



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: VAR787

Admission Authority: The Governing Board of Buxton School,
London Borough of Waltham Forest

Date of decision: 2 November 2018

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the variation to the admission arrangements determined by the Governing Board of Buxton School in Waltham Forest.

I determine that for admissions in the academic year 2018/2019, the published admission number for admission to the Reception Year shall be 90.

I have also considered the arrangements for 2018 and 2019 in accordance with section 88I (5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case, I specify a deadline of 30 November 2018 for changes to be made to the arrangements for both 2018 and 2019.

The referral

1. The board of governors of Buxton School (the school) has referred a variation to the adjudicator about the admission arrangements (the arrangements) for the school for the academic year 2018/19. Buxton School is a Foundation school for pupils aged 3 to 16 years in the London Borough of Waltham Forest and has a foundation, the Buxton School Learning Trust. The school admits pupils to Reception (YR) and additional pupils to Year 7 (Y7).

2. The requested variation is that the published admission number (PAN) for admission to YR for 2018/19 only should be reduced from 120 to 90.

Jurisdiction

3. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which states that:

“where an admission authority (a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined, the authority must [except in a case where the authority’s proposed variations fall within any description of variations prescribed for the purposes of this section] (a) refer their proposed variations to the adjudicator, and (b) notify the appropriate bodies of the proposed variations”.

4. I am satisfied that the proposed variation to the PAN for YR is within my jurisdiction.
5. I am also satisfied that it is within my jurisdiction to consider the determined arrangements for 2018 and for 2019 in accordance with my power under section 88I of the Act as they have come to my attention and to determine whether or not they conform with the requirements relating to admissions and if not in what ways they do not so conform.
6. In this case, the governing board did not determine its arrangements for 2018 until September 2018. This is more than eighteen months after the statutory deadline which was 28 February 2017. The school also determined its arrangements for 2019 at the same time which was over six months after the deadline for those arrangements to be determined. The governors made clear that the variation was to apply for the 2018 intake only and, therefore, it appears that the PAN for entry in 2019 will revert to 120. Other than in relation to the PAN the arrangements for both years are the same.

Procedure

7. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
8. The documents I have considered in reaching my decision include:
 - a) the governing board’s referral dated 22 September 2018 and supporting documents;
 - b) the determined admission arrangements for the school for admission in 2018 and September 2019, agreed by the governing board on 6 September 2018;

- c) minutes of the school's governing board's meeting on 6 September 2018 at which the request for a variation was discussed and subsequently agreed;
- d) the notification to the appropriate bodies about the governing board's intention to seek a variation to the PAN, undertaken by the local authority on 4 July 2018 on behalf of the governing board; and
- e) a copy of the local authority's booklet 'Starting Primary School 2018'.

Ways in which the arrangements appeared not to conform with the requirements relating to admissions

9. When I considered the arrangements I found other matters which I considered might not meet the requirements of the Code. These are (with the most relevant paragraphs of the Code in brackets):
 - a. The arrangements do not include all the information required by the Code for admission to the Reception Year (YR): deferred entry and part time places, children being educated outside their normal age group and summer born children (paragraphs 2.16 – 2.17B).
 - b. The oversubscription criteria gives the highest priority, as required in the Code, to looked after children and all previously looked after children. The Code further sets out the definitions for these groups. The school's first priority is for looked after and previously looked after children but also includes children 'at risk'. A child who is 'at risk', is defined in the arrangements as a child who is on the Child Protection Register. The Code requires that first priority be given to looked after children and previously looked after children. Children 'at risk' may or may not be looked after or previously looked after and it is certainly not the case that all children 'at risk' will fall within the definition of looked after or previously looked after children(paragraph 1.7).
 - c. The arrangements for measuring distance from school do not include provision for the situation where parents have shared responsibility for a child but live at different addresses and the child stays with each for part of the week (paragraph 1.13).
 - d. The school's arrangements for waiting lists sets out that they close at the end of August and that if parents want to re-join the waiting list they need to complete an iCAF application. Admission authorities **must** maintain a waiting list until at least 31 December of each school year of admission (paragraph 2.14).

The arrangements refer to PANs of 120 for entry in YR and 180 in Year 7 (Y7). However, the total number of places in Y7 is 180. PANs relate only to children joining a school for the first time as children already in the school simply move from one

year group to the next. The Y7 PAN therefore needs to relate to the number of places available to children not already in the school (paragraph 1.2).

The proposed variation

10. The proposed variation was received on 22 September 2018. The effect of the variation is to reduce the PAN for YR for September 2018 from 120 to 90 as the school has admitted 82 pupils in September and is concerned about the financial impact on the budget should it admit significant numbers of additional children and need to employ an additional reception teacher in order to comply with the requirements of the infant class size regulations. The regulations require schools to organise themselves to ensure that no more than 30 key stage one children are taught by a single teacher (unless one or more of the limited exceptions in the regulations applied).
11. The governors did not determine the admission arrangements for entry to the school in 2018 until 6 September 2018 and, in effect, were using the arrangements for 2017.

