

DETERMINATION

Case reference: ADA2305

Objector: Hertfordshire County Council

Admission Authority: The governing body of the Academy Trust for The Leventhorpe School, Hertfordshire

Date of decision: 6 August 2012

Determination

In accordance with section 88H (4) of the School Standards and Framework Act 1998, I uphold the objection to the arrangements determined by the governing body of the Academy Trust for The Leventhorpe School for admissions in September 2013.

On the basis of the evidence available to me, I am satisfied that the governing body did consider the requirement for earlier testing, but have failed to take all reasonable steps to comply with paragraph 1.32 (c) of the School Admissions Code.

I have also considered the arrangements in accordance with section 88I (5) of the Act. There are other aspects which appear not comply with the School Admissions Code in the ways set out in paragraph 15 of this adjudication.

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 make the remaining revisions to 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 Hertfordshire County Council (the Council) about the 2013 admission arrangements (the arrangements) for The Leventhorpe School (the School), an Academy school. The objection relates to the published dates for testing which would not allow parents to receive the outcome of the musical aptitude test before the closing date for secondary transfer applications.

Jurisdiction

2. The terms of the Academy agreement between the Leventhorpe Trust (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 Council submitted an objection to these determined arrangements on 25 June 2012. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that it is within my jurisdiction.

Procedure

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

The documents I have considered in reaching my decision include:

- a. the Council's objection form dated 25 June 2012 and further email correspondence;
- b. the School's response to the objection dated 9 July 2012, further correspondence and supporting documents;
- c. the Council's composite prospectus for parents seeking admission to schools in the area for September 2012, as downloaded from the Council's website,
- d. a map of local secondary schools supplied by the Council;
- e. minutes of a meeting of the Hertfordshire County Admissions Forum dated 23rd February 2012;
- f. the admissions arrangements and supplementary application form (SIF) supplied by the School;
- g. the admissions arrangements as downloaded from the School's website on 12 July 2012;
- h. the minutes of meetings of the School's admissions committee dated 19 March and 18 June 2012;
- i. the minutes of the governing body meeting dated 3 July 2012;
- j. the funding agreement;
- k. Music Test Details for Parents dated 26 November 2011; and
- l. the determinations of 1999, 2003, 2006, and 2007.

5. I held a meeting (the meeting) at the Bishop's Stortford High School on 17 July 2012 with representatives of the School, the Council, and the two other schools in the consortium subject to the same objection, namely The Bishop's Stortford High School and The Hertfordshire & Essex High School and Science College. I have taken account of the views expressed and information received during that meeting and subsequent correspondence from the School and the Council related to points discussed at the meeting.

The Objection

6. The objection relates to the published dates for testing which would not allow parents to receive the outcomes of the musical aptitude tests before the closing date for secondary transfer applications. The published date for the musical aptitude test is 24 November 2012, despite the requirement of the Code at paragraph 1.32 (c) that admissions authorities **must**take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on 31 October so as to allow parents time to make an informed choice of school.

Other Matters

7. In reviewing the 2013 arrangements I drew the attention of the School to other aspects of the arrangements that appeared to contravene the requirement of the Code at paragraph 1.8 that oversubscription criteria must be reasonable, clear, objective, and procedurally fair.

Background

8. The School opened as a state funded Academy for pupils aged 11 to 18 years on 1 August 2011, replacing The Leventhorpe School, a Foundation secondary school. The Academy is an all ability inclusive school with pre-existing partially selective admissions for children demonstrating musical aptitude, permitted by section 100 of the Act.

9. The School is part of a consortium with two other local secondary schools, which together operate combined testing arrangements. Each of the consortium schools selects 10 per cent of their annual intake by aptitude.

Consideration of Factors

10. From the evidence available to me, it is clear that before submitting its objection, the Council had communicated with the School, met with the Headteacher and Admissions Officer and also sought advice from the Department for Education (DfE), so as to support the School to be compliant with the Code. In a letter dated 25 January 2012, the Council advised the School that in order to comply with the Code, the arrangements should explain the School will be holding its aptitude tests earlier, to ensure that parents can be informed of the outcome of the test before the closing date for application. The Council reports that it offered assistance to all Hertfordshire schools in communicating arrangements for new testing timescales, including providing information to primary schools through the schools bulletin and, where relevant, circulating information to neighbouring local authorities. Although 16 schools in Hertfordshire include aptitude and/or academic testing as part of their admission arrangements, only the three schools in this consortium have not altered their testing arrangements to adhere to the new Code.

