



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3453 Rodillian Academy

**Objector:** Leeds City Council

**Admission Authority:** The Rodillian Multi-Academy Trust

**Date of decision:** 7 August 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 July 2019 determined by the Rodillian Multi-Academy Trust for Rodillian Academy, Leeds.**

**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 Leeds City Council, (the objector), about the admission arrangements (the arrangements) for Rodillian Academy (the school), an academy secondary school for pupils aged 11 – 18. The objection is to the fact that the arrangements state that, if a newly admitted year 7 pupil fails to start school on 9 July 2019, they risk losing their place at the school.
2. The local authority (LA) for the area in which the school is located is Leeds City Council. The LA is the objector. Other parties to the objection are the Rodillian Academy Trust (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 19 March 2018 by the Rodillian

Multi-Academy Trust, which is the admission authority for the school, on that basis.

4. The objector submitted an objection to these determined arrangements on 8 May 2018. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and is within my jurisdiction.

### **Procedure**

5. In considering this matter, I have had regard to all relevant legislation and the School Admissions Code (the Code).
6. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 8 May 2018;
  - b. the admission authority's response to the objection and supporting documents;
  - c. confirmation of when consultation on the arrangements last took place;
  - d. an extract of the minutes of the meeting held on 19 March 2018 at which the Rodillian Multi-Academy Trust Board determined the arrangements; and
  - e. a copy of the determined arrangements.

### **The Objection**

7. The objector argues that the circumstances in which a school place, or the offer of a school place, may be withdrawn are set out in paragraphs 2.12 and 2.13 of the Code. The arrangements state that a school place will be withdrawn in circumstances which do not fall within these paragraphs. Therefore the arrangements do not conform to paragraphs 2.12 and 2.13 of the Code.

### **Background**

8. The school was originally built in 1933 as Rothwell Grammar School to serve the needs of children in Rothwell and the surrounding areas. The name "*Rodillian*" is derived from the name that was given to former pupils of the Rothwell Grammar School. The school is non-selective, however 10% of places are allocated to applicants who have demonstrated an aptitude in either rugby or netball. It is a mixed secondary school with a Published Admission Number (PAN) of 270. It is situated in a £27 million building which opened in 2008. The school became an academy in 2012, and is part of the Rodillian Multi-Academy Trust. The number of applications for entry to the school in September 2018 was 762, and the number of first preference applications was 381.

9. I have not set out the oversubscription criteria because they are not relevant to the objection. I have set paragraph 1.2 and Note 1, which form the basis for the objection.

*“1.2 The Academy transition process from Year 6 into Year 7 will start on 9<sup>th</sup> July 2019, when children officially become Rodillian pupils and leave their primary school. This is in line with the start of our academic [year]. If a child fails to attend the start of term due to a holiday or chooses to remain at their primary school **then they risk losing their place** at the Academy (see Note 1).*

#### **Note 1 Start of the Academic Year – Monday 8 July 2019**

*We wish to make it explicitly clear that all Year 7 students will start on Monday 8 July 2019 unless exceptional circumstances have been discussed and agreed with the Academy, in advance. Students who do not start on 9<sup>th</sup> July and whose parents do not have permission for their child to start late will lose their place at the Academy. Any vacancies at the Academy will be allocated to other pupils in accordance with the waiting list”. I think the second date was probably intended to be 8 July, but since the arrangements refer to 9 July as the required start date, this is the date I have referred to.*

#### **Consideration of Case**

10. The LA states in the form of objection that the school consulted in 2017 on its proposed arrangements for admission in September 2019. At the consultation stage, paragraph 1.2 of the proposed arrangements read as follows: *“The academy Year 6 into Year 7 transition process will start on 9<sup>th</sup> July 2019 when children officially become Rodillian pupils. This is in line with the start of our new academic year for the academy. Any pupils who do not start that process **will lose their place** if deciding to stay at their feeder school or use that period for a holiday. Subsequent places will then be offered to pupils according to waiting list priority”.*
11. The LA submitted the following comment as part of its response to the consultation.

