



## **DETERMINATION**

- Case reference:** ADA2942, ADA2943, ADA2944, ADA2945, ADA2946, ADA2947, ADA2948, ADA2949, ADA2950, ADA2951, ADA2954, ADA2955 and ADA2956
- Objectors:** twelve parents and St. Michael's School, Leigh-on Sea, Essex
- Admission Authority:** Legra Academy Trust for Belfairs Academy, Leigh-on-Sea, Essex
- Date of decision:** 8 September 2015

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objections to the admission arrangements determined by the trust for Belfairs Academy.**

**I have also considered the arrangements as a whole in accordance with section 88I(5). I determine there are other matters that do not conform with the requirements relating to admission arrangements.**

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements and in this case I specify that the arrangements should be revised by 30 September 2015.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), objections have been referred to the adjudicator by 12 parents and an independent school (the objectors), about the admission arrangements for September 2016 (the arrangements) for Belfairs Academy (the school), an academy secondary school for pupils aged between 11 and 18. The objections are that the consultation was flawed; and to the priority given in the oversubscription criteria to children attending a feeder school above children living in the catchment area.

### **Jurisdiction**

2. The terms of the academy agreement between the Legra Academy Trust (the trust) and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the

trust, which was the admission authority for the school, through the governing body, on that basis. The objectors submitted their objections to these determined arrangements between 24 and 30 June 2015. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and that they are within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

### **Procedure**

3. In considering these matters I have had regard to all relevant legislation and the School Admissions Code (the Code). The 13 objections are substantially the same so this determination contains all matters raised.
4. The documents I have considered in reaching my decision include:
  - a. the objectors' emails, letters and forms of objection dated between 24 and 30 June 2015 and further communications received;
  - b. the school's response to the objection; documents; and subsequent correspondence;
  - c. Southend-on-Sea Borough Council's, (the local authority) composite prospectus for parents seeking admission to schools in the area in September 2016;
  - d. maps of the area identifying relevant schools, their catchment areas; and the home addresses of their pupils;
  - e. information on when the consultation on the arrangements last took place; what was circulated and to whom; and what responses were received;
  - f. extracts from the minutes of the meetings at which the governing body for the school discussed and determined the arrangements; and
  - g. a copy of the determined arrangements.

### **The Objections**

5. Twelve parent objectors and an independent school have raised objections which are substantially the same and are provided below with the relevant paragraph of the Code in brackets. The objections are:
  - a. The consultation did not meet the requirements of the Code (15.b and 1.44) as parents and some other relevant admission authorities were unaware of the proposals. In addition the school deleted the priority in the oversubscription criteria for children with exceptional circumstances without consulting on this matter.
  - b. Children attending feeder schools are given a higher priority in the oversubscription criteria above children living in the catchment area and this is not fair or reasonable in the local circumstances as some of those living close to the school are

unlikely to be allocated a place. Other points raised by a minority of objectors included that the arrangements were discriminatory against a particular social group; that account was being taken of parents' financial background; that the decision to introduce feeder schools had been made on financial grounds; and that more than one feeder school was named (1.2, 1.4, 1.8, 1.9b, 1.9f, 1.14 and 1.15).

### **Other Matters**

6. In considering the admission arrangements for the school, the following matters came to my attention which may contravene the Code (relevant paragraph in brackets). For admissions to post 16 education:
  - a. there is no published admission number (PAN) for external candidates (1.2);
  - b. there are no oversubscription criteria for external candidates (1.47); and
  - c. there is an application form for external applicants which implies that a selection interview may be held (1.9m and 2.6).

### **Background**

7. Belfairs Academy is situated in Leigh-on-Sea in the local authority area of Southend-on-Sea Borough Council. It converted to become an academy on 1 June 2012 replacing an existing school on the same site. The school is situated at the western edge of the local authority area. Its catchment area is bordered by the local authority area of Essex on its west side. The southern border is coastline.
8. On 1 February 2015 the school became part of the Legra Academy Trust, a multi academy trust, which held its first board meeting 9 March 2015. The governing body met 16 March 2015 and I am assured by the school that the governing body determined the arrangements at that meeting and had the authority to do so.