Background and consideration of factors

12. The school is a foundation all-through school for 3 to 16 year olds. The governing board is the admission authority and therefore determines the arrangements for the school.
13. The school applied for a variation to the PAN from 120 to 90 for entry in September 2017 to YR on 20 September 2017. That application was determined in VAR739 on 14 December 2017 for one year only. The school applied again to vary the PAN from 120 to 90 for September 2018 on 13 July 2018. The school was informed on 13 August, by the Secretary to the Office of the Schools Adjudicator, that the variation could not be considered, as there was no evidence that the admission arrangements for September 2018 had been determined by 28 February 2017, as required by paragraph 1.46 of the Code.
14. Following the governing board's determination of the arrangements for September 2018 on 6 September 2018, the request for the variation was submitted on 22 September 2018. The local authority, on behalf of the governing board, had notified headteachers in the area about the proposed variation on 4 July 2018. That notification related to the request made by the governors on 13 July 2018, which as explained above, had subsequently been found to be outside the jurisdiction of the adjudicator. However, I am content that the July notification serves adequately as notification for the purposes of the variation made in September which I am considering. In its covering email the local authority wrote *"You will be aware from the National Offer Day stats that admissions sent that there is a large surplus looming in reception for September 2018. For this reason we have already supported 5 schools in reducing their PAN on a temporary basis to reduce this surplus and allow cost savings for the schools. I am writing to inform*

you that Buxton Primary School is also applying to reduce their PAN from 120 to 90 for this coming September. I am required to notify all Heads and ask if there are any objections in order for the schools adjudicator to make this decision.”

15. The school admitted 89 children to YR in 2016, 85 in 2017 and 82 in 2018. It projects 90 pupils in 2019 and 2020. I agree that, as the numbers admitted over the last few years are below 90, and with the subsequent budgetary difficulties if one or more children are admitted over 90, the PAN for 2018 should be 90. I approve the request for a variation and the PAN for 2018 shall be 90.

Matters not in conformity with the requirements relating to admissions

16. The school responded quickly to the issues I raised where I was concerned that the arrangements may not comply with the Code. In most cases, the school looked to the local authority for information and to mirror their arrangements.
17. On its website, the school does not include in its admission arrangements all the details required by the Code for entry to YR, as set out earlier: deferred entry and part time places, children being educated outside their normal age group and summer born children. The school told me *“Our admission arrangements and communications, consist of Buxton Admissions Policy and the Parents’ Booklet. Our policy states the following, ‘We follow the Waltham Forest Admission Policy with a variation on the oversubscription criteria’.*” However, the governing board is the admission authority for the school and the full admission arrangements are required to be published on its website in order to meet the requirements of paragraphs 2.16 - 2.17B of the Code. Parents are entitled to be able to access all information about the admission arrangements from the school’s website. This applies also to information about children whose parents are separated and where the arrangements need to be clear about the child’s home address. The local authority may measure the distance on behalf of the admission authority but the responsibility for the arrangements and their publication rests with the admission authority which in this case is the school governing board.
18. The school accepts the need to remove children ‘at risk’ from the first oversubscription criterion and will move that group to the criterion on medical and social need, the second oversubscription criterion. It also needs to amend the date when a waiting list needs to be held to at least 31 December, as set out in paragraph 2.14 of the Code.
19. I raised with the school that, with an existing PAN of 120 for entry at YR and automatic transfer to Y7, if pupils remain at the school, the PAN at Y7 should be set at 60 instead of 180 as currently published. The school responded *“The year 7 PAN remains at 180 as although the pupils have the right for automatic transfer, they do not have to take up a year 7 place.”* The Code, at paragraph 1.2, sets out that *“admission authorities **must** set an admission number for each relevant age*

group”. Footnote 11 further defines the relevant age group as “*the age group at which pupils are or will normally be admitted to the school eg reception, year 7 and year 12 where the school admits external applicants to the sixth form (Section 142 of the Schools Standards and Framework Act 1998).*” I accept that not all pupils may transfer to Y7 within the school. However, the PAN is the legally binding number of places available to children being admitted to the school for the first time. If the school does persist in setting a PAN of 180, it needs to be aware that it will be under a legal duty to admit at least 180 children who are not already registered pupils at the school should that number apply. Paragraph 15d of the Code states that “*if a school is undersubscribed, any parent that applies **must** be offered a place.*” Section 86 of the Act makes clear that the only grounds on which places can be refused in a non-selective school with no boarding provision such as this is if prejudice to the efficient use of resources or efficient provision of education would occur. The same section of the Act provides in terms that in a normal year of entry such as Y7 at this school, there can be no such prejudice below the number of places indicated by the PAN.

20. There are a number of aspects of its arrangements which the school needs to amend. Paragraph 3.6 of the Code states that admission authorities can revise their arrangements to give effect to a mandatory requirement of the Code, admission law or a determination of the adjudicator. The 2018/19 school year has already started and not all the issues I have raised are relevant at this point in the school year. However, the date when the waiting lists are held must be amended with immediate effect and all the changes need to be amended in time for the 2019 admission round and published on the school’s website. The school determined arrangements for 2019/20 on 6 September 2018 and I consider that the changes need to be made by the end of November 2018 as the admissions round for entry in 2019 gets underway.

Determination

21. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the variation to the admission arrangements determined by the Governing Board of Buxton School in Waltham Forest.
22. I determine that for admissions in 2018/2019, the published admission number for admission to the Reception Year shall be 90.
23. I have also considered the arrangements in accordance with section 88I (5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

24. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case, I specify a deadline of 30 November 2018.

Dated: 2 November 2018

Signed:

Schools Adjudicator: Lorraine Chapman