*“In paragraph 1.2, you appear to be withdrawing the school place offer. The Admissions Code specifies the circumstances when a place can be withdrawn (paragraphs 2.12 & 2.13 of the Code).*

*Withdrawal is permitted when the place is:-*

- *offered in error,*
- *fraudulently obtained or*
- *the parent has not responded within a reasonable period.*

*However, in this latter circumstance, the parent must be given a further opportunity to respond with this opportunity including an explanation*

*that the place may be withdrawn if they do not respond. This would happen at the stage the parent fails to accept or decline the offer sent out, which should be well before the start of your school year in July.*

*If a parent has accepted your offer, but the child then fails to attend at the school in July, this does not fall into the categories above so the Code does not permit withdrawal of the place for this reason. We would advise you to remove this section. If a child fails to attend school in July, the school should follow the usual attendance procedures reporting the child as missing from education in the same way as you would for any other child who stopped attending school". The LA states that the Trust Board took into account many of the amendments suggested in the LA's response to the consultation, but did not remove the relevant section.*

12. The wording in paragraph 1.2 has been amended so that it no longer states that an applicant "*will lose their place if deciding to stay at their feeder school or use that period for a holiday*". It now reads as follows: "*If a child fails to attend the start of term due to a holiday or chooses to remain at their primary school then they **risk losing their place** at the Academy*". However, note 1 states: "*Students who do not start on 9<sup>th</sup> July and whose parents do not have permission for their child to start late will lose their place at the Academy*".
13. As stated above, the LA's view is that the wording in the final version of the arrangements appears to suggest the withdrawal of an offer of a school place under circumstances that are not permitted by the Code.
14. The school submitted a response to the objection on 24 May 2018. In summary, the school feels very strongly that the start of term date should be included in the arrangements to ensure that parents are completely clear about the school's expectations in relation to attendance from that date. The school is "*heavily oversubscribed, and it is important that those allocated places are able to follow the school's rules and expectations. Starting school on the first day of term is a clear expectation*". The school refers to the fact that the arrangements do not mention the legal basis for withdrawing the offer or withdrawing the school place in terms of whether this would be pursuant to paragraphs 2.12 or 2.13 of the Code, or the Pupil Registration Regulations. The school says that this is because each case is different, so it is not necessary to specify in the arrangements which legal route would be appropriate.
15. The school considers that, if, having accepted a place and informing the school that the child would attend on the first day of term, parents failed to ensure for no good reason that the child attended school on that date, the school would "*follow the Code and/or the statutory instrument on registration*". In these circumstances, the school suggest, the child would clearly risk losing the place. It is therefore "*semantics*" for the LA to assume which piece of the Code or legislation will be used or adhered to – "*if indeed it is required to be used*". The school says it would only withdraw a place under paragraph 2.12 or 2.13 of the Code

if the circumstances permitted. Otherwise, the regulations relating to removal of a child's name from the register would be adhered to. Parents would be given a right of appeal, and the decision of the Independent Appeal Panel would be binding. The school would expect the LA to challenge any unlawful decision to remove a child from the roll.

16. The school does not believe that informing parents that they run the risk of losing a place should be in breach of the Code. In fact, it argues that not making this clear in the arrangements could lead to an Independent Appeal Panel reinstating a pupil whose place had been withdrawn because he/she had failed to start school on the first day of term. Because the school's term dates are so different to those of other schools, it considers it is essential that the start of term date is drawn to the attention of parents.
17. The school states that it has changed its arrangements to "*soften the approach*". The arrangements used to say that parents would lose the child's place. The fact that paragraph 2.1 is inconsistent with Note 1 is an oversight. Note 1 should say "*at risk of losing a place*". The school has told me that it would be prepared to substitute the wording "*may lose their place in accordance with relevant legislation and guidance*".
18. The LA's commented on 29 May 2019 in reply to the school's response as follows: "*We agree with Rodillian Academy that there is no need to include the legal grounds for the withdrawal of a school place offer in their admissions policy.*"

