

DETERMINATION

Case reference: ADA 2550, 2551, 2552

Objector: A member of the public

Admission Authority: The governing bodies of Cuckoo Hall School, Kingfisher Hall School and Woodpecker Hall School

Date of decision: 8 October 2013

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I determine that the admission arrangements for Cuckoo Hall School, Kingfisher Hall School, and Woodpecker Hall School 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 authorities to revise their admission arrangements as quickly as possible.

The referral

1. Under section 88H(2) of the Schools Standards and Framework Act 1998, (the Act); an objection was referred to the Adjudicator about the admission arrangements (the arrangements) for Cuckoo Hall School, Woodpecker Hall School and Kingfisher Hall School (the schools). The objector has asked to remain anonymous but complied with Regulation 24 of the School Admissions Regulations 2012 by providing their name and address to the adjudicator. The objector initially corresponded about this matter on 16 April 2013 and finally submitted an objection on 21 July 2013. The objector stated that the objection was submitted late because the 2014 arrangements for these three schools had not yet been placed upon their websites and so the objector had not had access to the determined arrangements in time to place an objection by 30 June as laid out in the Regulations. Given that the objection was received late, I have decided to review the comments made under section 88I(5) of the Act as a referral as the arrangements have come to my attention rather than as an objection.

2. These schools are managed through the Cuckoo Hall Academy Trust and each is a 3 -11 primary school. The governing body for each school is the admitting authority for the individual school and these governing bodies derive their authority from the Cuckoo Hall Academies Trust which is the proprietor of the schools.

3. The admission arrangements and oversubscription criteria for each of these three schools are essentially the same, only differing in the published admission numbers (PAN) and school contact information. I have decided, therefore, that it is appropriate to deal with the concern raised in a single determination. Cuckoo Hall School became an academy on 1 September 2010; Woodpecker Hall School opened as a free school on 1 September 2011 and Kingfisher Hall opened as a free school on 1 September 2012. These schools together with a linked secondary school comprise the Cuckoo Hall Academy Trust. The concern raised and which is dealt with in this determination is that the fourth oversubscription criterion in each of the schools' arrangements gives priority for reception places in the reception year to children on roll at the individual school's nursery class at the time of application.

Jurisdiction

4. The terms of the master funding agreement and the individual supplementary agreements for each of these schools between the proprietor (Cuckoo Hall Academies Trust) and the Secretary of State for Education require that the admissions policy and arrangements for the academy schools are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing bodies, which are the admission authorities for the schools on behalf of the Cuckoo Hall Academies Trust, on that basis.

5. The objector submitted the objection to these determined arrangements on 21 July 2013 having waited to see them publicly available on the school websites. The deadline for objections had passed so I have used my power to consider the matter raised under section 88I(5) of the Act and I am satisfied that it is within my jurisdiction.

Procedure

6. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

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

- a referral dated 21 July 2013;
- the school's response to the referral made through their solicitors and supporting documents;
- The London Borough of Enfield Council's (the council's) composite prospectus for parents seeking admission to schools in the area in September 2013;
- maps of the area identifying relevant schools;
- copies of the minutes of the meetings on 24 February at which the proprietor of the school, acting through the individual school governing bodies, determined the arrangements for September

2014; and

- a copy of the determined arrangements for each of the schools.

8. I have also taken account of the information I received during a meeting I held at Cuckoo Hall School on 13 September 2013. This meeting was attended by representatives from the schools, the local authority and the schools' solicitor.

The Referral

9. Each of the school's arrangements for September 2014 list as point four of the oversubscription criteria; "Children who attended the nursery class at xx school at the time of application and remain in the nursery class until their admittance to xx reception class". The referral is that this is not compliant with the requirements of the Code.

10. The referrer reported that the determined arrangements were not displayed on the school websites in time to make an objection before the 30 June deadline given in the Code. The schools determined their arrangements on 24 February 2013 and the documents are dated on the websites 24 June 2013, 25 July 2013 and the third is undated. The Code is not specific when the arrangements should be published on the website but the inference is that this should be within the same time constraints as the notification of arrangements to the local authority which is given as 1 May in paragraph 1.47 of the Code.

Background

11. These three primary schools serve a similar community in Enfield. Cuckoo Hall is the largest of the three with a PAN of 120, Kingfisher Hall School has a PAN of 30 and Woodpecker Hall School has a PAN of 60. The nursery classes in each of the schools are an integrated part of the early years foundation stage provision. Children attend the nursery classes part time on either mornings or afternoons for 15 hours per week. The schools are inspected as a 3 -11 provider. The published admission arrangements for each of the nurseries use the same wording as the respective primary school admission arrangements apart from two differences. The first is that the attendance at the nursery criterion does not apply since this an application to the nursery and the second is that there is no right of appeal if a place is not offered although unsuccessful applicants are referred to the schools' complaints procedures. There is also a note at the end of the nursery admission arrangements that says that attendance in the nursery classes does not guarantee admission to the appropriate primary class and that a separate application must be made for transfer from the nursery to the primary school.

