



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA2980

Objector: Ad Astra Infant School, Canford Heath, Poole

Admission Authority: Aspirations Academies Trust for Magna Academy, Canford Heath, Poole

Date of decision: 18 September 2015

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the Aspirations Academies Trust for Magna Academy.

I have also considered the arrangements in accordance with section 88I(5). I determine there are other matters as set out in this determination 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 within two months.

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 Ad Astra Infant School (the objector) about the admission arrangements for September 2016 (the arrangements) for Magna Academy (the school), an secondary academy school for pupils aged between 11 and 18 in Canford Heath, Poole.
2. The objector believes that the use of the named feeder schools in the oversubscription criteria is not compliant with the School Admissions Code (the Code) because the feeder schools are further away than local schools and this makes it less likely that local children who live nearer will be allocated a place at the school. The objector also objects to the oversubscription criterion which gives priority to children of staff because it reduces the number of places available to local children.

Jurisdiction

3. The terms of the academy agreement between the Aspirations Academies 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 is the admission authority for the school, on that basis. The objector submitted its objection to the determined arrangements on 29 June 2015. 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.

4. I have used my power under section 88I of the Act to consider the arrangements as a whole and have included within that consideration matters raised by the local authority in the school's varied arrangements that were sent to me on 17 July 2015.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the Code.

6. The documents I have considered in reaching my decision include:

- a. the objector's form of objection dated 29 June 2015 and subsequent communications;
- b. the local authority's responses to the objection; further information and related correspondence;
- c. the school's response to the objection; to the matters raised by me and by the local authority; and supporting documents;
- d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2016;
- e. maps of the area identifying relevant schools;
- f. information on the most recent consultation;
- g. extracts of the minutes of the meeting at which the trust determined the arrangements;
- h. "*Free Schools Admissions Guidance for Mainstream Schools*" (the guidance) published by the Department for Education in September 2014;
- i. a copy of the arrangements determined on 13 March 2015; and
- j. a copy of the varied arrangements provided to me on 17 July 2015 (the varied arrangements).

The Objection

7. The objection has two parts. The first is that the arrangements give priority within the oversubscription criteria to two primary schools as feeder schools as they are part of the same trust as the school when there are several nearer primary schools. The objection refers to the "*Free Schools Admissions Guidance for Mainstream Schools*" provided by the Department for Education in September 2014 which gives examples of arrangements which may not comply with the Code including, "*a feeder school system that bypassed local schools in favour of ones further away could breach these provisions.*" On this basis the objector says that the arrangements may not be compliant with paragraph 1.15 of the Code which requires that feeder schools

should be named on reasonable grounds.

8. The second part of the objection is that the oversubscription criteria give priority to children of staff which may prevent children who live closer to the school being allocated a place.

Other Matters

9. In considering the admission arrangements for the school the following matters came to my attention which may contravene the Code. The figures in brackets refer to the main relevant paragraph of the Code.

- a. The use of a literacy test for banding may not be a true test of ability (1.31).
- b. The arrangements are not clear in relation to various matters including that it is not clear that looked after and previously looked after children need not take the test to be allocated a place (1.7); the information on banding refers to the national ability range and the ability range of those who took the test (14); unclear information on allocation when a band is oversubscribed and there are spaces in other bands (14); the use of the term '*catchment area*' when there is no catchment area (14); and lack of clarity on what is the final tie-breaker (14).
- c. The arrangements for post 16 education appear to have: no application form for external applicants; oversubscription criteria for external applicants which are based on selection by ability (1.9d); and use interviews for selection (1.9m and 2.6). There is also evidence that the school takes account of previous behaviour, application and attendance when allocating places for admission (1.9a and 1.9g).

