

DETERMINATION

Case reference: ADA/002454

Referrer Somerset Local Authority

Admission Authority: The Redstart Primary Academy Trust

Date of decision: 8 October 2013

Determination

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 Redstart Primary Academy Trust for The Redstart Primary School, Chard Somerset for admissions in September 2014.

I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in relation to looked after and previously looked after children and in relation to children with special educational needs who do not have a statement of special educational needs.

By virtue of section 88K(2) of the Act, the adjudicator's determination is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible in relation to looked after and previously looked after children and children with special educational needs who do not have a statement of special educational needs. The school has already revised its arrangements in relation to the matters which were the subject of the objection and need take no further action in relation to these.

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 in an email referral dated 20 June 2013 from Somerset County Council, the local authority (the LA) for the area about the admission arrangements (the arrangements) for The Redstart Primary School (the school) a primary academy for children aged 3 – 11 years for September 2014. The objection is to:
 - a. the element of priority given in the oversubscription criteria to children who had attended the school's early years centre, and

- b. the inclusion of the word “normally” in the sentence in the admission arrangements stating: ‘Where there are fewer applications than places available within the Published Admission Number or admission limit set for the required year group, places will normally be provided for every child.’

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. The arrangements were determined by the academy trust, which is the admission authority for the school, on that basis. The objector submitted the objection to these determined arrangements on 20 June 2013. I am satisfied that the objection was properly referred to me in accordance with section 88H of the Act and is within my jurisdiction.
3. I have also used my powers under section 88I(5) 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 objector’s email of objection dated 20 June 2013;
 - b. the school’s response to the objection dated 28 June 2013 and subsequent emails sent during July, August and September 2013;
 - c. confirmation of when consultation on the arrangements last took place;
 - d. the LA’s composite prospectus for parents seeking admission to schools in the area in September 2013;
 - e. copies of the minutes of the meeting at which the proprietor of the school determined the arrangements;
 - f. copies of the arrangements as originally determined and as subsequently revised; and
 - g. a copy of the arrangements as published on the school’s website.

The Objection

6. The LA objected to two aspects of the admission arrangements as initially determined by the school. In its objection to the element of priority given to children who have attended the school's early years centre, the LA argues that this breaches the prohibition in paragraph 1.9 e on giving priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation and the prohibition in paragraph 1.9 l on naming fee-paying independent schools as feeder schools. Parents can take up the state-funded nursery provision at the school's nursery but can also pay for additional provision there.
7. In its objection to the use of the word "normally" as outlined above in the referral section, the LA argues that this does not conform to the requirements of paragraphs 15d, 1.6, 2.8 and 2.11 of the Code. The LA contends that these provisions are concerned with ensuring that in the normal year of admission, admission authorities offer places up to the published admission number (PAN) which is a legal limit and there is no discretion for admission authorities to refuse a place below the PAN. The use of the word normally in this context is thus, the LA maintains, in breach of the Code.

Other Matters

8. In the course of examining the arrangements I found other matters that appeared not to conform to the Code. These were that the oversubscription criteria giving priority:
 - a. to looked after and previously looked after children did not conform to the requirements of paragraph 1.7 of the Code and were not clear as required by paragraphs 14 and 1.8 of the Code; and
 - b. to children with special educational needs that could only be met at the school were not clear and were not objective as required by paragraphs 14 and 1.8 of the Code.

Background

9. The school became an academy in July 2011. The arrangements for September 2012 will thus have been determined before the school become an academy, but the academy trust will have been responsible for determining the arrangements for 2013 as well as for the arrangements for 2014 which are the subject of this determination.
10. The school made some changes to its arrangements for 2014. It carried out a consultation on the intended arrangements between 21 December 2012 and 15 February 2013. This consultation met the requirements of the regulations and the Code. The school determined its arrangements and published what were intended to be its finalised arrangements on its website on 20 February 2013.

11. The oversubscription criteria for 2013 as described in the LA's composite prospectus for admissions to schools in September this year can be summarised as follows:

- 1 Looked after and previously looked after children
- 2 Children of staff
- 3 Siblings
- 4 Children living in the designated catchment area
- 5 Children attending the school's early years centre
- 6 Other children.

