

DETERMINATION

Case reference: ADA/002398

Objector: The Headteacher of a primary school

Admission Authority: The Gateway Learning Community Trust

Date of decision: 7 February 2013

Determination

I have considered the arrangements of The Gateway Academy for admissions in September 2013 in accordance with section 88I (5) of the School Standards and Framework Act 1998. I determine that they do not conform with the requirements relating to admission arrangements in the ways set out in this determination. The school has accepted that there are some aspects that do not conform and has begun to make amendments.

By virtue of section 88K (2) of the Act, 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. Under section 88I (5) of the Schools Standards and Framework Act 1998, (the Act), the admission arrangements (the arrangements) for admissions in September 2013 of The Gateway Academy, a secondary Academy school, (the school) have been brought to the attention of the Adjudicator by the headteacher of a primary school (the referrer). The referral concerns the priority for admission to the school for children who have attended certain primary schools.

Jurisdiction

2. The terms of the Academy agreement between the proprietor 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 by the governing body for the Trust which is the admission authority for the school, on that basis on 26 March 2012. The referrer wrote to the Office of the Schools Adjudicator about these determined arrangements in a letter dated 7 December 2012.
3. The case was referred to an adjudicator, Dr Stephen Venner. Just

prior to the meeting on 17 January 2013 it became necessary to reassign the case and with the parties' agreement at the meeting I took over as the adjudicator. I am satisfied the arrangements have been properly referred to me in accordance with section 88I of the Act and the matter is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a. the referral letter of 7 December 2012 and subsequent correspondence;
 - b. the school's response to the referral dated 15 January 2013 and supporting documents, and subsequent correspondence;
 - c. Thurrock Council's, the local authority, composite prospectus; and
 - d. a copy of the determined arrangements
6. I have also taken account of the information I received during the discussion held with the parties at a meeting convened at the school on 17 January 2013 and subsequent correspondence.

The referral

7. The referral asserts that the arrangements contravene the Code in relation to paragraphs 1.8 and 1.9 which specifies that "oversubscription criteria **must** be reasonable, clear, objective, procedurally fair....." and ".... **must not** take into account any previous schools attended, unless it is a named feeder school".
8. The arrangements give priority to applicants at:
 - "e. Admission of students who attend Gateway Primary Free School" and
 - "f. Admission of students who attend primary schools in the Gateway Learning Community".
9. The referer points out that there is no statement that the Gateway Primary Free School or the primary schools in the Gateway Learning Community have the status of feeder schools. The arrangements do not name the relevant schools, Landsdowne Primary Academy and Herringham Primary Academy, as members of the Gateway Learning Community as part of the oversubscription criterion.

Other matters

10. I have also considered the arrangements as a whole and found there are matters that appear not to conform with the Code.

Background

11. The school opened in 2006 as an Academy, sponsored by The Ormiston Trust, under section 482 of the Education Act 1996. The school has purpose built accommodation and an Academy primary school that is a Free School has opened on the same site. At present children have been admitted to Year 6 only of the Free School. The admission arrangements for The Gateway Academy were set out in detail as part of the funding agreement and the arrangements for September 2013 include some changes that have been made to comply with changing legislation and some to take account of other circumstances.
12. Part of the reason for the referral is concern that children are changing primary schools to gain priority for admission to the school. The view expressed in the referral is that a change of school during the primary years can have a negative impact on children's learning and should not be encouraged.

