



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2156

Admission authority: William Hildyard Church of England Primary and Nursery School, Market Deeping, Lincolnshire

Date of decision: 8 November 2021

Determination

In accordance with section 88E of the School Standards and Framework Act 1998 (the Act), I approve the proposed variation to the admission arrangements determined by the governing board for William Hildyard Church of England Primary and Nursery School for September 2022.

I determine that for admission in September 2022 the faith-based oversubscription criteria will be as described in this determination.

I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination, unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised by 28 February 2022.

The referral

1. The governing board for William Hildyard Church of England Primary and Nursery School (the school) has referred a proposal for a variation to the admission arrangements for September 2022 (the arrangements) to the adjudicator. The school is a voluntary aided school for children aged 3 to 11 in Market Deeping in Lincolnshire. The school is within the area covered by Lincolnshire County Council (the local authority (LA)). It is a Church of England school within the Diocese of Lincoln (the diocese).

2. The school is part of the Aspire Federation along with St George's Church of England Primary School in Stamford. The variation requested has been made on behalf of both schools in the Federation. The variation as it relates to St George's Church of England Primary School is dealt with under a separate determination, case reference VAR2157.
3. The proposed variation is for changes to the faith-based oversubscription criterion and is requested in the light of the COVID-19 pandemic.

Jurisdiction and procedure

4. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which deals with variations to determined arrangements. Paragraphs 3.6 and 3.7 of the Code say (in so far as relevant here):

“3.6 Once admission arrangements have been determined for a particular school year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements. Admission authorities may propose other variations where they consider such changes to be necessary in view of a major change in circumstances. Such proposals **must** be referred to the Schools Adjudicator for approval, and the appropriate bodies notified. Where the local authority is the admission authority for a community or voluntary controlled school, it must consult the governing body of the school before making any reference.

3.7 Admission authorities **must** notify the appropriate bodies of all variations”.

5. The governing board has provided me with confirmation that the appropriate bodies have been notified. I find that the appropriate procedures were followed, and I am also satisfied that the proposed variation is within my jurisdiction. I am also satisfied that it is within my jurisdiction to consider the determined arrangements in accordance with my power under section 88I of the Act as they have come to my attention and determine whether or not they conform with the requirements relating to admissions and if not in what ways they do not so conform.
6. In considering the variation request, and matters under section 88I, I have had regard to all relevant legislation, and the School Admissions Code (the Code).
7. The information I have considered in reaching my decision included:
 - a. the referral from the governing board dated 28 March 2021, supporting documents and further information provided at my request;
 - b. the determined arrangements for 2022 and the proposed variation to those arrangements;

- c. comments on the proposed variation from the LA and diocese;
- d. comments from the LA on the matters arising under the 'Consideration of the arrangements' section; and
- e. information available on the websites of the LA, the school, and the Department for Education.

8. I have also taken account of information received during a telephone meeting with the Executive Headteacher of the school on 15 September 2021.

9. A revised Code came into effect on 1 September 2021. Since the variation request and the responses to it were framed in terms of the 2014 Code, I shall use the references to it which have been made by the parties to the case and will indicate only if the new Code differs in any respect. It is of course the revised version of the Code which is now in force.

10. When the arrangements for the school were determined, the 2014 Code then in force provided that children previously looked after in England and then adopted or made subject to a child arrangements or special guardianship order should have equal highest priority with looked after children in school admission arrangements (subject to certain exemptions in schools with a religious character). The new Code has extended the level of priority for looked after and previously looked after children to children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. All admission authorities were required to vary their admission arrangements accordingly by 1 September 2021. There was no requirement for this variation to be approved by the Office of the Schools Adjudicator (OSA). I have made my determination in this case on the basis that the admission authority will have varied its arrangements in order to comply with the new requirements as set out above.

The proposed variation and consideration of the proposed variation

11. Paragraph 3.6 of the Code (as above) requires that admission arrangements, once determined, may only be revised, that is changed or varied, if there is a major change of circumstance or certain other limited and specified circumstances. I will consider below whether the variation requested is justified by the change in circumstances.

12. Where the school is oversubscribed, priority may be given on the basis of faith. The school's arrangements take account of attendance at places of worship, under oversubscription criterion iii. During the COVID-19 pandemic places of public worship have at times been closed altogether and at other times not available for public worship or access to such worship has been restricted in the interests of public health. It is against that background that the request for a variation is made. Since the school's oversubscription criteria include priority on the basis of the frequency of attendance at Church, parents and their children are unable to meet these criteria under the terms of the school's arrangements. In consequence,

the proposed variation provides that attendance will only have been required at times when places of public worship are open for such public worship.

13. The proposed variation reads as follows: “In the event that during the period specified for attendance at worship the church has been closed for public worship and has not provided alternative premises for that worship, the requirements of these arrangements in relation to attendance will only apply to the period when the church or alternative premises have been available for public worship.”

14. It is beyond question that the COVID-19 pandemic has represented a major change of circumstances. I am satisfied that the proposed variation is a pragmatic and appropriate response. I approve the variation.