12. The admission arrangements for admission to Year R for September 2014 have been published with the following oversubscription criteria;

- Those children in public care or previously in public care;
- Children of staff who have been employed at the school for two or more years or who have been recruited to fill a vacant post for which there is a demonstrable skill shortage;
- Children with a sibling attending the academy at the time of admission and who will be attending at the time of admittance with priority in this group given to children of twin or multiple births living at the same address;
- Children who attended the nursery class at the school at the time of the application and remain in the nursery class until their admittance to the school reception class;
- Children living nearest to the school with priority given to children of twin/multiple births before other children.

A distance tie-break is included measured as the crow flies with random allocation if two distances are the same.

The oversubscription criteria also include the statement: "Please note that attendance at the nursery class at xx academy does not guarantee admission to the academy for primary admission and that a separate application must be made for transfer from nursery to academy.

Consideration of Factors

13. The solicitor acting on behalf of the schools argues that the Code is silent on the matter of automatic entry from nursery classes into a reception class and that the main issue in the use of a criterion giving priority to children who have attended the nursery is the extent to which such a criterion creates a condition upon admission to reception and balances the reasonable interests of pupils in the nursery to have educational continuity against the reasonable interests of other children to enter the school without attending the nursery.

14. The solicitor argues that the weight of importance given to educational continuity will vary considerably and must be considered in the context of each primary setting. The schools say there is clear evidence that children entering the nursery classes have low levels of expressive language skills, literacy and numeracy skills and personal development. This is addressed in the nursery and children progress to the school with higher levels in these areas in comparison to those children who have not attended the nursery. Where external support is needed this is identified during the nursery year and individual educational plans are established and support services put in place which can then go with the child into the main school. The school has evidence that where children are picked up in this way the children thrive and do well.

15. In addition, the schools say that assessments carried out at the end of the nursery year in 2012 at Cuckoo Hall School showed that most of the children attending the nursery showed excellent progress in all early

learning goals with 81 per cent reaching expected levels in reading and 95 per cent achieving expected levels in mathematics. The school argues that as a result of this progress in the nursery, children entering the school go on to achieve well at the end of each year through to the end of Key Stage 1. The results show 93 per cent of children at the school achieved well in the Year 1 phonics screening compared with a national average of 58 per cent and for children in receipt of free school meals, 89 per cent reached this level in comparison with a national average of 45 per cent.

16. The schools argue that where children go on from the nursery class to other schools the continuity is broken and the children do not achieve as well and that parents who are told that they cannot continue at the school and must choose another school become distraught and lose faith in the system. The schools comment that the social demographics of the area mean that families move into and out of the area and so the schools experience high mobility but that the parents do their best to keep their children at the schools even when a move to another area is outside their control because they recognise that their children are doing well at the school.

17. The solicitor for the schools has provided the figures for admission to Cuckoo Hall School in the last three years and accepts that these show that few children attend the school who have neither attended the nursery nor have a sibling already in the school.

	Children with statement	Looked after or previously looked after	Sibling (also in nursery)	Sibling (not in nursery)	nursery	distance
2011/2012	1	0	43	7	68	1
2012/2013	0	0	62	5	51	2
2013/2014	0	0	58	3	58	1

18. The submission from the solicitor says that “this extent of admission access to pupils who have not attended the nursery may be regarded by the adjudicator as insufficient to be fair for the requirements of the Code.” The solicitor goes on to suggest that this determination should only partially uphold the objection because of the need to balance the interests of those children with nursery places who will benefit from continuity of education with those who have not attended the nursery and for whom the current arrangements could be judged to be unfair because of the current particular use of the nursery priority in the admissions arrangements.

19. The solicitor proposes amended admission arrangements that allocate 50 per cent of places by distance before the criterion that gives priority to those who have attended the nursery. My jurisdiction is limited to considering arrangements that have been determined by the admission authority for a school. Any changes that the schools might propose in response to a determination by an adjudicator must themselves be tested against admissions law and the Code by the admission authority. I make no judgement about the solicitor's proposal.

20. I have considered the submission by the school and I agree that the Code is silent concerning nursery admissions. Given that it neither prohibits giving priority nor gives permission for nursery priority to be included as an oversubscription criterion I must consider the criterion against the mandatory requirements of the Code. In particular, I shall consider the general requirement in paragraph 14 of the Code which states; "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"

21. Schools must provide places for admission to the reception year and applications must be made through the council's co-ordinated admissions arrangements. In the council's admission documentation it is clearly stated that applications for reception places must be made for all children including those who attend any nursery provision. This is also stated within each of the schools' admission arrangements.