12. The revised arrangements for 2014 differ from those above by the omission of the criterion relating to children who have attended the early years centre. The original and revised arrangements for 2014 but not those for 2013 also include the following statement:

"The above criteria (2 – 6) may be overridden and priority given to an applicant who can establish any of the following:

- pupils with special educational needs that can only be met at The Redstart Primary School (e.g. where the academy has specialist provision)';

*Applications in this category must be supported by a statement in writing from a doctor, social worker or other relevant professional. This is necessary because you will be asking the academy to assess your child as having a stronger case than other children. Each case will be considered on its merits by the Governing Body of The Redstart Primary School."

Consideration of Factors

13. The LA has provided me with copies of emails it sent to the school in March this year raising its concerns about the use of the word normally and the element of priority for admission to Reception Year (YR) given to children who had attended the early years centre. The LA has told me that it received no response to these.

14. The LA submitted its objection to the school's arrangements on 20 June as noted above. The school has responded to the LA's objection with commendable alacrity. The Office of the School Adjudicator (OSA) wrote to the school on 25 June to inform it of the objection and seek a response. That response was sent on 28 June. In its response the school informed the OSA that its governing body had unanimously agreed on 27 June to revise its arrangements to remove the word normally and the element of priority for children who had attended the early years centre. The letter enclosed a copy of the revised admission arrangements and these were also posted on the school's website where they are easy to find.

15. Regulation 17 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the regulations) requires all admission authorities to determine their admission arrangements by 15 April each year. Once admission arrangements have been determined, the regulations provide that they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of the Code, admissions law, a determination of the adjudicator or any misprint in the admission arrangements. I am satisfied that the changes to the admission arrangements made in this case were necessary to give effect to mandatory requirements of the Code. I find also that the arrangements as now determined so far as they relate to the matters which were the subject of the objection conform to the requirements of admissions law and the Code.
16. I have indicated above that the LA's objection was properly made and is within my jurisdiction. As the adjudicator appointed to consider the objection I am under a duty imposed by section 88(4) of the Act to decide whether and, if so, to what extent that objection is to be upheld. I find that the arrangements as originally determined and referred to me do not conform to the requirements of the Code. In the case of the nursery criterion, this is because parents are able to pay for provision beyond that funded by the state and paragraph 1.9e of the Code which prohibits – among other things – priority on the basis of financial support would thus be breached. In the case of the inclusion of the word “normally” in relation to the requirement to admit up to PAN, I agree with the LA's submission, with the exception of their reference to paragraph 2.11 of the Code which is not concerned with admission up to PAN and is not relevant in this case. The school has already changed its arrangements and need take no further action in this regard.
17. However, in the course of my investigations, I have found other matters which do not conform to the Code.
18. Paragraph 1.7 of the Code provides that the highest priority in oversubscription criteria for all schools (other than in specified circumstances, none of which applies to this school) **must be** given to both looked after children and previously looked after children. The Code provides definitions of both of these groups. Paragraphs 1.4 and 1.8 of the Code provide among other things that oversubscription criteria must be clear.
19. The school's first oversubscription criterion (which I am calling statement A for ease of reference) reads:
- “Children in the care of a Local Authority at the time of application or whose care has ceased because he/she has become adopted or the subject of a residence or special guardianship order.”

20. It is then followed by another section (which I am calling statement B) which reads:

“Places will first be allocated to pupils looked after by the Local Authority (Children in Public Care) as required by the Education (Admission of Looked After Children) (England) Regulations 2006 and in accordance with section 22 of the Children Act 1989 and who (a) are looked after at the time an application for admission to a school is made and (b) in relation to whom the Local Authority has confirmed the child will still be looked after at the time when the child will be admitted to the school.”