### **Consideration of Factors**

9. I asked the school for information on its consultation. The school told me that it started its consultation for admissions in September 2016 on 19 December 2014. The school sent me a copy of an email circulating a consultation letter dated 19 December 2014 which announced the consultation and provided a copy of the arrangements for 2016. The email was sent to all primary schools in the local authority area of Southend Borough Council, to the local authority and to Essex County Council, the neighbouring local authority. The letter was addressed "*Dear Colleagues.*" The letter did not provide any indication of what changes were proposed for 2016 from the arrangements for 2015. There was no request that any information on the consultation should be passed onto any other party such as parents. The letter did not include a closing

date but stated that responses would be needed by eight weeks from 19 December 2014 when the consultation closed. The school confirmed to me that the consultation ended 13 February 2015. The consultation was for eight weeks and was completed by 1 March 2015 and so the school conformed with paragraph 1.43 of the Code concerning the consultation period.

10. I asked the school for further information on the consultation and evidence of how the school had complied with paragraph 1.44 of the Code and in particular how it had consulted with parents. In response the school described its actions as above. The school has provided me with no evidence of any consultation with parents.
11. The school said that the letter on consultation was sent to Essex County Council "*on behalf of schools outside Southend Borough Council.*" There was no request to Essex County Council to provide the consultation letter to schools in its area. Objectors wrote that neighbouring schools, such as Hadleigh Infants and Nursery School, and Hadleigh Junior School, which are 1.3 miles from the school, own admission authorities and not in the local authority area, were not aware of the consultation. It would have been reasonable for the school to consult with these admission authorities but it did not do so. It is the responsibility of the school to ensure that its consultation meets the requirements of the Code.
12. I also note that the minutes of the governing body inaccurately record the decision made. The minutes record, "*The new admissions policy has been agreed by the Local Authority and is in place for 2017/18. A copy is to be circulated to all governors upon receipt from the LA.*" The school acknowledged that this should refer to 2016, not 2017. The governing body was responsible for determining the arrangements; this is not reflected in this record of the decision which implies that this was a decision by the local authority and the governing body would be informed of the detail following the meeting. This provides minimal evidence that due consideration was given to the points raised by the only response received to the consultation, which was from the local authority. The local authority brought to the attention of the school many of the points raised in these objections. In addition the local authority raised the concern that siblings of current students who were not attending a feeder primary school would not be allocated a place under the proposed arrangements; and that the wording for priority for children with exceptional needs was insufficiently clear.
13. Paragraph 1.44 of the Code says that "*Admission authorities **must** consult with:*
  - a) *parents of children between the ages of two and eighteen;*
  - b) *other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions;*
  - c) *all other admission authorities within the relevant area.*" I have

been provided with no evidence that the school consulted with: parents; other secondary schools in the local authority area which were their own admission authority; or all the neighbouring own admission authority schools. There were material changes between the arrangements for 2015 and 2016 and consultation was required. The school did not consult all those named in the Code and therefore has not met the requirements for consultation. I uphold this part of the objections.

14. One objector said that a change was made after consultation and the school should have consulted again. This relates to the deletion of the oversubscription criterion for children in exceptional circumstances. This appears to be in response to the local authority's concerns about the lack of clarity in the wording. It is my view that the school did respond to the consultation, but in an unacceptable way. If the school had wanted to remove the criterion then it should have consulted on doing so. The appropriate response to the concerns raised by the local authority was to clarify the wording; it was not acceptable to make a change of this nature without further consultation. I uphold this part of the objection.

