



DETERMINATION

Case reference: ADA3240

Referrer: A parent

Admission Authority: The Academy Trust for Midfield Primary School, Orpington

Date of decision: 11 October 2016

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I determine that the admission arrangements determined by the governing body on behalf of the academy trust for Midfield Primary School for September 2017 conform with the requirements relating to admission arrangements.

The referral

1. Under section 88I(5) of the School Standards and Framework Act 1998, (the Act), a referral has been made to the Office of the Schools Adjudicator (OSA) by a parent (the referrer) about the admission arrangements for Midfield Primary School, an academy school for boys and girls aged 3 to 11 years in Orpington. The referral relates to whether the school's arrangements for admissions in September 2017 comply with the School Admissions Code (the Code) with respect to the determination of the arrangements (paragraph 1.46); the option of part-time admission of children below compulsory school age (paragraph 2.16(c)); the admission of children outside their normal age group (paragraph 2.17); and the requirement of a final tie-breaker (paragraph 1.8).
2. The school is located in the London Borough of Bromley and Bromley Council (the local authority) and therefore the local authority is a party to this referral.

Jurisdiction

3. The terms of the funding agreement between the academy trust for Midfield Primary School (the trust) and the Secretary of State for Education require that the admissions policy and arrangements for the schools are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing body of the school on behalf of the trust, which is the admission authority for the school, on 17 March 2016

on that basis. The referral was made on 11 July 2016 which was after the deadline of 15 May 2016 for making objections to determined admission arrangements for 2017 but I have used my power under section 88I of the Act to consider the arrangements as they have been brought to my attention. I am satisfied that I have the jurisdiction to consider the arrangements on this basis.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the Code.
5. The documents I have considered in reaching my decision include:
 - a. the letter from the referrer dated 11 July 2016;
 - b. the school's response of 7 September, supporting documents and subsequent correspondence;
 - c. the local authority's comments sent by email on 26 July 2016;
 - d. the school's funding agreement;
 - e. a copy of the determined arrangements for 2017 downloaded from the school's website at the time of the referral;
 - f. the minutes of the meeting of the governing body on 17 March 2016 at which the 2017 arrangements were determined;
 - g. admissions data from the local authority for the period 2014- 2016 sent by email on 28 September 2016; and
 - h. a copy of the 2017 arrangements amended to comply with the Code, supplied by the school on 3 October 2016.
6. I arranged a meeting with the school and the local authority on 22 September 2016 (the meeting). The meeting was constructive. I have had regard to the representations made to me at the meeting and correspondence submitted afterwards including a copy of the amended arrangements as any aspects which appeared to which contravene the Code could be amended immediately by the admission authority as a permitted variation under paragraph 3.6 of the Code.

The Referral

7. The referral concerns whether the school's arrangements comply with the Code with respect to the following matters (relevant paragraph of the Code in brackets):
 - the determination of the arrangements (1.46);
 - the option that parents may choose for their child to start school on a part-time basis until the child reaches compulsory school age (2.16(c));
 - that the admission arrangements must make clear the process by

which parents may request admission for their child out of the normal age group (2.17); and

- the requirement that a tie-breaker must be included in the arrangements to decide between two applications that cannot otherwise be separated (1.8).

Background

8. Midfield Primary School became an academy for boys and girls aged 3 to 11 years on 1 January 2015. The school has a published admission number (PAN) of 60. The school has a nursery unit of 26 full time equivalent places and there are 18 places available in the school's specialist resource provision known as "The Tree House" for children aged 4 to 11 years with autistic spectrum disorder. Places in the unit are allocated on the basis of children's special educational needs and not through the school's admission arrangements.
9. The 2017 arrangements on the school's website at the time of the referral stated that if there are more applications than the 60 places available in the reception year (Year R), then the oversubscription criteria, which I have summarised below, will be applied:
 - i. Looked after children (children in public care);
 - ii. Children with medical/social need;
 - iii. Children who will still have a brother or sister attending at the beginning of their first term;
 - iv. Children of staff at schools in either or both of the following circumstances:
 - a) Where the member of staff has been employed at a school for two or more years at the time at which the application of 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;
 - v. Proximity, as measured in a straight line from the front door of the home to the front door of the school.

