



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3796

Objector: A parent

Admission authority: Yavneh College Academy Trust for Yavneh College in Borehamwood, Hertfordshire

Date of decision: 31 August 2021

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2022 determined by Yavneh College Academy Trust for Yavneh College in Borehamwood and the local authority area of Hertfordshire County Council.

I have also considered the arrangements in accordance with section 88I(5) and find another matter which does not conform with the requirements relating to admission arrangements in the way 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.

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 a parent about the admission arrangements for September 2022 (the arrangements) for Yavneh College (the school), an academy school with a Jewish religious character for students aged between 11 and 18. The objection is to a priority for those who attended Yavneh Primary School (the primary school) in the oversubscription criteria.

2. The parties to the objection are:

2.1. the parent who made the objection (the objector);

- 2.2. Yavneh College Academy Trust which is the admission authority for the school and the primary school (the trust);
- 2.3. the Office of the Chief Rabbi which is the religious authority for the school (the religious authority); and
- 2.4. Hertfordshire County Council which is the local authority for the area in which the school is located (the local authority).

Jurisdiction

3. The terms of the academy agreement between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the trust on that basis. The objector submitted his objection to these determined arrangements on 18 April 2021. 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. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

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. a copy of the minutes of the meeting of the trust at which the arrangements were determined;
 - b. a copy of the determined arrangements including the supplementary information form and certificate of religious practice (CRP);
 - c. the objector's form of objection and his comments on information provided;
 - d. the trust's response to the objection and further comments made by the objector, and information provided in response to my enquiries;
 - e. comments by the local authority on the objection;
 - f. comments by the religious authority on the objection and the guidance on admissions to schools with a Jewish character provided by the religious authority;
 - g. a map of the area in which the school is situated showing the home location of the children admitted to Year 7 (Y7) in 2020 and a map showing the address point for the school and the primary school;
 - h. information on the numbers of children admitted to the school and the primary school in recent years, the number of children admitted under each oversubscription criterion to reception year (YR) at the primary school in 2019

and 2020 and allocated a place under each criterion for admission in 2021; the furthest distance of the home from the school and the primary school that children have been admitted to the schools where distance has been taken into account in 2019, 2020 and 2021; and

- i. information available on the websites for the school and the Department for Education (the DfE).

The Objection

6. The objection is to a priority for children attending the primary school in the oversubscription criteria. The objector says that it is not reasonable or justifiable to give a priority to those who attend the primary school as there is a disproportionate disadvantage to those who are not able to attend the primary school. Paragraph 14 of the Code requires that arrangements are fair, and paragraph 1.8 requires that oversubscription criteria are reasonable. Paragraph 1.15 says, “The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.” These are the most relevant parts of the Code against which I will consider the objection.

Background

7. The school has a Jewish religious character. According to the DfE website, ‘Find and compare schools in England’ (the DfE website), there are five other state funded secondary schools with a Jewish character within ten miles of the school; two of which only admit girls and one only admits boys. I note that not all of these have the same religious authority as the school or primary school and that they do not all cater primarily for the same parts of the Jewish community. The same website records 164 state funded secondary schools in total within ten miles of the school. The school’s website says, “We are a modern orthodox school which welcomes students from across the spectrum of Jewish practice.”

8. The school opened in 2006 and converted to become an academy in July 2011. The previous school was judged by Ofsted to be outstanding in March 2011 and there has not been an inspection by Ofsted since then. The trust opened the primary school as a free school on the same site as the school in September 2016. The primary school is for children aged four to eleven and admitted children to YR from 2016 and in the following years so the first year that the primary school will have children seeking a place at a secondary school, because they will be in Year 6 (Y6), will be for September 2022. The same address location point is used for both schools so measurements of distances of homes to the two schools are the same. The primary school was judged to be outstanding by Ofsted in 2019.

9. As with other free schools that have a religious character, the primary school’s funding agreement requires that, if oversubscribed, at least 50 per cent of its places each year will be allocated without reference to faith-based admission criteria. The primary school has a published admission number (PAN) of 60 and has admitted at least 60

children every year since 2016. The oversubscription criteria for the primary school are in summary:

- 1) Looked after and previously looked after children
- 2) Children with a sibling at the primary school
- 3) Children of staff
- 4) Of the remaining places up to half will be allocated to those who achieve four points on the CRP
- 5) All other children.

If there is oversubscription in any criterion then places will be allocated based on proximity of the home to the school with the nearest having priority.