15. The next part of the objection is with regard to the oversubscription criteria and the introduction of six feeder schools whereby those attending them have priority over those living in the catchment area. The objectors said that the arrangements were not fair. The need for arrangements to be fair is referred to various paragraphs of the Code including paragraphs 12 and 14. Paragraph 14 says "*In drawing up their admission arrangements, admission authorities **must** ensure that the practices and criteria used to decide the allocation of school places are fair, clear and objective.*" In addition, specific requirements for feeder schools are set out in paragraph 1.15 of the Code which says "*Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.*" The Code permits feeder schools as part of oversubscription criteria. I will consider whether: the arrangements are fair; and the reasons for selecting the schools as feeder schools were transparent and reasonable. This includes taking into account the demand for school places in the area and local geography; parental preference and the effect of these schools as feeder schools. Feeder schools are not defined in the Code but, as their title indicates, it would be reasonable to expect the majority of those who attend such a named primary school to 'feed' into the secondary school. A child attending a feeder school should be likely to be able to gain a place at the secondary school which names it in their arrangements if the school is a high preference.

16. I asked the school for its reasons for naming these schools as feeder schools. The school wrote that it put a lot of effort into its

links with its feeder schools and the transition of children from them to the school. Most secondary schools work closely on transition with the primary schools from which children join them for year 7. This is not dependent upon naming that school as a feeder school. The school also explained that part of the motivation for developing feeder schools was meeting the Department for Education policy in developing multi-academy trusts which was described by the school as “*servicing the local community to improve the education of local young people regardless of their background or academic ability.*” I will consider the reality of achieving this ambition for the school in relation to naming feeder schools below.

17. The oversubscription criteria in the arrangements determined for 2016 were:

*“Priority 1: Looked After children and previously Looked After children*

*Children who are registered as being in the care of a Local Authority, as well as previously looked after children who have left care through adoption, a residence order, or special guardianship order.*

*Priority 2: Students who attend the following named Feeder schools and have an older sibling at the Academy*

*Blenheim Primary School, Chalkwell Hall Junior School, Darlington Primary School, Fairways Primary School, Leigh North Street Junior School, Westleigh Junior School.*

*Priority 3: Students who attend the following named Feeder schools*

*Blenheim Primary School, Chalkwell Hall Junior School, Darlington Primary School, Fairways Primary School, Leigh North Street Junior School, Westleigh Junior School.*

*Priority 4: Children who live in the catchment area served by the Academy and have an older sibling at the Academy.*

*Priority 5: Children who live in the catchment area served by the Academy.*

*Priority 6: Children who live outside the catchment area served by the Academy and have an older sibling at the Academy.*

*Priority 7: Children who live outside the catchment area served by the Academy.”*

18. The main reasons the objectors gave for objecting to the introduction of feeder schools in the oversubscription criteria were closely related to local circumstances and their wish to attend their local secondary school. The majority had not been able to get a place at their local primary school (now named as a feeder school)

as it was oversubscribed. The priority given to children attending feeder schools now made it likely that their child would not be able to attend their local secondary school either even though they live very close to it. Two objectors had elected to send their child to an independent school, lived very close to the school and had intended for their children to attend the school. One independent school is 0.2 miles from the school and is one of the objectors.

19. This oversubscription at some primary schools and the potential knock-on effect had been raised with the school by the local authority in its response to the consultation. The local authority explained that the data showed that the majority of the children attending the school were from the catchment area and that about 20 children a year who lived in the catchment area did not attend one of the feeder schools. This meant that the use of feeder schools may lead to some children who lived in the catchment area being displaced by those who attended a feeder school but did not live in the catchment area.
20. The main oversubscription criteria for the named feeder schools are based on living in the catchment areas for those schools. This will mean that where there is oversubscription then local children will have priority but maps, with information of home addresses of existing feeder school pupils on, show considerable numbers of the current intake of some of the schools, come from outside their catchment areas and that of the school. This may reflect families that have moved since their child started school or other reasons for selecting these primary schools, but these children would have priority for a place at Belfairs Academy before any local child who had not been able to gain a place at their local primary school which has now been named as a feeder primary school.
21. There is a rising demand for places in the area which means that some children will not be allocated a place at their preferred primary or secondary school whatever oversubscription criteria are used. The local authority assures me that there will be sufficient places overall but not for all of those who wish for a place at the school. The number of places in primary schools is being increased and it is intended to increase the number of places at secondary schools in response to forecast demand. The school has not planned any increase for 2016; the PAN remains unchanged at 232.
22. The sum of the PANs of the feeder schools is 533 based on the primary schools' PANs in 2009 for those entering secondary education in 2016. The number of year 5 children in the feeder schools at the summer 2015 census (these are the children who will be applying for places for 2016) is 516. This is a difference of 284 places between the number of places available at the school and the number of children in the feeder schools. This makes it impossible that all the children attending a feeder school would be

