



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA2827

Referrer: A member of the public

Admission Authority: The governing body of Wolfson Hillel Primary School, Enfield

Date of decision: 12 November 2014

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the arrangements determined by the governing body of Wolfson Hillel Primary School in Enfield for September 2015. I determine that they 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 as quickly as possible.

The referral

1. The admission arrangements (the arrangements) of Wolfson Hillel Primary School (the school) for September 2015 have been brought to the attention of the Office of the Schools Adjudicator (OSA) by a member of the public (the referrer) in a referral dated 21 July 2014. The school is a voluntary aided (VA) primary school for children aged 3 to 11 in the London Borough of Enfield and it has a Jewish religious character. The matter brought to my attention concerns the inclusion in the school's arrangements of priority for admission to reception (YR) for children who attend the school's nursery class.

Jurisdiction

2. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the school's governing body which is the admission authority for the school. Objections to admission arrangements for admission in September 2015 had to be made on or before 30 June 2014. However, as it appeared to me that

the arrangements may not conform with the requirements relating to admission arrangements I am using my power under section 88(5) of the Act to consider the matter brought to my attention and the arrangements as a whole.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 - i. the referral dated 21 July 2014;
 - ii. the school's response to the referral dated 12 September 2014 and supporting documents;
 - iii. the composite prospectus published by the London Borough of Enfield which is the local authority (LA) for the area for parents seeking admission to schools in the area in September 2015;
 - iv. the LA's response to the referral dated 29 August 2014;
 - v. copies of the minutes of the meeting of the governing body at which the arrangements were determined; and
 - vi. a copy of the determined arrangements.
5. I have also taken account of information received during a meeting I convened on 13 October 2014 at the United Synagogue attended by representatives of the school, the LA and of the Chief Rabbi of the United Hebrew Congregation of the British Commonwealth/United Synagogue which is the Rabbinic Authority body for the school according to schedule 4 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012.

The Referral

6. The reason given for bringing the arrangements to the attention of the adjudicator is that a number of Jewish primary schools in north-west London had included in their admission arrangements priority for admission to YR for children who had attended that school's nursery. The referrer said that in several previous rulings by the OSA this practice had been found not to comply with the Code and argued that "*It is only fair that all Jewish schools in the same geographic area have to live by the same rules and interpretations of the Code as determined by the OSA.*" The referrer pointed out that fairness is required by paragraphs 14 and 1.8 of the Code.

Other Matters

7. While considering the arrangements I became concerned that they

were not as clear as they ought to be in a number of places.
Paragraph 14 of the Code requires arrangements to be clear.

8. Paragraph 1.37 of the Code sets out how admission authorities of faith schools **must** prioritise looked after and previously looked after children who are not of the faith. It appeared to me that these arrangements did not comply with these requirements.
9. The school's supplementary information form (SIF) asks for proof of date of birth. This may not comply with paragraph 2.5 of the Code.

Background

10. The school offers 60 places in its nursery to children who are 3 years old on 1 September each year. These 60 children all attend morning sessions funded by the early years entitlement grant. About half of these children also attend optional afternoon sessions for which parents pay.
11. The nursery class is oversubscribed and the oversubscription criteria are the same as those for YR with the exception of the criterion referring to the nursery.
12. There are 60 places available in YR. In the past the school has not been oversubscribed, but it has been in the last two years. The oversubscription criteria are then:
 1. children who are looked after by a local authority, or a child who was previously looked after, with a completed and valid certificate of religious practice (CRP);
 2. children for whom the school is appropriate on genuine medical or social grounds, with a completed and valid CRP;
 3. siblings of pupils attending the school, with a completed and valid CRP;
 4. children who are currently attending the Wolfson Hillel Nursery, with a completed and valid CRP;
 5. siblings of former pupils of the school, with a completed and valid CRP;
 6. other children with a complete and valid CRP;
 7. other children who have an incomplete or invalid CRP;
 8. other children who are looked after by a local authority, or other children who were previously looked after by a local authority;
 9. any other children.
13. Footnotes clarify the terms in these criteria and the tie-breaker is based

on distance with children living nearest to the school having priority. Random allocation is used if two children live the same distance from the school.