The school confirmed that the fourth priority for the children of staff was a change introduced in the 2017 arrangements after a period of consultation.

10. Admissions data was helpfully supplied by the local authority for the period 2014 – 16 which I have summarised the data in the table below. The local authority confirmed that the school is usually oversubscribed by parents who nominated the school as their first preference.

	2014	2015	2016
Number of places available (the PAN)	60	60	60
Total number of applications	190	155	162
First preferences	76	53	68
Children with a statement of special educational needs (SEN) or Education, Health and Care plan (EHC plan) (not The Tree House)	0	0	0
Children looked after and previously looked after	0	0	0
Medical/social	0	0	0
Siblings	32	25	25
Distance	28	35	33

Consideration of Case

11. The first matter of consideration relates to the version of the arrangements published on the school's website at the time of the referral, which had the heading *Midfield Primary School Proposed Admission Arrangements 2017-18*" (the proposed 2017 arrangements). The referrer said it was not clear from the use of the word "*proposed*" whether the arrangements were those determined for admissions in September 2017.
12. The school explained at the meeting that the proposed 2017 arrangements related to the consultation process conducted in the period 12 October to 27 November 2015. The school explained that in order to improve the recruitment and retention of staff, the admission authority had proposed to include in the arrangements a new priority for the children of staff, which had necessitated the publication of the proposed 2017 arrangements on the school's website during the consultation process. The proposed arrangements were adopted unchanged as the determined arrangements, and I accept that the school forgot to replace the proposed 2017 arrangements with the determined arrangements. Soon after the referral was made, the school published the 2017 determined arrangements and removed the proposed 2017 arrangements from its website.
13. I drew the school's attention to paragraphs 1.42 to 1.45 of the Code regarding the consultation process, particularly the requirement to consult all the parties listed in paragraph 1.44. The school provided evidence that the proposed 2017 arrangements were available on the school's website during the consultation period, and that the parents of children already at the school were informed about the consultation process through the school's newsletter. The school also sent an email about the consultation process and the proposed 2017 arrangements to the local authority, and all neighbouring schools and admission authorities but these bodies were not requested to share the consultation information with parents. The school informed its own parents, but it is not clear that other parents of children

between the ages of two and eighteen, or any other interested persons in the local area, were informed.

14. In the meeting I explained that if the school wished to rely on other admission authorities to inform parents about its consultation, it may have been helpful to have made this expectation clear in the email about the consultation so that parents would have an opportunity to express their opinions before the 2017 arrangements were determined. In addition, there are a number of ways the school might have brought the consultation to the attention of the parents of pre-school children, such as, through early years providers and childminders, or by placing information in local newspapers, doctor's surgeries, libraries, local supermarkets and by use of social media. The local authority explained that it conducts a consultation process each year before determining its admission arrangements, which includes publishing a public notice about the consultation in the local press. The local authority helpfully offered to include the school in its public notice in the local press should a consultation process be required in future years.
15. I conclude that the school did not consult all the relevant parties as carefully as it could have done, but whether or not the consultation process was adequate does not affect the status of the determined arrangements.
16. I note that the arrangements had been determined at the governing body on 17 March 2016, as confirmed by the minutes of that meeting, but this was after the required deadline. Regulation 17 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations (the regulations) and the Code at paragraph 1.46 require that the admission authority **must** determine the admission arrangements by 28 February in the determination year. The school agreed to update its procedures for the determination and publication of arrangements to ensure that it meets the requirements of the Code and the regulations in future years.
17. The referrer questioned whether the arrangements comply with the Code with respect to paragraph 2.16(c) which requires that the *"admission authority **must** make it clear in their arrangements that, where they have offered a child a place at a school, where the parents wish, children may attend part-time until later in the school year but not beyond the point at which they reach compulsory school age."* The referrer suggested that the arrangements were non-compliant because they state that *"in exceptional circumstances parents can also request that their child attends part-time until the child reaches compulsory school age but this must be in discussion with the Head of school and in the best interest of the child."*
18. The Code clearly provides the option for parents to choose that their child starts school part-time until their son or daughter reaches compulsory school age and that there is no requirement for *"exceptional circumstances"*. The school has amended the arrangements appropriately to comply with paragraph 2.16(c) of the Code.