Consideration of Factors

13. The referrer states that as there is no official declaration in the arrangements that the primary schools covered by oversubscription criteria e) and f) are feeder schools and thus giving priority to children attending the schools is unlawful. Paragraph 1.9b of the Code prohibits priority for admission to any previous school attended unless it is a named feeder school. The Code at paragraph 1.15 gives permission for a school to name a primary or middle school as a feeder school and says that "the selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds." The referrer also contends that if the schools covered by criteria e) and f) are feeder schools they should all be listed together as a single criterion and attendance at one should not gain higher priority than attendance at another.
14. Oversubscription criterion e) specifies students who attend the Gateway Primary Free School, but criterion f) does not name the primary schools saying only the primary schools in the Gateway Learning Community. The referrer is correct that the arrangements do not say the primary schools are feeder schools, but not actually using the words "feeder school" does not mean that the schools are not.
15. Not naming the primary schools in the Gateway Learning Community means that whether they are feeder schools or not, the arrangements are not clear, as required by the Code. It also means that parents cannot begin to assess the likelihood of their child gaining a place at the school until they have found out how many and which schools are part of the Community. This goes against the principles set out in paragraph 14 of the Code. As the primary schools are not named in

criterion f) I agree with the referrer that the arrangements as presented do not conform with the Code in respect of designating schools as feeder schools. Furthermore, it is not clear from the arrangements why any of the primary schools should be named as feeder schools. Parents have to surmise why these primary schools afford priority for admission to the school.

16. When discussed at the meeting, the representatives of the school explained the association of Gateway Primary Free School with the Academy. The two classes that currently comprise the primary school are accommodated within the school while building work takes place that will lead to the entire primary school being separate, but located on the same site as the school. They also explained the relationship with Landsdowne and Herringham Primary Academies as members of the Gateway Learning Community. Thus the school could have feeder schools if it meets the requirements of the Code by being transparent and selecting the schools on reasonable grounds. If the school wishes to have one or more feeder primary schools it would do well to be clear about what justifies a school being a feeder school and ensure that the grounds can be accepted by the wider community as being reasonable. The school or schools must be named individually.
17. The referrer queries the separation of the three primary schools into two oversubscription criteria. In 2013 it is clear that the Gateway Primary Free School has closer physical links with the school, but being a feeder school should mean more than proximity. If the school wishes to name more than one school as a feeder school and give differential priority to one of those schools it needs to have good reasons for doing so that can withstand scrutiny against the requirements of the Code.
18. Once the identity of the three primary schools was established, I became concerned about whether having these schools as feeder schools would be fair as required by the Code. The arrangements as published refer to seeking the permission of the Secretary of State to increase the published admission number (PAN) from 180 for 2012 to 210 in 2013 and 240 in 2014. The PAN for Gateway Primary Free School is 90, for Herringham it is 60 and for Landsdowne it is 90. Thus if the PAN for the school remained at 180 it would seem likely that not all the children at the three primary schools would be able to attend the school if those schools had admitted up to their PAN, and children from other schools would have no chance of securing a place. Even if increased to 210, which has now been agreed, there would still be too many children from the three primary schools. In 2014 there would still potentially be difficulties as the arrangements give priority to siblings above that for attending the feeder schools. When a secondary school's PAN is equal to or lower than the sum of the PANs of the feeder primary schools, the secondary school is in danger of falling foul not only of having arrangements that are not fair, but also of the prohibition on making something a condition for gaining priority for a place at a school. If it becomes necessary that for an applicant to gain priority for a place at the school the child needs to have attended

named primary schools then the inclusion of named feeder schools would be likely to be ruled unfair and in contravention of the requirement not to impose a condition.

19. Discussion about the number of applications for 2013 suggests that there will be places for applicants who do not attend the three primary schools. There are only two classes at present at the Gateway Primary Free School and Herringham and Landsdowne are not full to their PAN. Data provided by the referrer since the meeting indicates that there are 164 children in Year 6 of the three primary schools compared with the school's PAN of 210. I do not accept that for admissions in September 2013, the year for which I have jurisdiction to make a determination, giving priority for attending the three primary schools could be judged unfair.
20. However, I urge the school to consider very carefully before determining its arrangements for 2014 whether it designates one or more named schools as feeder schools, and if so how many and on what grounds, checking that any priority for attending a feeder school does not contravene any of the general requirements for admission arrangements.
21. As part of the referral, there is a reference to children changing schools to join the Gateway Primary Free School, thus disrupting their primary education to increase their chances of securing a place at the school. As the Gateway Free Primary School has at present taken children only into Year 6 it was inevitable that children would leave other schools to take up one of the places available this year. The referrer suggests that giving priority for attending this particular primary school contravenes the Code by "disadvantaging unfairly, either directly or indirectly, a child from a particular social or racial group". She argues that that the criteria used by the school are prejudiced against those parents or carers who may not be able to evaluate the advantages of moving for Year 6. I have no evidence that any particular social or racial group is disadvantaged for admissions in 2013 and do not accept this part of the referral.