22. The schools have emphasised that the nursery classes are an integral part of their provision and have produced information to show the progress made by children who attend the nursery classes. I do not argue against the benefits of early years education or continuity where it can be achieved, but I must consider the fairness of the admission arrangements for admission to the reception year. These are good schools and the evidence of progress made by children in the nurseries and the schools that the schools have provided demonstrates this. I have no doubt that the schools wish to provide the best possible education they can for their pupils.

23. Attendance at the schools' nursery classes however, has a very strong bearing on whether a child will gain a place at the schools so I have considered the admission arrangements for the nursery classes. The admission arrangements for the nursery classes do not have to comply with the Code however these schools have chosen to apply the same criteria for nursery admissions as for the school with the two exceptions previously mentioned (omission of prior attendance at the nursery and there is no appeal system). The absence of an appeal system means that parents who consider that they have been treated unfairly do not have the opportunity to appeal. The arrangements offer the opportunity for their concern to be dealt with as a complaint, but I do not think that this system has the comparable force to the independent appeal system that has to be

in place for admission to schools at a relevant age such as to the reception year and for in-year admissions to schools. It is possible that a child could be unfairly denied a place in a nursery class which in turn would mean that it would be most unlikely that the child would be allocated a reception place.

24. Paragraph 14 of the Code requires arrangements that parents can easily understand so I have considered the over subscription criteria from the perspective of a parent of a three or four year old living in the local community considering the educational opportunities for their child. They may see that they will be in the fifth priority category when oversubscription criteria are applied to their application for a school place, if the criteria for looked after children or siblings do not apply to them and they have not sent their child to the school's nursery class. The information provided by the school suggests that they are very unlikely to get a place in the nursery if they are in this category as the school has almost reached its admission limit when it gets to this criterion.

25. For admission to the reception year the Code makes clear in paragraph 2.16 that parents do not have to send their child to school either full or part-time until the term in which the child reaches compulsory school age. This is their legal right and therefore admission arrangements should not operate against them being able to make this choice at the appropriate time for their child. Parents may prefer to look after their children themselves at home or have other arrangements for child care based on family and/or work commitments that mean they need provision which the schools do not offer.

26. It could be argued that the presence of the sibling criterion dilutes the attendance criterion and in some way makes it fairer. The information provided by the schools show the large percentage of siblings who are allocated places in the school. However, this does little to make it easier for a family moving in to the area to find a place on an equal basis with those already living in the area or for those families where for whatever reason an older sibling was not allocated a place at the school. The school in its submission commented that there is a high level of mobility in the area. My conclusion is that the oversubscription criteria provide a clear advantage to those children attending the nursery over those children who may live closer to the school but who, for whatever reason, do not or are not able to attend the nursery even if their parents wished them to do so.

27. The schools have said that parents whose children have obtained a place in the nursery will be distraught and lose faith in the system if they do not subsequently obtain a place in the school. I have considered this point and concluded that much depends on the messages that are given to parents and their children both within the admission process to the nursery and during the time that the child attends the nursery class. The benefits of the nursery experience need not be diminished by a change of school if good links to other schools are present. If the expectation of continuity within the school is routinely reinforced during the time in the nursery class

then clearly, the sense of disappointment will be greater if this is not achieved.

Conclusion

28. These schools have been judged by Ofsted to be good schools which work hard to do the best for their pupils. I appreciate the arguments they make about the benefits of continuity, but as I have said above, the messages given to parents and their children must help to positively manage this expectation for the benefit of the children and their families. I consider that it is not fair that gaining a place in a nursery class for which attendance is not compulsory can affect to such a very large extent a child's chance of gaining a place at the school. Parents should not feel that they have to take a place at the nursery in order to have a reasonable chance of gaining a place in the school and that if they cannot or do not choose to do so or are not offered a place in the nursery that they will have very little chance indeed of gaining a place in the primary school. The Code is clear that admission authorities must not require parents to take up their school places until the term in which the child reaches compulsory school age. I therefore conclude that these arrangements are unfair and not compliant with the Code. The solicitor for the schools has proposed some possible amendments to the arrangements. I have not made any comments about these since I do not have the jurisdiction to comment upon arrangements that have not yet been determined.

29. The determination has been made under section 88I of the Act as a referral because the objector was unable to access the determined arrangements in time to make an objection by the deadline of 30 June. The schools had not published this information on their websites in the timescales set out in the Code and in this respect have not complied with the Code.

Determination

30. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I determine that the admission arrangements for Cuckoo Hall School, Kingfisher Hall School, and Woodpecker Hall School do not conform with the requirements relating to admission arrangements.

31. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authorities to revise their admission arrangements as quickly as possible.

Dated: 8 October 2013

Signed:

Schools Adjudicator: David Lennard Jones