10. The PAN for the school is 150. The school was oversubscribed with first preferences for admissions in 2019, 2020 and 2021. In 2019 there were 180 children admitted to Y7 and 155 in 2020. For admissions in 2021, 181 children have been allocated places. The oversubscription criteria for the school are, in summary:

- A. Looked after and previously looked after children who obtain a minimum of four points on the school's CRP
- B. Other children who obtain a minimum of four points on the school's CRP
- C. Looked after and previously looked after children without a minimum of four points on the school's CRP
- D. Other children without a minimum of four points on the school's CRP.

If the PAN is reached so that oversubscription arises within criterion B or D then the places are allocated in the following order:

- i. Siblings of children attending the school at the deadline for applications
- ii. Children attending the primary school at the deadline for applications
- iii. Children of staff
- iv. Other children.

11. If there remains oversubscription within any of these criteria i. – iv., then priority is given to the child whose home is nearest to the school. The final tie-breaker is random allocation. Both the objector and the trust observed that the trust could have applied for the primary school and the school to be one school for children aged four to eighteen (often known as an all-through school) with a second point of admission at age 11, that is to Y7, Had such an approach been taken, the children already on roll in year 6 would have moved into Y7 just as they had already moved from year 4 to year 5 for example. There would

have been no question of any children already on roll not being able to continue at the school. However, the trust did not choose this approach and it is not for me to consider the potential implications of what could have been.

Consideration of Case

12. The objector is a parent whose children were not able to gain admission to the primary school and he believes that the priority given to those attending the primary school in the arrangements will lessen the chances of his children being able to attend the school. The objector said that the naming of the primary school as a feeder school to the school was unreasonable and so I have tested this against the relevant requirements of the Code and in particular paragraphs 14, 1.8 and 1.15 as described above.

13. Paragraph 1.15 of the Code says, “The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.” I find the naming of the primary school in the admission arrangements is transparent as it is clearly stated. I have summarised the objector’s argument that giving priority to those attending the primary school is unreasonable as follows.

13.1. The primary school is so oversubscribed that even those who live less than 800 metres from the primary school are not admitted and, in order to attend a primary school with a Jewish religious character, children have to travel some distance. These same children are less likely to be able to gain admission to the school as priority is given to those attending the primary school and therefore the objector believes that these children are doubly disadvantaged as they may again have to travel long distances in order to attend a secondary school with a Jewish religious character.

13.2. The priority given to children attending the primary school is not justified as it links admissions to YR to admissions at Y7.

13.3. The PAN for the school is 150 and the PAN for the primary school is 60 so there could be up to 90 children admitted to the school who have not attended the primary school and therefore any argument on the basis of providing continuity for children is flawed.

14. The objector concludes “We believe that Yavneh College have actively chosen to confer additional advantage to the children attending the primary school whilst simply ignoring the children who weren’t so lucky to get into the primary school, this decision is arbitrary and given the difference in the PAN numbers between the two schools, we believe cannot be justified as reasonable.”

15. The trust consulted on changes to its arrangements for admissions in 2022 and the changes included the introduction of a priority for those who were attending the primary school. The school’s website includes a response by the trust following the consultation. This explains that several responses to the consultation raised concerns that those who lived closest to the school may not gain admission because of the priority given to those

already admitted to the primary school. The website entry said, “In reaching their decision the Trustees ... took account of the fact that pupils at the Primary School are children who at the time of admission to the Primary School are those who live the closest to the School. As a consequence, the Trustees of the [multi-academy trust] have determined that they are the prospective pupils most likely to gain admission into the School in the event the School is oversubscribed and therefore by making the Primary School a feeder school it will not unduly disadvantage other children seeking admission to the School who are not pupils at the Primary School at the date of their application to the School.”

16. I asked the trust to explain its reasons for naming the primary school as a feeder school. The response was, “The Trustees proposed this change to ensure and facilitate:

- i) Continuity of education to the children at Yavneh Primary School; and
- ii) The viability of Yavneh College.”

17. The local authority provided comments on the objection and said, “Yavneh College and Yavneh Primary school are situated on the same school site, have the same faith requirements and belong to the same Multi Academy Trust. The inclusion of Yavneh Primary as a “feeder” school is similar, in the view of the County Council, to the inclusion of named catholic primary schools as feeders to catholic secondary schools. It could be argued that the inclusion of Yavneh Primary is more justifiable because the schools are co-located on the same site as well as having the same faith requirements.”

18. The trust further said, “The [primary school] and [the school] are of the same faith, share the same site, ethos and values, and even share the same name. Distance is measured from exactly the same point within the site for both schools when applying their respective admission criteria, and both schools use distance as their tie breaker (with random allocation where distances are equal), the intention being that both schools draw the majority of their pupils from the local area.”