21. The version of the admission arrangements sent to me with the school’s letter of 28 June has the two sections above numbered as 1 and 2 respectively. The version on the school’s website has a large bullet point for the first and a smaller bullet point for the second.
22. Statement B is superfluous and, indeed, could be confusing and thus unhelpful to readers as the children covered by it are a subset of those covered by statement A. It also refers to a set of regulations which were revoked in 2008.
23. Statement A itself does not quite meet the requirements of the Code. The Code refers to “looked after children”. The legal definition of a looked after child in the Children Act 1989 – which is explained in the Code – is one who is in the care of a local authority or who is being provided with accommodation by a local authority. The school’s arrangements refer only to children who are in care and not those who are being provided with accommodation. Statement A would in addition be clearer if it referred to looked after children and previously looked after children before it described those who fall into this category.
24. I am in no doubt that the school’s intentions are to comply fully with the requirements of the regulations and the Code in relation to looked after and previously looked after children. However, the definition of a looked after child is not accurate. The inclusion of both statement A and statement B also make the arrangements unclear and possibly confusing to parents and others. The Act requires the school to revise its arrangements as quickly as possible.
25. I turn now to the oversubscription criterion introduced for 2014 and concerned with children who have special educational needs (SEN). I should say that the school’s arrangements contain a clear and prominent statement that they will admit any child who has a statement of SEN which names the school. This is, of course, a legal requirement. The oversubscription criterion under my consideration here is accordingly concerned only with children who have SEN but for whom a statement of SEN has not been made.
26. The Code contains a number of provisions (in paragraphs 1.8, 1.9 h, 1.30, 1.32 b and 2.4 c) which refer to children with SEN. The common purpose of these is to ensure that admission arrangements do not disadvantage

such children, but the Code is silent on the permissibility of arrangements which actually give priority to children with SEN. As the Code makes clear that it is not intended to give an exhaustive list of acceptable oversubscription criteria, I must consider whether this particular criterion meets the tests in paragraph 14 and 1.8 that all criteria must be clear, objective and fair. In addition, I have taken into account the provision also in paragraph 14 that parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.

27. I was concerned on reading the criterion that it was not clear and not objective. In the first place, it is not included in the ordered list of oversubscription criteria, but rather it is intended that it may “over-ride” any of the criteria other than that related to looked after and previously looked after children. I consider that this is not clear as it is not possible to discern the extent of the priority that is intended to be given. In particular, the use of the word “may” suggests that in some cases it “may not” over-ride other criteria. Secondly, the criterion states that such cases will be considered on their merits by the governing body. This is not objective and suggests an element of discretion for the governing body in deciding who should be offered a place other than on the strict application of the oversubscription criteria. I draw attention in this context to paragraph 1.16 of the Code. While this paragraph is concerned with social or medical need rather than SEN, it provides a useful analogy in how admission authorities are required to deal with evidence of particular types of need. Paragraph 1.16 provides that where admission authorities wish to use social or medical need as an oversubscription criterion they **must** set out how they will define this need and give clear details about what supporting evidence will be required (for example a letter from a doctor or social worker) and then make consistent decisions on the evidence provided. I find that the school’s criterion relating to SEN is not clear and not objective and accordingly does not conform to the Code. The Act requires the school to revise its arrangements as quickly as possible.

Conclusion

28. For the reasons given above, I am upholding the objection but conclude that the revised arrangements conform to admissions law and the Code in relation to the requirement to admit up to PAN and in the removal of priority for admission for children attending certain nursery provision. I conclude that the school’s oversubscription criteria do not conform to the law and Code in relation to looked after and previously looked after children and that they do not conform to the Code in relation to priority given to children with SEN.

Determination

29. 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 Redstart Primary Academy Trust for The Redstart Primary School, Chard Somerset for admissions in September 2014.
30. I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in relation to looked after and previously looked after children and in relation to children with special educational needs who do not have a statement of special educational needs.
31. By virtue of section 88K(2) of the Act, the adjudicator's determination is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible in relation to looked after and previously looked after children and children with special educational needs who do not have a statement of special educational needs. The school has already revised its arrangements in relation to the matters which were the subject of the objection and need take no further action in relation to these.

Dated: 8 October 2013

Signed:

Schools Adjudicator: Shan Scott