

## DETERMINATION

**Case reference:** ADA 2371

**Objector:** a Parent

**Admission Authority:** the governing body of West London Free School

**Date of decision:** 22 August 2012

### **Determination**

**In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of the West London Free School, London, for admissions in September 2013.**

**I have also considered the arrangements in accordance with section 88I (5) of the Act. I determine that there are other matters that do not conform with the requirements relating to admission arrangements.**

**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 88H (2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by a parent, (the objector) about the admission arrangements (the arrangements) for West London Free School (the school), an Academy School, this is a Free School, for September 2013. The school is located in the London Borough of Hammersmith and Fulham (the council). The objection is to the fact that the school published its admission arrangements for 2013/2014 in the proper timescale, but subsequently changed them; and that the school should use the proposed new site of the school for measuring the distance criterion.

### **Jurisdiction**

2. The terms of the Academy agreement between West London Free School (the Academy Trust) and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. The arrangements were determined by the governing body of the Academy Trust (the governing body) which is the admission authority.

3. The objector submitted the objections to these arrangements on 29 June 2012 to the council and they were received on 5 July 2012 at the Office of the Schools Adjudicator (OSA). Although received as an objection after the deadline of 30 June, the School Admissions Code (the Code), paragraph 3.5 and footnote 54 cites regulation 23 of The School Admission (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 which gives the adjudicator discretion to consider late referrals. I have used the evidence that the objection was lodged with the local authority within timescale and was delayed in its arrival with the OSA to establish when the objection was referred. I consider it would unreasonable not to accept the objection and I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

### **Procedure**

4. In considering this matter I have had regard to all relevant legislation and the Code.

The documents I have considered in reaching my decision include:

- a. the parent's objection dated 29 June 2012;
- b. the council's composite prospectus for parents seeking admission to schools in the area in September 2012;
- c. confirmation of when consultation on the arrangements last took place and a chronology of when decisions were made and information was posted on the school's website;
- d. a map showing how the area definitions for random allocation of places overlay on the geographical boundaries of the London Borough of Hammersmith and Fulham;
- e. a copy of the determined arrangements for 2012/2013; and
- f. a copy of the determined arrangements for 2013/2014.

5. I attended a meeting at the school on 19 July 2012 with the school's chair of governors, the objector, the Cabinet Member for Children's Services in the council and the council's admissions officer.

### **The Objection**

6. The objection is to changes in the published arrangements that were made some time in April after they had been determined on 28 March 2012 and which were later ratified in a governors meeting on 27 June 2012. The objection also concerns the location of the school to be used for measuring the distance criterion in 2013.

## **Consideration of Factors**

7. The school undertook a consultation concerning its admission arrangements in line with the requirements of the Code and took account of comments in formulating its arrangements for 2013. The governing body met on 28 March 2012 to consider the responses to the consultation and any issues that had emerged and following this meeting the chair of governors published the arrangements as the determined arrangements on the school's website.

8. The consultation concerned the proportion of places that were to be offered on the grounds of distance and the the proportions of places which would be included in the two random allocations for places and the definition of those random allocations. One of the responses to the consultation had been made by the council through its Cabinet Member for Children's Services. In this response, two key comments were made. The first comment was that the school should use the current location of the school for measuring distance rather than the proposed new location. The second comment was that the balance between the places offered on distance and the places offered through a random allocation should be amended and the distance boundaries be adjusted to bring a greater proportion of places within the geographical area of the local authority and assist the council in providing school places for its residents.

9. In her objection, the objector suggests that the new location should be used to measure distance as that would make more sense to parents at the time of applying for places because the school would have moved to the new location by then. The governing body had decided that the school location would be the existing building because the lease of the new building had not yet been finalised and left some uncertainty about whether it would be finalised or not. This decision was made at the governing body meeting on 28 March 2012. In the meeting with the objector and the school held on 19 July 2012, the objector became aware that the new location was less certain than she had been led to understand by the information on the school's website. She was able to see the reason why the governing body had decided that the uncertainty of the situation made it appropriate to use the existing site rather than the new one for admissions in 2013 even if, by then, the school may have moved. The chair of governors agreed that this was a matter that he would need to explain clearly to parents at the admission meetings to be held in the autumn term.

10. The consultation about the distance criteria for the random allocations led to a response from the council that the distance boundaries for these should be 0 - 1 miles and 1 - 3 miles because this gave the best fit with the existing council area and would assist the council in providing school places for its residents. The governing body took these views into consideration when it decided that the distance boundaries for the random place allocations should be 0 - 1.5 miles and 1.5 – 3 miles. This was the information that was then published on the school's website.

11. The council received the determined arrangements and responded that they still considered that the shorter distances for the random allocation boundaries of 0-1 and 1-3 miles would be preferable. They conveyed this to the chairman of governors in April and he agreed to take this back to the governing body and he changed the arrangements on the website at some point around 25 April 2012 in anticipation that the governing body would amend the arrangements in the light of the council's request. The governing body subsequently agreed these changes at their meeting on 27 June 2012.