*However, even with the proposed amendment to Note 1 included in the Academy's response dated 24 May 2018, the phrase "at risk of losing their place" remains misleading. Any lay parent reading the determined policy would interpret the phrase as being a threat that their child's place would be withdrawn if their child fails to attend the school from the July start date – and we believe this is not possible within the law and therefore should not be included in the admissions policy".*

## **Analysis**

19. I should firstly say that 9 July 2019 is a very unusual date for the first day of the academic year. For all other schools in Leeds, the summer term will finish at the end of July. Year 6 pupils would expect to remain in their primary schools until the end of term date for those schools. The first day of the autumn term for pupils in Leeds schools will be at the beginning of September 2019.
20. When I looked on the Rodillian Academy calendar for the school year 2017/2018, I noticed that it showed a year 6 transition period from 9 - 20 July 2018, which appeared to be the school's end of term. Pupils started summer holidays on 20 July 2018, and will return to school on 4 September 2018. The end of the summer term in 2019 is said to be 19 July. It appeared, therefore, that the school was treating 9 July 2019

as the first day of term for year 7 pupils newly admitted to the school only, and that these pupils will then have their summer holidays at the same time as all other Rodillian pupils from 19 July. I wrote to the school for clarification.

21. The school's response was received on 16 July 2018. It was very helpful. What it said was that the term dates on the school's website were misleading because they reflect the traditional school holidays which are different to how the school's academic year runs. The school consulted on changes to its academic year 2 years ago. All schools in the 'Family of Schools' (the primary schools from which most of the children feed through), all secondary schools and the LA were all consulted.
22. The start of the academic year for all year groups is the date of the end of the summer half term. This has been moved from May to June. When pupils return from their half term holiday, they move up into the next year group with year 7s "*following on in July*". It is said that this allows years 8 – 11 to transition seamlessly before the new year 7s join the school. Years 7 – 11 have celebration assemblies before the holidays. Because the new year 7s join in July, they are able to familiarise themselves with the building and the timetable. They attend lessons, and are involved in activities across the whole school. The school has operated this timetable for the last 2 years.
23. Rodillian staff attend the 'Family of Schools' meetings regularly, and so the school's academic year dates are well known to the other local schools. The effect of pupils moving year groups in June is said to be that the school is a calmer place. Year 7s settle in quickly as the academic year groups are in full swing. When they return in September, the year 7s know exactly what is expected of them, where their classes are and their timetable. I was sent a list of dates showing that the academic year for 2019/2020 begins on 24 June 2019.
24. My understanding, therefore, is that the school still has 3 terms with dates which are broadly similar to the term dates for other schools in Leeds, except that the Whitsun half-term is in June, rather than May. The start of the school's academic year is different to other Leeds schools. For these other schools, the date of the start of the academic year is the date of the beginning of the autumn term. For the Rodillian Academy, the start of the academic year for new year 7 pupils is different to the start of the academic year for other Leeds schools and different to the start date for Rodillian pupils in years 8 -11.
25. Paragraph 14 of the Code states: "*In drawing up their admission arrangements, admission authorities **must** ensure that the practices and criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated*". Whilst paragraph 14 refers to the allocation of places, as opposed to withdrawal of a place, my view is that it is relevant. The school's argument is that it is necessary to include a statement about what will

happen if a pupil fails to attend school on the first day of the academic year in order for parents to understand how the admissions process operates. It is particularly important that the start date for the year 7 academic year is drawn specifically to the attention of parents, as it is an unusual date. The school feels very strongly about this, and there is force to the argument that the arrangements must be clear on the point.