able to secure a place at Belfairs Academy if they made it a first preference. There is a tension between this and naming the schools as feeder schools where it should be expected that a child attending a feeder school has a reasonable expectation of being able to attend the school.

23. Historically the school has been oversubscribed from applications from within the catchment with 38, 29, 27 and 50 being refused admission to year 7 on offer day in 2012, 2013, 2014 and 2015 respectively. The secondary schools' composite prospectus provided by the local authority shows that no child out of catchment (excepting those with a statement of educational need, looked after or previously looked after) has been allocated a place at the school since 2012. In 2015 the furthest distance from the school of a child allocated a place was 1.654 miles from the school. This shows a high demand for places from very local children. The use of catchment area oversubscription has led to disappointed parents and children for at least the last four years of allocation. The introduction of the priority for children attending a feeder school is likely to mean that children living outside the catchment area will be allocated a place at the school. This means that the arrangements are less likely to fulfil the school's ambition to serve "*the local community to improve the education of local young people*" than the previous arrangements if the emphasis is on "*local*."
24. The majority of the children attending the school have previously attended one of the named feeder schools. In 2012 and 2013 over 200 children allocated a place for the September intake had attended one of the named feeder schools and, as of 2 March 2015, 213 of the places allocated for September 2015 were for children attending one of the named feeder schools; this is over 90 per cent. Some of those who expressed a preference for the school may choose to attend elsewhere. The data provided by the local authority of those who expressed a preference for the school for September 2015 shows that from those attending the feeder schools:
- 80 children gained selective place;
  - 20 gained faith places;
  - 69 gained places at other Southend schools;
  - 50 gained places at schools outside of Southend; and
  - 14 gained places at independent schools or other destinations.
25. This totals 233 from the feeder schools named for 2016 going to schools other than Belfairs Academy. It is significant that over 50 per cent of children from the named feeder schools preferred places at schools other than Belfairs Academy. This does not support the naming of these schools as feeder schools in the arrangements, and neither could they have been accommodated given the school's PAN. It is significant that the school would not be able to take all



children who fulfil priority 3 which is for those attending a feeder school. The inability to provide places for all those attending a feeder school does not support the naming of these schools as feeder schools in the arrangements.

26. Children in priority 4 and 5 of the oversubscription criteria, those living in the catchment area with or without a sibling at the school but not attending a feeder school, would be highly unlikely to be allocated a place. I note that this is likely to split up siblings as previously raised by the local authority in the consultation.
27. The objectors wrote that children affected by the change to giving priority to those attending a feeder school may be unfairly disadvantaged or discriminated against. Paragraph 1.8 of the Code says, "*Oversubscription criteria **must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child.*****" The arrangements do not disadvantage unfairly any of the groups named in paragraph 1.8. It is, however, unfair to name schools as feeder schools when it is known that less than 50 per cent of the children attending the feeder schools could have a place at the school.
28. The independent school, which made the objection, wrote of its collaboration and close working with the local schools, the disadvantages which some of its children had and its physical closeness to the school (0.2 miles). It explained that only a few children a year will move onto the school but those who live in the catchment area are now unlikely to be able to gain a place at their local school because of the introduction of feeder schools. The independent school objector wrote that the school's actions may be in contravention of paragraph 1.9b of the Code as the school intends to take account of a child's previous school and discriminate against any child who has attended a school which is not a named feeder school. Paragraph 1.9b says that admission authorities **must not** "*take into account any previous schools attended, unless it is a named feeder school.*" These are named feeder schools and therefore the school is not contravening the Code in this regard.
29. The independent school objector further says, "*this could also be in contravention of paragraph 1.9 (f) where prioritisation must not be given to children according to the occupational, marital, financial or educational status of parents applying. The Code implies that schools must not prioritise children from favourable backgrounds but the Academy's Code appears to inversely discriminate against children on the same grounds.*" The objector refers to other