12. Paragraphs 1.46 and 1.47 of the Code states that arrangements **must** be determined by 15 April and the admission authority **must** publish the arrangements on the school's website. The admission authority **must** send a copy of the determined arrangements to the local authority before 1 May. In this case the governing body determined its arrangements on 28 March 2012 and the determined arrangements were published on the school's website and sent to the council. The council requested a change during April and on 25 April 2012 the chairman made this change to the admission arrangements on the website and subsequently on 27 June 2012 these amended arrangements were agreed by the governing body and the final admissions arrangements were approved. The way these amendments were made does not comply with the process that must be followed for changing admission arrangements after they have been determined. Paragraph 3.6 and 3.7 of the Code set out how arrangements can be changed. Footnote 56 makes clear that a request for a variation for an Academy School must be made to the Secretary of State and not the Schools Adjudicator.

13. Since the arrangements were properly determined and the change has not been made lawfully, I uphold the objection to the change being made to the arrangements. If the governors wish to make the change that they considered on 27 June 2012 lawful they need to test the proposed change against the conditions for making such a change and if they wish to do so they must apply to the Secretary of State to agree the variation.

### **Other Matters**

14. I have reviewed the arrangements that have now been determined and there is one matter that is not compliant the Code and other matters which are compliant but which could be clarified for the benefit of parents.

15. The school allocates 10 per cent of places by musical aptitude and offers a test of aptitude to applicants who wish to take it and who can then be considered for these places.

16. The Code states in paragraph 1.32 (c) that the school must take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on 31 October. The school has not made it clear that it will do this in its published arrangements and has agreed that it needs to change the arrangements to ensure compliance with the Code.

17. The school has also agreed that its website is unclear about the status of the admission arrangements displayed. It has agreed to address this issue so that parents can be clear whether the arrangements are for consultation and if so how they can respond, or if the arrangements have been determined. If they are determined then they need to state the year of entry for which they apply.

18. The determined admission policy states at paragraph 10 that proof of residence is needed and that this can be provided by providing a utility bill and an original or certified copy of a birth certificate. Paragraph 2.5 of the Code states that a birth certificate can be asked for once a place has been offered. To ask for one earlier would contravene the Code as there cannot be an oversubscription criterion that uses information from a birth certificate. The school will require the address to measure the distance criteria but can obtain this from the Common Application Form. In order to avoid any doubt about this issue and to ensure compliance with the Code this paragraph should be amended to begin "All applicants allocated a place will need to show proof of residence..."

19. Paragraph 12 of the admission policy states that parents will be sent a letter informing them of the outcome of their application by post on 1 March and paragraph 13 asks them to confirm that they will accept the place. Earlier in paragraph 5 is the statement that the school is part of the London Borough of Hammersmith and Fulham's coordinated arrangements. This means that on 1 March it is the home authority for any applicant that will notify them of the outcome of their applications made through the system and the system will also ensure that parents only receive at most one offer of a place. To help to ensure that parents are clear who they will hear from, paragraph 12 should be amended to say, "Applicants will be informed of the outcome of their application on 1 March 2013 by their home local authority." Given that the system will only generate one offer per applicant, paragraph 13 should be amended to state "Applicants to whom places are offered will be advised in their offer letter of any action that they need to take to accept the place offered".

20. Paragraph 14 of the Code says that, "Admission authorities **must** ensure that the practices and 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." The changes outlined in the previous paragraphs to improve clarity help to meet this requirement and do not make a change on which the school should consult, the changes can be made immediately as a permitted variation.

## **Conclusion**

21. The admission arrangements were determined by the governing body on 28 March 2012 and these were published on the school's website. This decision and its publication comply with the requirements of the Code. The changes made subsequently contravene the Code. In consequence I uphold the objection and conclude that the School's lawful arrangements are those determined on 28 March 2012. Paragraphs 3.6 and 3.7 of the Code set out

how arrangements can be changed. Footnote 56 makes clear that a request for a variation for an Academy School must be made to the Secretary of State and not the Schools Adjudicator.

22. The matter of which location to use for measuring distance was determined properly by the governing body within the timescale prescribed by the Code and I do not uphold the objection about this.

23. The school has agreed to address the issues I raised concerning the administration of the musical aptitude tests. It has also agreed to ensure that the matters covered in paragraphs 17 – 20 will be addressed and the admission arrangements revised accordingly.

### **Determination**

24. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of West London Free School, London, for admissions in September 2013.

25. I have also considered the arrangements in accordance with section 88I (5) of the Act. I determine that there are other matters that do not conform with the requirements relating to admission arrangements.

26. 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: 22 August 2012

Signed:

Schools Adjudicator: David Lennard Jones