26. What the school cannot do is make a false or misleading statement in the arrangements. If they choose to make a statement drawing parents' attention to the date of the start of the academic year and the school's expectations about attendance on that date, it must be a statement which is clear to parents. A statement that the school **will** withdraw a school place if a child fails to attend is certainly clear. The question is whether it is misleading if the school cannot, in fact, do what it says it will do. A statement that a child "*may lose their place in accordance with relevant legislation and guidance*" is not a clear statement. A parent reading this statement would not understand which legislation is applicable, or the circumstances in which the place could be withdrawn.
27. It follows from this that, as a first step, it is important to consider whether the school can require year 7 pupils to attend school on 9 July 2019. The school used the phrases "*start of term*" and "*start of the academic year*" interchangeably as meaning the same thing. I could not see how the first day of term could be set as 9 July 2019 for year 7 students only. The school's first day of term for the academic year 2019/20 does not yet appear on the website, but the last day of the summer term is posted as Friday 19 July 2019. I now understand that the school changes its academic year groups before the start of the school holidays in July. As stated above, the start of the autumn term and the start of the academic year groups are not the same thing in the case of this school.
28. My first consideration was whether the school is able to require new year 7 pupils to attend on 9 July 2019. If the school is unable to impose such a requirement, the arrangements must not state that it can. Regulation 5(3) of The Education (Pupil Registration) Regulations 2006 provides that *a pupil is a pupil at the school from the beginning of the first day on which the school has agreed, or has been notified, that the pupil will attend the school.*" This being the case, if the school agrees with parents who have accepted a place that new year 7 pupils will be admitted to the school from 9 July 2019, these pupils must attend regularly from that date during term time. The names of these pupils will be entered on the school's admissions register on that date, regardless of whether a pupil actually attends on that date because this is the date from which the pupil is expected to attend.
29. I have concluded, therefore, that a statement that pupils are required to attend school on 9 July 2019 is a statement which is factually and legally correct. It is a statement that could be made in admission arrangements. Whether or not this is a reasonable requirement is not something I have jurisdiction to consider. It is for the school to set the date of its academic year. My function is to ensure that the

arrangements are clear and do not contain a statement which is false or misleading to parents.

30. Paragraph 1.9a) of the Code states that admission arrangements “*must not place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements*”. I was concerned about whether the arrangements could appear to suggest that the offer of a place is conditional upon the child turning up at the school on 9 July. I wondered whether making the statement about withdrawal of the place directly alongside the arrangements for admission would give this impression. On balance, however, my view is that the arrangements do not imply that a place will only be offered to parents who agree to ensure their child attends on the first day of term. They clearly refer to “*the risk of losing a place*”, as opposed to the risk of not being offered a place.
31. The second question is whether the school can withdraw a place if a child fails to attend on the first day of the academic year. If this cannot be done, the arrangements must not suggest that it can be done. Paragraphs 2.12 and 2.13 of the Code set out the circumstances in which a school place, or an offer of a school place, can be withdrawn as follows:
- 2.12. “*An admission authority **must not** withdraw an offer unless it is offered in error, a parent has not responded within a reasonable period of time, or it is established that the offer was obtained through a fraudulent or intentionally misleading application. Where the parent has not responded to the offer, the admission authority **must** give the parent a further opportunity to respond and explain that the offer may be withdrawn if they do not. Where an offer is withdrawn on the basis of misleading information, the application must be considered afresh, and a right of appeal offered if an offer is refused.*”
- 2.13 “*A school **must not** withdraw a place once a child has started school, except where that place was fraudulently obtained. In deciding whether to withdraw the place, the length of time that the child has been at the school **must** be taken into account. For example, it might be considered appropriate if the child has been at the school for less than one term.*”
32. A set of admission arrangements which makes provision for the withdrawal of a school place, or the withdrawal of the offer of a school place, other than in these specified circumstances fails to conform to the Code, and will need to be amended so that it does conform to the Code. As I understand the position, on the first day of the academic year for year 7 pupils, an offer will have been made and accepted, therefore in my view paragraph 2.12 does not apply. What the school intends to do is withdraw a school place, as opposed to the offer of a place, therefore paragraph 2.13 is relevant.
33. A school place cannot be withdrawn under paragraph 2.13 once a child has started at the school, except where the place was fraudulently



obtained. The arrangements under consideration set out what will happen where a child has **not** started at the school. If a place is withdrawn because a child has not started at the school on the first day of term, or the place has not been fraudulently obtained, paragraph 2.13 does not provide a legal basis upon which a school place can be withdrawn. This paragraph does not preclude the school from withdrawing the place. It is simply not relevant to the circumstances in question.