determinations from the Office of the Schools Adjudicator to support the case. I have looked at the cases to which reference was made and note that the circumstances were different. The use of named schools as feeder schools when they are the nearest state funded schools is not a form of unlawful discrimination in terms of the Code. Children who attend a fee-paying independent school are not a particular social group in terms of the Code and so the arrangements are not discriminatory in this regard. In addition I do not think that the arrangements discriminate against children on the basis of their parents' backgrounds.

30. It was further suggested that the independent school should be named as a feeder school given its proximity and that some parents had intended their child to attend the school at the end of their primary education. I also note that paragraph 1.9l of the Code says that admission authorities **must not**, "*name fee-paying independent schools as feeder schools.*" The school could not name an independent school as a feeder school.
31. Some of the parent objectors wrote that it may be procedurally unfair that children who live close to the school may not be able to have priority for a place because children who may attend a feeder school but who live further away and are in the catchment area for another school for which they are in walking distance have a higher priority. A child who attends a feeder school, however far they live from the school, will have a priority over a child who does not attend the feeder school, however close they lived to the school. I further note that the school is likely to allocate all its places to children attending feeder schools. The school will then have to apply its tie-breaker which is based on distance from the school so in this context priority is given to those who live closest.
32. The Academies Act 2010 created a requirement for academies that their pupils should be "*wholly or mainly drawn from the area in which the school is situated.*" A reasonable interpretation of this is that at least 50 percent of the children come from the immediate area and, on the basis of the information provided to me, the school's intake from its feeder schools will be considerably more than that. However, several of the parent objectors brought to my attention that Hadleigh Infant and Nursery School and Hadleigh Junior School are 1.3 miles from the school and increasingly being used by parents who cannot get a place at their nearest school, which would be a feeder school, because of oversubscription. For admissions to reception in 2014 there were 33 children who lived in the catchment area who could not obtain places at one of the feeder schools. There were 16 children who took reception places at Hadleigh Infant and Nursery School for this reason. The Hadleigh schools are nearer to the school than four of the feeder schools but in the area of Essex local authority. Few children have previously transferred to the school from Hadleigh Junior School and few

children would be expected to apply who attend the school in 2016. The school did not take into account in the arrangements that there are local children who cannot secure a place at the feeder schools.