19. The Code allows the naming of feeder schools in arrangements. The objector has argued that it is not reasonable to do so in this case. The primary school is on the same site as the school and the two schools have the same religious ethos and the same admission authority. These are reasonable grounds for the naming of the primary school as a feeder school. I accordingly find that the requirements of paragraph 1.15 are met.

20. I turn now to consider the effects of the inclusion of the primary school as a feeder and whether these are unreasonable or unfair. As described above, paragraph 14 of the Code says that admission arrangements **must** be fair, and paragraph 1.8 of the Code says that oversubscription criteria **must** be reasonable.

21. The school is oversubscribed, and the trust said, “Unfortunately, by their very nature, oversubscription criteria will disadvantage some children who do not achieve a place. This is inevitable when there is substantially more demand for places than there are places available.” When there are more applications than places for any school then the oversubscription criteria are used to discriminate between applicants and some families will

be disappointed and disadvantaged. The objector has argued that in this case some families will be unfairly disadvantaged because giving priority to those children who attend the primary school gives them what he describes as a “disproportionate” advantage. The basis of the argument is that those who live near to the school will not gain admission as others have higher priority as they have the advantage of having been admitted to the primary school. He further argues that children can be doubly disadvantaged as they are not admitted to the school because they were not admitted to the primary school. I understand that what is meant here is, to give an example, that child A with at least four points on the CRP living, say, 800 metres from the school and who attended the primary school will have higher priority for a place than child B with at least four points on the CRP who lives 801 metres from the school but was not able to attend the primary school following the application of the primary school’s oversubscription criteria. The double disadvantage, as I understand it, is that the parents of child B wanted child B to attend the primary school but child B was not admitted because of the high demand for the primary school and may now not be able to gain admission to the school either.

22. In order to explore this argument, I asked the local authority to provide me with information on the admissions to the primary school and the school including the distance of the home of the last child admitted on the basis of distance to the primary school and school. I note that these figures are not directly comparable as the children are admitted to YR at the primary school and to Y7 at the school and it will be another six years before the YR child requires a place at secondary school. I also note that the trust has admitted at least 30 children over its PAN for the school in 2019 and 2021 and so was able to admit children from further away than would have been the case otherwise.

Table 1: distance of home address of the last child admitted or allocated a place under the distance priority

Year of admission	Distance of home to the primary school in metres	Distance of home to the school in metres
2019	1057.28	1622.94
2020	1016.16	2143.44
2021	726.18 (allocated)	3906.20 (allocated)

23. Table 1 shows that for each cohort the last child admitted under the distance of the home to the school criterion to the secondary school lives some distance farther from the school than the last child admitted under the parallel criterion to the primary school. As the same address point is used by both schools it appears that the children admitted to the primary school (having met the faith requirements) under the distance criterion would also have been admitted to the school, whether they had attended the primary school or not.

24. The objector, having seen this information, argued that some parents may move further from the school and that “These children will then enjoy an advantage over children who live closer to the school but who did not gain entry to the primary school.” In addition, the objector said that as the children admitted to the primary school would be admitted to

the school because of their proximity to the school, that the policy seemed designed to make sure that children whose families moved away from the school could still have priority for admission to the school and that the objector did not consider this to be proportionate, or, in the terms of the Code, fair. Of course, a similar argument could be made that a sibling of a child already attending the school would also retain a higher priority, even if the family moved away, than a child who did not have a sibling at the school.

25. The trust explained that distance was only considered when there was oversubscription (that is when PAN is reached) within any oversubscription criterion category; distance from the school is not in itself, in the school's view, an oversubscription criterion for the school. However, it is clear to me that distance of the home from the school is a crucial factor in allocating places; it is after all a main way in which the school will rank applicants who fall within the category in which PAN has generally been reached, that is those children with at least four points on a CRP but who have no sibling at the school. It is in this sense determinative of who does and who does not secure a place. No child without at least four points on a CRP has been admitted to the school in recent years. The trust also said that the possibility of a parent moving further from a school after the admission of a child to the primary school "is simply the nature of any admission arrangements that do not admit solely by distance after looked after and previously looked after children (i.e. do not give priority to siblings, children of staff, etc.), and is difficult to prevent."