14. In September 2014 the school offered 75 places in YR to meet increased demand and 64 of these have been filled.

Consideration of Factors

15. Although the referral made reference to previous cases considered by the OSA concerning priority for admission to YR for children attending a particular nursery, all determinations are made in taking into account the circumstances of the school, the relevant legislation and the Code.
16. The argument set out by the referrer was that schools which had been required to stop using attendance at their nursery to give priority for YR had seen their nurseries "*placed at a disadvantage in relation to other Jewish schools*". The referral said this was "*unfair as parents who want to send their children to one of those nurseries will have a disincentive to do so because if their children don't get into that school's reception class they will have little or no chance or be extremely unlikely to get a place at one of the other Jewish schools*".
17. This appears to me to be saying that linking admission to YR to attendance at the nursery is an incentive or in practice a requirement for parents to send their child to the nursery. It also identifies the link between nursery and YR as reducing the likelihood of a child obtaining a place in YR if he or she did not attend the school's nursery.
18. In its response to the referral the school made the case that it does not serve the same geographical area as the schools mentioned in the referral. They go on to say that as about five children do not transfer from the nursery to YR each year, no child has been refused a place in YR until 2014 when children initially not offered places lived nine miles from the school.
19. The school pointed out the benefits of continuity within the early years foundation stage and how the relationships built up with the parents of younger children help throughout the children's school career. The benefits to parents of having all children at the same location were also drawn to my attention.
20. The LA said that it had discussed the issue with the school. As the school was not usually oversubscribed it considered there was no disadvantage to local families and the practice gave stability to parents.
21. The Rabbinic Authority asked me to note that the school's arrangements made it clear that a place in the nursery did not guarantee a place in YR and said it supported the school's views.
22. The Code neither specifically permits nor prohibits giving priority for places in YR to children who attend a school's nursery class. It does

however make it clear in paragraph 15d that “*a separate application **must** be made for any transfer from nursery to primary school*”.

Prioritising children at the nursery for places in YR must therefore be tested against the Code as a whole and, in particular, against the key provisions of paragraphs 14 and 1.8.

23. Paragraph 14 of the Code says “*In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the 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.*” Furthermore paragraph 1.8 says “*Oversubscription criteria **must** be reasonable, clear, objective, [and] procedurally fair*”.
24. The school has said that, because not all children in the nursery took up places in YR, this gave the opportunity for others to join the school. As the school was undersubscribed until 2013, admission to YR was made without reference to the oversubscription criteria so the school does not have full data on which criteria children were admitted under in earlier years. However, in 2013 and 2014 when the school was oversubscribed there were seven and five places available respectively for children who had not attended the nursery.
25. The law does not require parents to educate their children until the term following their fifth birthday. Parents have the right to choose the pre-school setting which best suits their child or not to send their child to a pre-school setting at all. Other parents may have family circumstances that make it impossible for their child to attend the nursery even though they would have had a high priority for a place. There may be other families who move into the area after places have been allocated at the nursery and some who may not be able to meet the faith-based criteria when the child is aged 3, but a change their practice or family circumstances may mean they would do so a year later.
26. In the past when the school was undersubscribed, it relied on there being enough children leaving the nursery to start YR in other schools for all children who wanted to join the school in YR to be able to do so. This has not been the case in the last year without the school agreeing to exceed its published admission number (PAN). The school does not have to exceed its PAN and in future years may not be a position to do so due to constraints of the accommodation or budget.
27. From the figures above it would appear that if a parent does not send their child to the nursery class at this school when they are 3 years old, then the possibility of them securing a place when the child is of statutory school age is greatly reduced and, other than for siblings, it could be zero if all of the nursery children applied for YR. This would seem to me to be unfair on families in the situations described above.
28. I have also considered the fairness to those families who have decided to place their child at the nursery if there were no priority for YR for children from the nursery. The criteria (with the exception of the

nursery criterion and an appeal process which I address below) are the same for the nursery and YR. This means that any child from the nursery who failed to get a place in YR could only have been displaced by another child who would have had higher priority for a place at the nursery if their parents had wanted or been able to apply for one.

