



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3467

**Objector:** Hertfordshire County Council

**Admission Authority:** Spiral Partnership Trust for Fleetville Infant & Nursery School, St Albans

**Date of decision:** 25 June 2018

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2019 determined by the local governing board, under delegated authority from Spiral Partnership Trust for Fleetville Infant & Nursery School, St Albans, Hertfordshire.**

**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 within two months of the date of the determination.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by Hertfordshire County Council (the local authority), about the admission arrangements (the arrangements) for September 2019 for Fleetville Infant & Nursery School (the infant school), an academy school within Spiral Partnership Trust (the trust), which is a multi-academy trust responsible for five schools. The infant school provides for children aged 3 to 7. The objection is to an oversubscription criterion that gives priority for places to children of staff employed at Fleetville Junior School (the junior school).
2. The local authority for the area in which the infant school is located is Hertfordshire County Council, which has made the objection. Other parties to the objection are the governing board of the infant school and the trust.

### **Jurisdiction**

3. The terms of the Academy agreement between the multi-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 on that basis by the local governing board of the infant school on behalf of the trust, which is the admission authority for the infant school. The local authority submitted its objection to these determined arrangements on 14 May 2018. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

## **Procedure**

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 14 May 2018;
  - b. the admission authority's response to the objection;
  - c. confirmation of when consultation on the arrangements last took place;
  - d. copies of the minutes of the meeting at which the local governing board of the infant school determined the arrangements;
  - e. a copy of the determined arrangements;
  - f. a map showing the locations of schools in the area;
  - g. copies of correspondence between the local authority and the infant school; and
  - h. details of the allocation of places at the infant school.

## **The Objection**

6. The objector believes that the arrangements contravene paragraph 1.39 of the Code, which, under the heading of "*Children of staff at the school*", states that,

*Admission authorities may give priority in their oversubscription criteria to children of staff in either or both of the following circumstances:*

*a) where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made, and/or*

*b) the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage.*

The oversubscription criterion in question gives priority to,

*“a child of a member of staff provided that the member of staff has been employed at the school **or linked school**”* (my emphasis).

The circumstances in which this priority may be given are then worded precisely as in the Code (see above). The linked school is defined elsewhere in the arrangements as being the junior school. It is the local authority’s view that this criterion “*goes beyond*” what the Code allows as it gives priority to children of staff who are not employed at the infant school for which the application for a place has been made. The local authority lodged a parallel objection to the admission arrangements of the junior school, which is considered in determination ADA3468.

## **Background**

7. The infant and junior schools are located to the east of St Albans city centre. Their sites are very close to one another, but not directly adjacent. Both are rated outstanding by OfSTED. The schools state that they have “*a very close relationship*” and work together on matters such as curriculum and behaviour policy. Both schools have a Published Admission Number of 90. The oversubscription criteria for the infant school can be summarised as:

1. Looked after and previously looked after children.
2. Children with a particular medical or social need to go to the infant school.
3. Children who have a sibling on the roll of either the infant or the junior school.
4. Children of staff employed at the infant school or linked school.
5. Children for whom it is their nearest school.
6. Other children.

Distance from the infant school is used as a tie-breaker within each criterion.

8. The infant school was oversubscribed for admission in September 2018. A total of 287 applicants made the school a preference; 93 of these were first preferences. No places were allocated under the fourth criterion (children of staff).

## **Consideration of Case**

9. The local authority’s objection refers to paragraph 1.39 of the Code, which states that admission authorities may give priority to children of staff “*employed at the school.*” Therefore, it appears to the local authority to be a breach of the Code for the infant school to give priority

to children of staff employed at the junior school, which, its close working relationship with the infant school notwithstanding, is a different school.

