years there were at least as many families wanting places for children not at the nursery as there were places available and potentially significantly more.

26. The law does not require children to be in full-time education until the term after their fifth birthday. Parents therefore have the freedom to choose whether to send their child to a pre-school setting or not. Some parents, who would like their child to attend the school in YR, may consider another pre-school setting more suitable for their child at the age of 3. Others may, for a range of valid reasons, be unable to send their children to the school’s nursery even if they would have high priority for a place.

27. If a parent does not send their child to the nursery class at this school when they are 3 years old, then the possibility of them securing a place when the child is of statutory school age is greatly reduced with as few as four places being available. This would seem to me to be unfair on parents who preferred other pre-school settings, or none for their child.

28. Other groups who would be disadvantaged include a family who moved into the area after places at the nursery had been allocated or one who might not have been able to score sufficient points on the CRP at age 3, but could do so a year later, having changed their religious practice or having different family circumstances.

29. I have also considered the fairness to those families who have decided to place their child at the nursery if there were no priority for YR for

children from the nursery. The criteria (with the exception of the nursery criterion and an appeal process which I address below) are the same for the nursery and YR. This means that any child from the nursery who failed to get a place in YR could only have been displaced by another child who would have had higher priority for a place at the nursery if their parents had wanted or been able to apply for one.

30. The school expressed a view that continuity across the early years foundation stage was important. I do not dispute this, but without the nursery criterion, most nursery children would still be likely to have priority for places in YR and have that continuity. There is no inherent reason why children who have been in other settings will not assimilate quickly into YR or why children from the nursery will not assimilate smoothly into YR at other schools.
31. I have also considered whether it would be possible for a child to gain admission to the nursery and thereby the school in a way that was not compliant with the Code. As noted above, the arrangements for admission to the nursery and YR are the same in all but two respects, the nursery criterion and the right of appeal. I have identified below ways in which I consider the arrangements for YR do not comply with the Code and so neither would the nursery arrangements. Therefore it might be possible for a child to gain admission to YR in a non-compliant way through the nursery.
32. The second way in which the arrangements differ is that there is no right of appeal in the arrangements for the nursery. The right of appeal is an important compulsory element of the school admissions system. While it is not required for admissions to nursery, the fact that there is in the case of this nursery no right of appeal leaves the possibility that someone entitled to a place in the nursery might fail to secure one and thereby lose priority for a place at the school. This would not be fair.
33. For these reasons I consider giving priority in the oversubscription criteria for YR to children attending the nursery is unfair to families who either choose not to send their child to the nursery or are unable to send their child to the nursery or would like to but are not allocated a place. This does not comply with the Code's requirement for fairness in admission arrangements.

## **Other Matters**

### Determination of arrangements

34. Paragraph 1.46 of the Code says "*All admission authorities must determine their arrangements by 15 April every year*". In its response to the referral the school admitted that the meeting of the governing body scheduled for 10 March 2014, at which it was planned to determine the 2015 arrangements, had been cancelled. At my meeting on 13 October 2014 I was told that the arrangements had been determined by the governing body on 29 September 2014.

35. I asked for and was subsequently sent minutes of that meeting in which there was a proposal for the "*Ratification of the Admissions arrangements for 2015*" followed by notes of a discussion about admissions. There is however no record of the proposal being accepted by the governing body in the redacted minutes sent to me. I am however prepared to accept the head teacher's assurance given in my meeting that the governing body did agree the arrangements on 29 September 2014. The school **must** ensure arrangements are determined when required by the Code and that this process is properly recorded in future.

#### Clarity of the arrangements

36. Paragraph 14 of the Code quoted above requires admission arrangements to be clear. My first concern about the clarity of the arrangements is found in the first sentence in the section under the heading oversubscription. It says "*If the school is oversubscribed, after the admission of SEN<sup>5</sup> children, priority will be given to ...*". In discussion at the meeting the school confirmed that this meant children whose statement of special educational needs (SEN) names the school. While the last sentence in the preceding section of the arrangements says children with a statement of SEN naming the school will be admitted, note 5 simply gives a definition of what a statement is. As written, any child with SEN, whether or not they had a statement would be included. The school agreed this was not clear and undertook to clarify the wording.

37. I was also concerned that the first five oversubscription criteria used the term "*children ... with a completed and valid CRP*". This appeared to me to be about the possession of a document, not about being, to use the term found on the CRP itself, "*a priority applicant*" through scoring sufficient points on the CRP as the school intended. After discussion the school agreed this could be clarified

38. I was concerned that the wording of the arrangements in paragraph 2b suggested that the school might be unwilling to consider the admission of children who did not complete the SIF. Under the heading "*How to apply*" it says "*the School's Application Form must be completed*".

39. Arrangements are required by paragraph 14 and 1.8 to be clear and this includes being clear that anyone can apply for a place at the school. Governors cannot refuse to consider applications submitted without the SIF, but clearly such applications could only be prioritised on the basis of information on the common application form (CAF).

#### The supplementary information form

40. Paragraph 2.4 of the Code says that admissions authorities "**must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability.**" The SIF includes questions about whether the child has SEN, whether they are looked

after or previously looked after, whether they are new to the area, transferring from another school or have been permanently excluded. Apart from the second item which should be known through the CAF, none of these questions have a direct bearing on the decisions about the over subscription criteria.

41. At the meeting the faith body said that the form was originally designed for in-year applications and not as a SIF. It was agreed that asking these questions did not comply with the Code.
42. The SIF also asked for proof of date of birth. Paragraph 2.5 of the Code says this may only be asked for after a place is offered.
43. It is my conclusion that the SIF does not conform with the Code.

### **Conclusion**

44. Parents are not required by law to send their children to nursery at the age of 3. By giving priority for places in the reception class to children who have attended the school's nursery only a small number of places are available for others when children are required to attend school. There could be families who have made other choices of pre-school provision or who were unable to apply for a place at the nursery. The priority afforded to applicants on the basis of having attended the nursery does not meet the Code's requirement for arrangements to be fair.
45. There are a number of other matters in the arrangements which do not comply with the Code for the reasons set out above.

### **Determination**

46. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the arrangements determined by the governing body of The Moriah Jewish Day School for September 2015. I determine that they do not conform with the requirements relating to admission arrangements.
47. 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.

Dated: 12 November 2014

Signed:

Schools Adjudicator: Mr Phil Whiffing