26. The objector's line of enquiry led the trust to consider the effect of its oversubscription criteria and it provided figures which showed that the numbers of children who have been allocated places because they had a CRP and were siblings of children already attending the school were 82 in 2019, 72 in 2020 and 90 in 2021. As 2021 is the nearest year to compare for admissions in 2022 I will consider the detail for admissions in 2021 further. The trust has allocated 30 over its PAN for admissions in 2021 by allocating 180 places. This means that (after allocations already made for children in higher categories (such as siblings of children already at the school or with an education health and care plan), 83 places were available for other children under the remaining criteria. The trust said, "many pupils attending [the primary school] have priority under higher categories (e.g. as siblings). Some pupils [at the primary school] will not have a CRP. Some children will transfer to local grammar schools, and others to private schools. It is very unlikely that anywhere near 60 children will be admitted solely under the feeder school category." Admissions in 2022 will be the first year that a child from the primary school will be applying for a secondary school place so there is no information on how many were admitted to the school under this priority in previous years.

27. In 2016, which is the year group which will be admitted to secondary school education in 2022, there were three children admitted to the primary school without a CRP although at least half of the children will not have been admitted under a criterion requiring a CRP (although they may hold a CRP with four points). In the intervening years the number of children admitted to the primary school without a CRP has varied between zero and five. Therefore, most of the children attending the primary school have a CRP with at least four points and would thus fall to be considered under oversubscription category B ii. for admission to the school.

28. If admissions in 2021 had been only up to the PAN (150 children as opposed to 180) then 53 places would have been available after sibling and higher category allocations had been made; theoretically all 53 places could have been allocated to children who were attending the primary school and even some attending the primary school might not have secured a place. For this to happen, it would need to have been the case that all or nearly all the children admitted to the school because they had an older sibling there did not attend the primary school. This is unlikely but it is also the case that the situation feared by the objector that no places would be available after places had been allocated to those attending the primary school or higher categories, could theoretically come to pass. Given, however, that both the schools use distance in the way they do and measured to the same point, the effect of the feeder school criterion is extremely limited. The only differences it can make to which children with at least four points on a CRP gain a place are:

- A child whose family has moved further from the school but continued to attend the primary school will retain the higher priority;
- A child whose family moves to the area and so close to the primary school that he or she would have gained admission in YR will not enjoy the higher priority.

29. With these exceptions, the feeder school criterion makes no difference.

30. Against this background, and recognising that some families, albeit few, may be disadvantaged, I have considered carefully whether those not attending the primary school are unfairly disadvantaged.

31. If the parent of a child living near the school wished for a secondary school place, then there are (according to the DfE website) five state funded secondary schools within three miles of the school and 163 within ten miles. Five of the secondary schools within ten miles have Jewish characters (as described above), although I recognise that not all of these have the same religious authority or ethos as the school; three of these are fewer than five miles away. I recognise that the characters of schools vary, including those with a Jewish religious character, but I have seen no evidence that a child living close to the school is unfairly disadvantaged if they are not able to attend the school; there are other options available within a reasonable travelling distance for a secondary school aged child.

32. Paragraph 1.9 of the Code says, "It is for admission authorities to formulate their admission arrangements" and describes matters that **must not** be included in oversubscription criteria. None of these prohibited matters is included in the oversubscription criteria for the school. There are various oversubscription criteria that the trust could have chosen to differentiate between those offered a place and those not offered a place; that is the prerogative of the admission authority as long as it operates within the requirements of the Code. It is true that those children who have been admitted to the primary school, whether they move further away from the school or not, will have a higher priority than those who have not been admitted but I have considered these matters against the requirements of paragraphs 14 and 1.8 of the Code referred to above and I see no

evidence of an unfair disadvantage for those who were unable to gain admission to the primary school.

33. It is reasonable for the trust to name the primary school as a feeder school to the school because both schools have the same religious character, are on the same site and both have the same trust as the admission authority. I have considered the effects of the arrangements and similarly do not find that they have an unreasonable or unfair effect. I do not uphold the objection.

Other Matters

34. Having considered the arrangements as a whole I raised the following matter with trust. The arrangements say, "In the event of over-subscription within each of the above categories B and D, places will be offered in accordance with the following further criteria" and further criteria are described. A and C are the priorities for looked after and previously looked after children described above. It may not be clear, as required by paragraph 14 of the Code, what the process is when there is oversubscription within A or C. The trust responded by saying that there had never been a need to prioritise within either of these categories. This may be the case, but it could occur and so the arrangements need to be clear how it would prioritise in these circumstances. The trust has said it will address this matter and this is welcomed.

Determination

35. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2022 determined by Yavneh College Academy Trust for Yavneh College in Borehamwood and the local authority area of Hertfordshire County Council.

36. I have also considered the arrangements in accordance with section 88I(5) and find is another matter which does not conform with the requirements relating to admission arrangements in the way set out in this determination.

37. 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: 31 August 2021

Signed:

Schools Adjudicator: Deborah Pritchard