34. Every school is required to have an admissions register and an attendance register. The names of all pupils required to attend the school will be entered on these registers from the first day upon which they are expected to attend school. Once a pupil's name is entered on the admissions register, it must be deleted if the pupil is no longer required to attend the school, unless there are grounds to withdraw the school place under paragraph 2.13 of the Code. The requirements to enter and delete a pupil's name from the register will apply whatever the required start date. If Rodillian pupils were required to attend school regularly from 4 September, as opposed to 9 July, the position would be no different.
35. Regulation 8 of The Education (Pupil Registration) Regulations 2006 sets out the grounds prescribed for deleting the name of a pupil of compulsory school age from the admission register. These are:
- “(a) where the pupil is registered at the school in accordance with the requirements of a school attendance order, that another school is substituted by the local education authority for that named in the order or the order is revoked by the local education authority on the ground that arrangements have been made for the child to receive efficient full-time education suitable to his age, ability and aptitude otherwise than at school;*
  - (b) except where it has been agreed by the proprietor that the pupil should be registered at more than one school, in a case not falling within sub-paragraph (a) or regulation 9, that he has been registered as a pupil at another school;*
  - (c) where a pupil is registered at more than one school, and in a case not falling within sub-paragraph (j) or (m) or regulation 9, that he has ceased to attend the school and the proprietor of any other school at which he is registered has given consent to the deletion;*
  - (d) in a case not falling within sub-paragraph (a) of this paragraph, that he has ceased to attend the school and the proprietor has received written notification from the parent that the pupil is receiving education otherwise than at school;*
  - (e) except in the case of a boarder, that he has ceased to attend the school and no longer ordinarily resides at a place which is a reasonable distance from the school at which he is registered;*

- (f) *in the case of a pupil granted leave of absence exceeding ten school days for the purpose of a holiday in accordance with regulation 7(3), that —*
- (i) *the pupil has failed to attend the school within the ten school days immediately following the expiry of the period for which such leave was granted;*
  - (ii) *the proprietor does not have reasonable grounds to believe that the pupil is unable to attend the school by reason of sickness or any unavoidable cause; and*
  - (iii) *both the proprietor and the local education authority have failed, after reasonable enquiry, to ascertain where the pupil is;*
- (g) *that he is certified by the school medical officer as unlikely to be in a fit state of health to attend school before ceasing to be of compulsory school age, and neither he nor his parent has indicated to the school the intention to continue to attend the school after ceasing to be of compulsory school age;*
- (h) *that he has been continuously absent from the school for a period of not less than twenty school days and —*
- (i) *at no time was his absence during that period authorised by the proprietor in accordance with regulation 6(2);*
  - (ii) *the proprietor does not have reasonable grounds to believe that the pupil is unable to attend the school by reason of sickness or any unavoidable cause; and*
  - (iii) *both the proprietor of the school and the local education authority have failed, after reasonable enquiry, to ascertain where the pupil is;*
- (i) *that he is detained in pursuance of a final order made by a court or of an order of recall made by a court or the Secretary of State, that order being for a period of not less than four months, and the proprietor does not have reasonable grounds to believe that the pupil will return to the school at the end of that period;*
- (j) *that the pupil has died;*
- (k) *that he will cease to be of compulsory school age before the school next meets and the relevant person has indicated that he will cease to attend the school;*
- (l) *in the case of a pupil at a school other than a maintained school, an Academy, a city technology college or a city college for the technology of the arts, that he has ceased to be a pupil of the school;*

- (m) *that he has been permanently excluded from the school; or*
- (n) *where the pupil has been admitted to the school to receive nursery education, that he has not on completing such education transferred to a reception, or higher, class at the school.*

36. It appears to me that none of these grounds apply in the case of a child who does not attend on the first day of the academic year. The only possible ground applicable on day 1 would be b) if the child remained on roll at their primary school. But, presumably this could only happen as an oversight because the proprietor of the primary school is required to delete a pupil's name from the register when the pupil becomes registered with another school – which is the date that the pupil is first expected to attend the other school. So, applicants who have accepted a place at the school will become registered pupils on 9 July 2019.