Background

10. Magna Academy became part of the Aspirations Academies Trust on 1 September 2013. There was a predecessor school on the same site at Canford Heath in Poole. The school was judged outstanding by Ofsted in June 2015. The school has a published admission number (PAN) of 180. The school was not oversubscribed with on time applications for September 2015, but in July 2015 had all 180 places allocated with some children on the waiting list. The number of children in the area is rising and it is predicted that in 2019 there will be insufficient secondary school places in Poole based on current capacity. The final admission arrangements for the predecessor school included priority being given to those who lived within a catchment area which covered the area called Canford Heath.

11. Ad Astra Infant School, the objector, is part of the TEACH Trust with Haymoor Junior School, and Canford Heath Infant and Junior Schools. The school is about a quarter of a mile from Haymoor Junior School and around one mile from Canford Junior School. It allocated places to 45 per cent of Canford Heath Junior School's pupils and 67 per cent of Haymoor Junior School's pupils for September 2015. The local authority has described how

the previous catchment area for the school matched that of the four primary schools which are now in the TEACH Trust, and that the sum of the PANs of the junior schools was a good fit for the number of places at the secondary school once the selective system and moves to faith schools were taken into account. The sum of the PANs of the junior schools in the TEACH Trust is 190. The sum of the PANs of the named feeder schools is 150.

12. The trust determined the arrangements for the school and other trust schools on 13 March 2015. Objections were made against the admission arrangements of other schools within the trust and, as part of the process, meetings were held with the adjudicator. Following these meetings varied arrangements were agreed by the trust for Magna Academy and other trust schools. The trust is permitted by paragraph 3.6 of the Code to vary its determined arrangements to comply with a mandatory requirement of the Code. The varied arrangements for this school were provided to the adjudicator on 17 July 2015. The matters raised in the objection have not been changed in the varied arrangements and I have taken the varied arrangements into account in this determination. The varied arrangements have some sections which are marked in red which appear to indicate the changes made to the determined arrangements although not all changes have been highlighted in this way. I have underlined the parts marked in red when I quote them below.

13. The trust has referred to its previous responses to questions to the adjudicator in relation to another school within the trust in response to this objection and my questions. I have taken these communications into account in this determination.

14. It is the usual procedure that when an adjudicator considers a case that papers received from one party to the case are copied to all the others. In this instance the local authority commented on matters in the varied arrangements and I have included the matters that were brought to my attention in my consideration of other matters.

15. The varied arrangements explain that all applicants have to sit a literacy test and that the score from the test will enable applicants to be allocated to one of three ability bands. If there is oversubscription, *“Applications will then be considered against the ability band in which the applicant is placed by the literacy test score.”* The oversubscription criteria in priority order (I have numbered these for ease of reference) in the varied arrangements are:

1. *“Looked after children (Note 1) and all previously looked after children. Previously looked after children are children who were looked after, but ceased to be so because they were adopted, (Note 2) (or became subject to a child arrangements order (Note 3) or special guardianship order (Note 4)). Such students will be given top priority in each band before the oversubscription criteria is applied.*
2. *Children with a sibling already at the Academy, ordered by shortest distance between home and Magna Academy Poole (see Note 5, Note 6 and Note 7)*

3. *Children who currently attend a Primary Aspirations Academy*, currently Ocean Academy Poole and Jewell Academy Bournemouth, ordered by shortest distance between home and Magna Academy Poole (see Notes 6 and 7). *The philosophy of the Aspirations Academies Trust considers all-through, age 2-19 education to be very effective practice and brings many educational benefits to our young people and their parents. Magna Academy works very closely with the staff and pupils at both Ocean Academy Poole and Jewell Academy Bournemouth with many shared staff and joint initiatives in place.*
4. *Children of staff in 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. *children of newly appointed staff, filling a post with a "demonstrable skills shortage"*
5. *Children who have the shortest distance between home and Magna Academy Poole (see Notes 6 and 7)."*

Consideration of Factors

16. The first part of the objection is that the naming of feeder schools in the oversubscription criteria was not made on reasonable grounds. Paragraph 1.9b) prohibits an admission authority from taking into account any school previously attended by an applicant unless it is a named feeder school. Paragraph 1.15 sets out the terms to be met for naming a feeder school, it 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."*