33. The unexpected introduction of named feeder schools is a grave concern for parents. As one parent said, *"We would not have named Hadleigh as second or third choice if the feeder schools for Belfairs had been named at the time,"* but it was their nearest school with places even though they lived in the catchment area for Belfairs Academy. The situation is particularly challenging for some families. As one objector said in a letter to the school, *"Many of the children further out in your catchment will live closer to other Southend Borough secondary schools and therefore stand more chance of gaining a place at a second or third choice and will be able to walk to school but my daughter does not live close to any other Southend Borough secondary school and therefore is unlikely to get a second or third choice."* Others pointed out that they lived in easy walking distance of the school but their child would have to travel several miles to attend other schools. Based on the data, the evidence shows that their concerns have substance in that the school is unlikely to have sufficient places for those attending feeder schools and stating a first preference for the school, even allowing for the effect of a selective system. It is the case that where there is oversubscription that not all children will be able to attend their local school; this in itself does not imply inconsistency with the Code.
34. Other factors brought to my attention included an interpretation that as paragraph 1.15 of the Code says, *"Admission authorities may wish to name a primary or middle school as a feeder school,"* that only one feeder school is permissible. This is not my interpretation as the paragraph continues to say, *"The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds."*
35. One objector raised the concern that admission decisions were being made on funding grounds as the school may get more money per pupil if the children had attended particular schools. I am satisfied that this is not the case.
36. It is my view having considered all the information available to me that the naming of these schools as feeder schools does not meet the terms of the Code. I note that 90 per cent of the school's children typically have come from these schools and that the schools are the nearest schools within the local authority area. However for 2016 there is a significant shortfall of 284 places between the number of children attending the feeder schools and the number of places at the school. The school could not accommodate all the children from the named schools and more children from the feeder schools choose to go to other schools than choose to attend Belfairs Academy. In these circumstances the

naming of the feeder schools is not transparent and reasonable as required by paragraph 1.15.

37. I have also considered that for at least four years there have been children living in the catchment area who have been refused places at the school because of oversubscription and this situation is unlikely to change. The high levels of oversubscription locally mean that there will always be some disappointed parents and children and to these parents no system will seem entirely fair. However, for these very local children to have no chance of attending their local secondary school because their local primary school was oversubscribed is not fair.

38. I uphold this part of the objection concerning the naming of feeder schools, that the arrangements do not conform with the Code.

### **Other Matters**

39. The school is required to publish its arrangements and these include those for post 16 education if external applications are allowed. The school **must** set a PAN for external applicants, as in paragraph 1.2 of the Code, and has not done so.

40. There are no oversubscription criteria for post 16 education in the arrangements. The school explained that it has not had to apply oversubscription criteria but these are required by the Code whether the school is oversubscribed or not.

41. When I first looked at the website the application form said, "*All external applicants will be invited in for an admissions interview before an offer is formally made.*" I asked the school for an explanation of this as paragraphs 1.9m and 2.6 prohibit the holding of interviews with paragraph 1.9m also saying, "*In the case of sixth form applications, a meeting may be held to discuss options and academic entry requirements for particular courses, but this meeting cannot form part of the decision making process on whether to offer a place.*" The school's response did not clarify this point. The application form for external applicants now states, "*For external students, upon receiving an application, the P16 office will be in contact with you to arrange an interview to which your parents/carers will also be invited.*" It is necessary for the school to be clear to potential applicants that any interview does not play any part in the admissions process.

### **Conclusion**

42. I uphold the objections that the consultation process was flawed as neither parents nor all appropriate admission authorities were consulted as required by the Code. I uphold the part of the objection that the school did not consult on the removal of the

priority for children with exceptional need.

43. I uphold the objections to the introduction of the feeder schools as part of the oversubscription criteria for the reasons given above in relation to the ways the arrangements do not comply with the Code, I do not accept all the reasons presented by the objectors as discussed above.
44. I have also considered the arrangements as a whole for admission to the school in September 2016 and have concluded that several aspects of the arrangements, as detailed above, do not comply with the Code.
45. Paragraph 3.1 of the Code sets the timescale for arrangements to be amended unless a different timescale is set by the adjudicator. I am mindful that there was no consultation with parents on these arrangements and that the deadline for applications for secondary schools in 2016 is 31 October 2015. I therefore require the admission authority to revise its admission arrangements by 30 September 2015 with regard to all issues of non-compliance.

#### **Determination**

46. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objections to the admission arrangements determined by the trust for Belfairs Academy.
47. I have also considered the arrangements as a whole in accordance with section 88I(5). I determine there are other matters that do not conform with the requirements relating to admission arrangements.
48. 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 by 30 September 2015.

Dated: 8 September 20145

Signed:

Schools Adjudicator: Mrs Deborah  
Pritchard