Consideration of the arrangements

15. Having considered the arrangements as a whole it appeared to me that the following matter does not conform with requirements of the Code and so I brought it to the attention of the governing board. This matter relates specifically to oversubscription criterion iv. (“Nearest School: measured by straight line distance”). The arrangements define ‘nearest school as: “This applies when the school is the nearest state funded school to the child’s address admitting children to the relevant year group: this is calculated by Lincolnshire County Council school admissions team using straight line distance.”

16. The concerns in respect of oversubscription criterion iv. are best explained by reference to the Office of the Schools Adjudicator Annual Report September 2018 to August 2019 (published January 2020), in which it was recorded:

“18. ... The effect of working out all the addresses for which a given school is the nearest is the creation of an area around the school. The boundaries of this area will depend on the location of other schools. If residence within the area affords priority for a place at the school within it then that area meets the Code’s definition of a catchment area as it is quite clearly “[a] geographical area, from which children may be afforded priority for admission to a particular school.”

19. The Code’s requirements as to catchment areas are clear and apply to catchment areas however they are created: they must be “reasonable and clearly defined.” [Paragraph 1.14 of the Code]. Adjudicators have found cases where admission arrangements based on “nearest school” either did not make clear how parents could establish which schools were included for the purpose of defining nearest schools or did not make it at all easy for parents to work out which the nearest school to their address actually was. ... It is also worth pointing out that an area generated on the “nearest school” basis cannot take account of the number of children living in that area and whether the school concerned will be able to accommodate them all should they apply there. Nor does it take account of boundaries such as rivers or major roads or of transport routes to the schools.”

17. The final part of paragraph 14 of the Code states, “Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.” In that context, the arrangements in respect of oversubscription criterion iv. do not currently address the following matters:

- What is the catchment area as defined by the use of the ‘nearest school’ oversubscription criterion? How do the arrangements indicate this area for parents?
- How does a parent easily work out if the school is the nearest school? In this context, I note that there are five other state funded primary schools within two miles of the postcode for the school; three of these are within one mile of the school’s postcode and one is very close indeed at 0.12 miles distant. It is not at all clear to me that in these circumstances parents will easily know which school their child has priority for on the basis of its being the nearest school.
- As Market Deeping is on the border of Lincolnshire and Cambridgeshire and close to the border with Rutland, how does this criterion work with the nearest schools over those borders?
- What happens if the nearest schools do not use the same approach? How would that school be taken into account in the calculation of the ‘nearest school’? If not, how would parents know if that is the case?

18. In my meeting with the Executive Headteacher of the school, I raised these matters. The Executive Headteacher explained that this criterion was based on the approach adopted by the LA in the arrangements it determines for voluntary controlled and community schools in the LA’s area.

19. I wrote to the LA requesting information on how parents are able to establish which school is the nearest to their address. The response stated: “... anyone interested in understanding which school is their nearest can contact the customer service centre for this information. Parents can also email schooladmissions@lincolnshire.gov.uk or ask at any Lincolnshire state funded school who will forward the request to the admissions team. Lincolnshire county council run this as an address search within the synergy system as this may come down to the position of the data point within a property.”

20. I am concerned by this response in that it does not address the requirement in paragraph 1.14 of the Code which requires a catchment area ‘to be clearly defined’. Whilst a useful service, the email response from the LA does not serve the requirements of the Code for the school. I will be taking up the more general issue of the use of ‘nearest school’ oversubscription criteria in Lincolnshire schools with the LA in due course. The determination on this issue will be set out in REF3887.

21. As the school is its own admission authority, it will have to address the matters raised here for its own arrangements. The governing board has told me that it will address these

matters, as permitted by paragraph 3.6 of the Code, which is welcomed. As the governing board has accepted that changes are required, I will not discuss them further other than to make clear that the Code requires that the arrangements be amended to address the points set out here. I have considered carefully how long I should allow the school for this. Paragraph 3.1 of the Code provides that arrangements must, where necessary, be revised to give effect to the determination of an adjudicator within two months of my decision unless the adjudicator specifies an alternative timescale. While the admission arrangements for this school are the responsibility of its governing board, it has to date acted in the main in step with those arrangements adopted by the LA for the schools for which the LA is the admission authority. As I explain above, the matters I have found not to be compliant for this school affect also many other schools in the area and will be addressed in the forthcoming determination REF3887. I cannot here pre-empt that determination, but I am sure that the school will wish to discuss matters with the LA and others. I am accordingly setting a deadline of 28 February 2022 for the arrangements to be revised. This does not, of course, affect the requested variation which comes into force immediately.

Determination

22. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the governing board for William Hildyard Church of England Primary and Nursery School for September 2022.

23. I determine that for admission in September 2022 the faith-based oversubscription criteria will be as described in this determination.

24. I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

25. 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, unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised by 28 February 2022.

Dated: 8 November 2021

Signed:

Schools adjudicator: Dr Robert Cawley