17. The objection is that these oversubscription criteria give lower priority to pupils attending schools in the local Canford Heath area which is where the school is situated. The objector refers to the guidance and says that they understand that an admissions policy can be judged *'non-compliant'* if the school sets a catchment that sought to exclude a local area, especially if areas further away from the school were given priority or if a feeder school system was promoted that bypassed local schools in favour of ones further away. The objector reports the guidance as saying that *"it is a requirement of the Academies Act (2010) that Academies (including Free schools) provide places for children of all abilities, the majority of whom are from the 'area.' This means that their admission arrangements must allow for over 50% of pupils to be from the 'area'. The area is not actually defined in law but guidance states that, for pupils over 8 years old, a radius of 3 miles would be deemed reasonable for the definition of area."*

18. The named feeder schools are Ocean Academy Poole and Jewell Academy Bournemouth. Ocean Academy is a junior school that accepted its first pupils in year 3 in September 2015. This group will become the first year 6 group at that school able to apply for a secondary school place and will transfer to secondary education in September 2019. It is 2.7 miles from the

school. Jewell Academy is a primary school that opened in September 2013 when it had its first intake into reception. This group will become the first year 6 group at that school and will transfer to secondary education in 2019.

19. The arrangements under consideration are for admission in September 2016 when there will not be any pupils in either of the named schools in year 6 and thus no pupils to transfer to secondary school. I therefore make no comment on the objector's reasons for saying the arrangements are unreasonable. However, it is not reasonable to name a school as a feeder school for admissions in 2016 when there are no children at that school who will be eligible to join the school or any other secondary school. Paragraph 14 of the Code requires arrangements to be clear. To include these schools makes the arrangements misleading as there are no eligible children at those schools and therefore unclear for parents seeking a place for their child in 2016. Arrangements for admission in September 2019 when there will be children transferring to a secondary school from these schools will need to be determined the previous year and will need to comply with the Code that is in force at that time. I uphold the objection to the inclusion of the feeder schools in the 2016 arrangements.

20. The second part of the objection is that giving priority to the children of staff is unfair as it reduces the number of places available for children who live more locally. There is no evidence that including the priority for children of staff would unreasonably reduce the number of places for more local children. Paragraph 1.39 of the Code permits that oversubscription criteria can include priority for the children of staff. The criterion in the oversubscription criteria is for, "*Children of staff in the following circumstances:*

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
children of newly appointed staff, filling a post with a "demonstrable skills shortage"

21. The wording in the oversubscription criteria is similar to the wording in paragraph 1.39 which also explains that priority can be given in either or both of these circumstances. The wording in the arrangements retains that option and does not make it clear whether both criteria have to be applied or just one. This is not clear for parents considering applying for a place at the school and so does not conform with the Code in this regard. The Code gives permission for admission authorities to give priority to the children of staff but the arrangements are not clear. I partially uphold this part of the objection.

Other matters

22. The school uses banding which is a form of selection by ability permitted by the Code. The school uses literacy tests for its banding tests. Paragraph 1.31 of the Code says, "*Tests for all forms of selection **must be clear, objective, and give an accurate reflection of the child's ability or aptitude, irrespective of sex, race, or disability. It is for the admission authority to decide the content of the test, providing that the test is a true test of***

aptitude or ability.” Evidence provided by the trust demonstrates that an assessment of literacy helps the school put the right support in place for its pupils. It did not provide evidence that testing literacy is a true test of ability. Tests on the basis solely of literacy may also not accurately measure the ability of a child for whom English is an additional language. The school does not conform with the Code in regard to using tests that are a true test of ability.