29. The school expressed a view that continuity across the early years foundation stage was important. I do not dispute this, but without the nursery criterion, most nursery children would still be likely to have priority for places in YR and have that continuity. There is no inherent reason why children who have been in other settings will not assimilate quickly into YR or why children from the nursery will not assimilate smoothly into YR at other schools.
30. I have noted that because the admission numbers are the same and the school gives priority to children on medical or social grounds and to siblings over children attending the nursery, there is already a possibility that not all nursery children will secure a place at the school, disrupting continuity for some children.
31. I have also considered whether it would be possible for a child to gain admission to the nursery and thereby the school in a way that was not compliant with the Code. As noted above, the arrangements for admission to the nursery and YR are the same in all but two respects, the nursery criterion and the right of appeal. I have identified below ways in which I consider the arrangements for YR do not comply with the Code and so neither would the nursery arrangements. Therefore it might be possible for a child to gain admission to the school in a non-compliant way through the nursery.
32. The second way in which the arrangements differ is that there is no right of appeal in the arrangements for the nursery. The right of appeal is an important compulsory element of the school admissions system. While it is not required for admissions to the nursery, the fact that there is in the case of this nursery no right of appeal leaves the possibility that someone entitled to a place in the nursery might fail to secure one and thereby lose priority for a place at the school. This would not be fair.
33. For these reasons I consider giving priority in the oversubscription criteria for YR to children attending the nursery is unfair to families who either choose not to send their child to the nursery or are unable to send their child to the nursery or would like to but are not allocated a place. This does not comply with the Code's requirement for fairness in admission arrangements.

Other Matters

34. The arrangements have a section headed "*Application Procedures*". In this section it says "*the School's Supplementary Information Form (SIF) and the Certificate of Religious Practice (CRP) must be completed.*" Arrangements are required by paragraph 14 and 1.8 to be clear and

this includes being clear that anyone can apply for a place at the school. Governors cannot refuse to consider applications submitted without the SIF or CRP, but clearly such applications could only be prioritised on the basis of information on the common application form (CAF) and without the school's forms applicants could not be considered against the faith-based criteria.

35. Paragraph 14 of the Code requires arrangements to be clear. The first six oversubscription criteria used the term "children ... with a completed and valid CRP". This appeared to me to be about the possession of a document, not about being, to use the term found on the CRP itself, "a priority applicant" through scoring sufficient points on the CRP as the school intended. After discussion the school agreed this could be clarified
36. Criterion 7 gives children with "*an incomplete or invalid CRP*" priority for a place over other looked after and previously looked after children who are considered against criterion 8. Paragraph 1.37 of the Code says "*Admission authorities for faith schools may give priority to all looked after children and previously looked after children whether or not of the faith, but they **must** give priority to looked after children and previously looked after children of the faith before other children of the faith. Where any element of priority is given in relation to children not of the faith they **must** give priority to looked after children and previously looked after children not of the faith above other children not of the faith.*"
37. If having a "*completed and valid CRP*" defines a child of the faith, then a child with an "*incomplete or invalid CRP*" is clearly not eligible to be considered of the faith. The Code does not allow these children to be given priority over looked after and previously looked after children not of the faith.
38. The SIF asks for proof of date of birth; however paragraph 2.5 of the Code says an admission authority may ask for proof of date of birth but not until after a place has been offered.

Conclusion

39. Parents are not required by law to send their children to nursery at the age of 3. By giving priority for places in the reception class to children who have attend the school's nursery potentially no, or very few, places are available for other children when they are required to attend school at compulsory school age. There could be families who have made other choices of pre-school provision or who were unable to apply for a place at the nursery. The priority afforded to applicants on the basis of having attended the nursery does not meet the Code's requirement for arrangements to be fair.
40. There are a number of other matters in the arrangements which do not comply with the Code for the reasons set out above.

Determination

41. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the arrangements determined by the governing body of Wolfson Hillel Primary School for September 2015. I determine that they do not conform with the requirements relating to admission arrangements.

42. 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 as quickly as possible.

Dated: 12 November 2014

Signed:

Schools Adjudicator: Phil Whiffing