10. In response, the schools made a joint submission. They argue that this part of the Code should be interpreted in the light of the purpose for which it was included. They say,

*“Here, the context and purpose of the relevant part of the Code is to give schools the ability to allocate places to the children of qualifying staff, which assists with recruitment and retention and, further, the ability of teachers with children at primary school to better manage their childcare and heavy workloads.”*

Recruitment and retention is described as a “key priority” of the schools and therefore,

*“Offering admission to children of Fleetville Junior School staff to Fleetville Infants for qualifying members of staff is a potentially important part of retention of key members of staff, particularly as a significant number do not live in St Albans itself.”*

11. The schools comment that the Code does not specifically address the particular circumstances of linked schools. In their view, to interpret the words “employed at the school” to mean the member of staff must work at the individual school rather than at either of a pair of linked schools produces results that they describe as “unfair and absurd.” In particular, they explain how restricting the extent of the oversubscription criterion in this way would treat staff at the junior school differently from those at the infant school. Staff employed at the infant school who live outside St Albans would be able to take advantage of the criterion to secure admission for their child both to the infant school and almost certainly, in due course, to the junior school, because the junior school gives priority (after looked after and previously looked after children and those with a medical or social need) to children who attend the infant school. In contrast, staff employed at the junior school who live outside St Albans would be very unlikely to obtain a place for their child at the infant school, if it were oversubscribed. It would also be unlikely that their child would be admitted to the junior school, as children transferring from the infant school have a higher priority for places and, historically, have almost all moved on to the junior school.
12. I recognise the force of the school’s arguments. Paragraph 1.39 of the Code provides for an exception to the prohibition on giving priority for places to children according to the occupational status of their parents (paragraph 1.9 f). The potential benefits of the use of this provision in respect of both the recruitment and retention of staff and enhancing their work-life balance are clear to me. I can see, too, how benefits such as these would be welcome not only in individual schools but also in the circumstances of schools that are formally linked and other schools that are in very close proximity to each other. The oversubscription criterion about which the objection has been made is

designed to ensure that the benefits are enjoyed equally by the staff of these two linked schools.

13. However, the Code uses the singular form “*the school*” in both the heading to paragraph 1.39 and the wording within it. The plain meaning of this provision is that, in order to qualify for priority for a place for their child, the member of staff must be employed at the school for which an application is being made. There is no mention in the paragraph of any exceptions to this requirement, however fair and sensible they might be thought to be.
14. The schools argue that the use of the singular form in paragraph 1.39 does not mean that they should not be able to take advantage of its provisions. They say,

*“Fleetville Infant and Fleetville Junior schools are in these circumstances, to all intents and purposes, **the school**. This is because there is in reality a single point of entry in the reception year, even though there are two points of formal admission.”*

15. I do not agree with this argument, for two reasons. Firstly, whilst it is the case that almost every child transfers as a matter of course from the infant to the junior school, parents have a right at this point to express a preference for another school. It is also possible that applications might be received for places at the junior school from looked after or previously looked after children and children with medical and social needs, who have a higher priority for places than those who attend the infant school. The oversubscription criteria for the two schools are different, as the junior school has the additional criterion of attendance at the infant school. Admissions to each school are administered separately, according to their own oversubscription criteria, and only those who make a formal application for a place at the junior school can be considered.
16. Secondly, despite their close working together and shared policies, the schools are entirely distinct institutions. Although the trust is the employer of staff and has ultimate responsibility for the performance of the schools, they undergo, for example, their own OfSTED inspections and their funding is calculated separately. They have their own national reference numbers. It is therefore inconceivable to me that where the Code refers to “*the school*”, it could be interpreted in any circumstances as meaning more than one individual school.

## **Summary of Findings**

17. Whilst I have some sympathy for the reasons put forward by the infant school for giving priority to children of staff employed at both of the linked schools, I consider that the plain meaning of the Code is that this priority can only be given to children of staff employed at the school for which an application is being made. The infant and junior schools are clearly two separate schools and admissions to them are administered separately. I therefore consider the arrangements to be in breach of the

Code and I uphold the objection.

**Determination**

18. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2019 determined by the local governing board, under delegated authority from Spiral Partnership Trust for Fleetville Infant & Nursery School, St Albans, Hertfordshire.
19. 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 within two months of the date of the determination.

Dated: 25 June 2018

Signed:

Schools Adjudicator: Peter Goringe