23. The arrangements said, “*Students who make late applications and/or did not take the ability tests will only be considered if there are places remaining once allocations have been made to all those who applied on time and sat the tests. The only exceptions to this rule will be children with Statements of Special Educational Needs and looked after or former looked after children.*” The varied arrangements do not contain these lines and say, “*It is not compulsory for children whose statement of Special Educational Needs (SEN) or Education, Health and Care (EHC) plan names the school to sit the literacy test, however, it is strongly recommended as the test will enable appropriate interventions and support to be readily available from the start of term.*” This change does not make it clear that places **must** be allocated for children who have been looked after or who have been previously looked after whether they have sat the tests or not. This does not comply with paragraph 1.7 of the Code which requires that oversubscription criteria **must** give the highest priority to looked after and previously looked after children.

24. The varied arrangements are not consistent as they contain references to using both the national ability range and the ability range of those who took the tests as the basis for the banding. The arrangements **must** be clear to comply with paragraph 14 of the Code, but this is unclear and so does not conform with the Code.

25. The varied arrangements read, “*If at the end of this process there are unallocated places in any band these will be filled by unallocated applicants from the next nearest band(s) using the same allocation criteria set out above. If the middle band has unallocated places and there are unallocated pupils in both the two other bands then each alternate place will be filled by either the low band or the high band, starting with the low band. This process will be conducted randomly through the use of an electronic random sorter.*” This description of the process is unclear as there is reference to both applying the oversubscription criteria and to using a random sorter. It may mean that the oversubscription criteria will be used and then if there is a tie for the last place random allocation will be used, or it may not mean this. As presented the arrangements are not clear and therefore do not conform with the Code.

26. When explaining the process for late applications the varied arrangements refer to what would happen if a family were to move into the ‘*catchment area.*’ The school does not have a catchment area and the use of this term contributes to making the arrangements unclear.

27. There is no tie-breaker in the varied arrangements. Paragraph 1.8 of the Code says that, “*Admission arrangements **must** include an effective, clear*

and fair tie-breaker to decide between two applications that cannot otherwise be separated." The use of the random sorter may be intended to be used as a tie-breaker but this is not stated and therefore the arrangements are unclear.

28. The school admits external students for post 16 education. The application form that is on the school's website is designed for internal applicants stating their preferences for options and would not be appropriate for external students applying to be admitted to the school. There is no other application form available on the website. This makes the arrangements incomplete and therefore they do not conform with paragraph 1.47 of the Code.

29. The arrangements for post 16 education had oversubscription criteria which included as priority 3, *"Those who have achieved the highest Capped Point Score* (*CAP = the point score achieved from best 8 GCSEs)."* This would introduce a new form of selection and would not conform with paragraph 1.9d. The varied arrangements no longer include this criterion and therefore no longer contravene the Code in this matter.

30. The school's sixth form information booklet has a timetable which includes interviews. Interviews as part of the process of allocation of places are prohibited by paragraphs 1.9m and 2.6 of the Code. A meeting can be held to discuss options and courses, but this cannot form any part of the decision process on whether to offer the applicant a place. The school's prospectus also says, *"In addition to the academic entry criteria, a good record of behaviour, application and attendance is also expected."* Paragraph 1.9a of the Code says that admission authorities **must not** *"place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements."* Paragraph 1.9g says admission authorities **must not**, *"take account of reports from previous schools about children's past behaviour, attendance, attitude or achievement."* The school's arrangements do not conform with the Code in these matters.

Conclusion

31. The arrangements have oversubscription criteria which include feeder schools which will have no pupils able to take up places at the school until 2019. This is unreasonable as it renders the arrangements unclear as there cannot be any applicants from those schools. I uphold the objection to the use of the named feeder schools in the arrangements. I partially uphold the objection with regard to the oversubscription criterion based on children of staff as this is permitted by the Code but the arrangements are not clear.

32. 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 detailed above do not comply with the Code.

Determination

33. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the Aspirations Academies Trust for Magna Academy.

34. I have also considered the arrangements in accordance with section 88I(5). I determine there are other matters as set out in this determination that do not conform with the requirements relating to admission arrangements.

35. 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.

Dated: 18 September 2015

Signed:

Schools Adjudicator: Mrs Deborah Pritchard