Other matters

22. During the meeting I raised with the school a number of matters where in my view the arrangements appeared to contravene the Code.
23. Under the heading, "Procedures where the Academy is oversubscribed" The first oversubscription criterion a) needs to be amended to include "previously looked after children" in order to comply with paragraph 1.7 of the Code. The school agreed to make this amendment.
24. The second oversubscription criterion b) concerns children who have a statement of special educational need. The text says correctly that children who have such a statement are covered by separate legislation and must be admitted to the school. However, they are not

admitted through applying oversubscription criteria and must not be part of the arrangements that apply only if a school is oversubscribed. It is good practice for admission arrangements to say that the school will admit children who have a statement of special educational needs that names the school, but this should be included before any reference to oversubscription and must not be under the heading of, or part of, oversubscription criteria. The arrangements therefore need to remove criterion b) and place the text above "Procedures where the Academy is oversubscribed" and possibly introduce a new heading such as "Children who have a statement of special educational need that names the school". The school agreed to amend its arrangements.

25. It is rather strange to find as oversubscription criterion c) a priority that will not be used for admissions in 2013. If the school wishes to include some information about previously giving priority for 10 per cent of places for a particular aptitude or that it plans to reintroduce the criterion then it should do so other than as an oversubscription criterion. The school agreed to make this change.
26. Similarly, oversubscription criterion i) concerning a direction by the Secretary of State to the school to admit a child is not a matter of allocating places in the normal admissions round and is not an oversubscription criterion. The school agreed to make this amendment.
27. The arrangements do not have a final tie breaker to separate two applications that cannot otherwise be separated as required by paragraph 1.8 of the Code. In the albeit rare event that two applicants live at exactly the same distance from the school, a final way of separating the applicants must be included, for example by random allocation.
28. The school has about 60 students admitted to the sixth form and these are predominantly students transferring from the school's Year 11. However, some students do join the school and there is an invitation on the school's website for students to apply to join the sixth form. The school needs to determine a PAN to comply with paragraph 1.2 of the Code since admission to Year 12 is a "relevant age group". Prospective students need to know how many places are available for students from other schools who meet the entry requirements. The school needs oversubscription criteria for the sixth form as required by paragraph 1.7 of the Code. The application form also needs to be revised to comply with the Code in all aspects relating to admissions to a school. The school is aware that amendments are needed and has agreed to determine future arrangements that comply with the Code.
29. The school has already offered me sight of some suggested amendments. Applications for September 2013 are being processed and thus the necessary changes cannot apply to those applications. However, as a waiting list for places should be kept, the arrangements that apply for admissions from September onwards should be fully compliant with the Code. The school can amend its arrangements as it

is able to do in accordance with paragraph 3.6 of the Code to achieve compliance with the Code.

Conclusion

30. For the reasons given above I have concluded that some parts of the arrangements as referred to the Adjudicator do not conform with the requirements relating to admission arrangements.

31. I have also identified some additional ways in which the arrangements do not conform. Already the school has taken some action to achieve better compliance with the Code and agreed that further work is still needed and will be undertaken.

32. Determination

33. I have considered the arrangements of The Gateway Academy for admissions in September 2013 in accordance with section 88I (5) of the School Standards and Framework Act 1998. I determine that they do not conform with the requirements relating to admission arrangements in the ways set out in this determination. The school has accepted that there are some aspects that do not conform and has begun to make amendments.

34. By virtue of section 88K (2) of the Act, 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: 7 February 2013

Signed:

Schools Adjudicator: Dr Elizabeth Passmore