37. If the pupil was absent for 20 days, h) might apply if it were the case that both the proprietor of the school and the local authority had failed, after reasonable enquiry, to ascertain where the pupil is. But but this would not allow the school to delete the child's name for non-attendance on the first day. The school cannot remove a child's name from the register other than under regulation 8. This would be unlawful. Therefore a statement in the admission arrangements which suggests that the school can take this action is factually incorrect and misleading, and should not form part of the arrangements. If a pupil failed to attend on the first day of term with no explanation, the school would mark the child as absent without authorisation. Continued unauthorised absence could lead to action being taken against the parents for failure to ensure regular school attendance, or eventual deletion from the register.

38. The arrangements could make a statement along the following lines: Parents are required to ensure their child attends school regularly. Any pupil who fails to attend on 9 July 2019 without good reason will be considered to be absent without authorisation. If the absence is prolonged, consideration may be given to a Fixed Penalty Notice against the parents. Unauthorised absences of more than 20 days may lead to deletion of the child's name from register. From what I understand of the school's representations, this is what is intended to happen since the school has stated assuredly that it will act lawfully. If this is the intention, the arrangements can only state what the school can lawfully do.

39. I also questioned whether a statement about withdrawal of school places should feature in the admission arrangements at all. The school could easily make the point about non-attendance in other communications with parents. However, on balance, I accept the school's arguments about the need for clarity on this point in the arrangements. The unusual date for the start of the academic year is a factor which parents would need to be clear about at the point when they are considering whether to make an application to the school. The Code does not preclude a statement about the consequence of

non-attendance being part of any admission arrangements. Therefore, the arrangements could properly include a statement about the date of the first day of the academic year, and the possible consequences of not attending on that date provided that the statement is clear, and is factually and legally correct.

40. For the reasons given above, I uphold this objection because I agree with the central point made by the LA, namely that admission arrangements stating that a school will take action that it cannot legally take do not conform to the Code. Such arrangements would be factually incorrect and misleading. I make the further point that arrangements which state that something may happen without explaining the circumstances in which it would happen are unclear. I do not consider that the arrangements fail to conform to paragraph 2.12 or 2.13 of the code. I do, however, consider that the arrangements are unclear and misleading, and therefore do not conform to paragraph 14 of the Code.
41. The school has been cooperative in suggesting an amendment to the arrangements. Indeed, the school has been helpful throughout. Unfortunately the suggested revision would not conform to the requirements of the Code, but hopefully this determination will assist the school in amending the arrangements so that they do conform to the Code. I do understand the school's reasons for operating the change of the academic year as it does. This is said to work well for all of the pupils attending the school, including the new year 7s, and I am not seeking to interfere with the way the school manage this. It is not my role to do so.
42. What I am concerned about is that the school's admission arrangements must not make false or incorrect statements. At the moment, they do this, and so they must be revised. The school is required to revise its arrangements within 2 months of the date of this determination. It is important that the arrangements are compliant with the Code at the point when applications will be made for places at the school in July 2019. There is nothing to stop the school stressing the importance of new year 7 pupils attending a transition period starting on the 9 July 2019 in communications with parents other than the admission arrangements.

### **Summary of Findings**

43. My findings are that the school's published admission arrangements do not conform to paragraph 14 of the Code. Paragraph 1.2 is unclear because it does not explain the circumstances in which a school place can be withdrawn legally. Paragraph 1.2 is also inconsistent with note 1, which makes the arrangements even more unclear. Note 1 is also misleading because it makes a statement to the effect that the school will do something which it cannot do legally. The effect of this misleading statement is that the arrangements are unreasonable.

## **Determination**

44. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the Rodillian Multi-Academy Trust for July 2019 for the Rodillian School, Leeds.
45. 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: 7 August 2018

Signed:

Schools Adjudicator: Marisa Vallely