19. The referrer said that although *“the arrangements make clear that parents can seek a place outside their normal age group, they do not say what the process is.”* It is the case that paragraph 2.17 of the Code states that *“admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.”* The admission authority has amended the arrangements to comply with paragraph 2.17 of the Code by stating clearly with respect to requesting admission out of the normal age group *“parents should write, in the first instance, to the Head Teacher, explaining their reasons.”*
20. The final matter of concern in the referral was the lack of a final tie-breaker. Paragraph 1.8 of the Code requires that *“admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.”* The school has amended the arrangements to comply with the Code by stating clearly that *“random allocation will be used as a final tie-break to decide who has the highest priority for admission if the distance between two children’s homes and the school is the same. In these circumstances, lots will be drawn. This process will be independently verified.”*
21. In considering this referral, I have reviewed carefully the determined 2017 arrangements as a whole and noticed some other aspects which appeared not to conform with the requirements relating to admissions. I brought these additional matters to the school’s attention during the meeting.
22. The arrangements stated that *“the standard number for admissions to Midfield Primary School is 60.”* In the meeting I explained that the term *“standard number”* is an old term. The term used in the Code is Published Admission Number. To comply with the Code, the school has updated the arrangements to state clearly that *“the Published Admission Number (PAN) for admissions to Midfield Primary School is 60.”*
23. The arrangements did not comply with paragraph 1.6 of the Code which requires that children with a statement of SEN or EHC plan which names the school **must** be admitted. The school has now amended the arrangements to explain that if there are more applications than places available in Year R, the oversubscription criteria will apply after *“children with a statement of educational needs or education, health and care plan”* have been admitted.
24. The first oversubscription criterion prioritised *“looked after children (children in public care).”* However, paragraph 1.7 of the Code states clearly that *“the highest priority **must** be given... to looked after children and all previously looked after children.”* The school has updated appropriately the wording of the first oversubscription criterion to comply with paragraph 1.7 of the Code.
25. Since the meeting, the school has amended the third oversubscription criterion to make clear that the sibling priority applies to *“children who will still have a brother or sister on the school roll”* at the time of admission. I note that the definition of sibling has been extended to include foster brother or sister.

26. The fourth criterion included some typographical errors; these have been amended so the wording now complies with paragraph 1.39 of the Code.
27. The fifth oversubscription criterion gave priority on the basis of the proximity of an applicant's home to the school. However, the relevant definition in the notes section of the arrangements referred confusingly to distance rather than proximity. In the amended arrangements the fifth criterion and associated definition both refer to the distance between the applicant's home and the school, which in my view is clearer for parents.
28. In the meeting I also drew the school's attention to the requirements of paragraph 2.14 of the Code with respect to waiting lists; that the arrangements **must** state that *"each added child will require the list to be ranked again in line with the published oversubscription criteria."* The statement with respect to the waiting list now complies with paragraph 2.14 of the Code because it has been amended to make clear that the waiting list will be maintained until the 31 December 2017, and that *"each added child will require the list to be ranked again in line with the published oversubscription criteria."*

Summary of Findings

29. The referral brought to my attention a number of aspects of the school's arrangements that did not conform with the requirements relating to admission arrangements in the ways set out in the paragraphs above. It is to the school's credit that all the matters identified have been addressed so promptly after the meeting. The arrangements now comply with the Code and admissions law.

Determination

30. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I determine that the admission arrangements determined by the governing body on behalf of the academy trust for Midfield Primary School for September 2017 conform with the requirements relating to admission arrangements.

Dated: 11 October 2016

Signed:

Schools Adjudicator: Ms Cecilia Galloway