11. The minutes of the Governors' Admissions Committee of 19 March 2012 indicate that, as a result of guidance received from the Council, the governors did discuss the requirement to inform parents of the outcome of the music

tests before the 31 October closing date for applications. It appears that as the governors did not understand what the Code meant by the “outcome” of the music test, they decided that informing parents before the application deadline would neither be a reasonable step for the school to take nor fair to parents, as the time frame was too tight between the Code being published in February, the admission information being made available by the Council to Year 6 parents in September and the 31 October closing date for applications. However, had the governors agreed to comply with the Code at this meeting it is likely there would have been sufficient time to adjust the testing schedule.

12. The School reported that on the publication of earlier admission codes it had sought informal advice from DfE representatives and had been told each time that the provision now in paragraph 1.32 of the Code was intended to deter parents from applying to wholly selective (grammar) schools and then not being allocated any of their preferred schools because their child did not meet the required ability level. The School reports that it was on this basis that governors discussed the issue and agreed that any benefit to the small group of parents likely to apply for the 18 places available under musical aptitude was far outweighed by the difficulties of timings, communications, possible confusion amongst parents and complications at appeal. Governors were convinced that complying with paragraph 1.32 would actually make the entire process more complex for parents than it needed to or should be, and so came to the conclusion that the steps that would need to be taken to ensure that parents knew the outcomes of the music test before they made their applications were disproportionate to the number of parents who would find this information useful and as such, in their view, were not reasonable steps to take. In the minutes of the governing body meeting of 3 July 2012, governors were of the opinion that it would not be possible within the time remaining to ensure that all parents who might wish to apply under the music criterion could be contacted about the change particularly as the test would be operated in conjunction with the two other consortium schools who had decided to keep the timings as published for 2013 admission. The governing body appeared surprised that the local authority had made a formal objection about the 2013 admission arrangements given the School’s willingness to look again at the issues for the 2014 arrangements. However, the Code is clear at paragraph 3.2 that “local authorities **must** refer an objection to the Schools Adjudicator if they are of the view or suspect that the admission arrangements that have been determined by other admission authorities are unlawful.”

13. The School detailed that governors had considered the following issues in reaching their decision:

(a) Timing issues

- It would be impractical for schools to publicise and organise the tests after their open evenings but before the closing date as parents would have insufficient notice of the dates of the tests. Parents would wish to visit the school before applying for the test, so the process, starting with the Open Evening, would need to be moved to the summer term before, with implications for the school’s prospectus, and also the Council’s composite prospectus.
- Parents expect the application process for secondary transfer to begin

in the autumn term, when all schools in the area hold their open events.

- That the process begins in September is inherent in the Code, as the published timeline begins with the publication of the composite prospectus to include detailed admission arrangements of all maintained schools in the area by 12 September 2012.
- Governors were of the opinion that there is something “odd” in asking parents to apply for their child to sit an aptitude test for a school they have not yet had an opportunity to visit.
- All three consortium schools are situated close to the county border with Essex, from where they attract significant numbers of applications. The governors acknowledged that the Council had offered help in publicising changes to testing arrangements, but governors believed there might be consequences at appeal should the revised information not reach all parents, particularly those in other counties who wished to apply. Alternative arrangements might then need to be made for those parents who had been unaware of a revised deadline to comply with paragraph 2.9 (e) of the Code.

(b) The value of the information to most parents

- The governors considered there was a lack of clarity about the meaning of “outcome” in the Code. If “outcome” refers to a child’s score or rank in the test then governors are concerned that the information would be potentially unfair as those whose children ranked or scored very highly would be at an advantage as they would have a very good idea of the outcome of any application they might make, contrary to paragraph 2.10 of the Code which prohibits admission authorities from advising applicants of the outcome of their application before the national offer date in March.

(c) Other Considerations

- Governors recognise that earlier application and testing may resolve specific difficulties in allocating a ranked place to children in the more highly selective areas of the county, but they believe this is not the case for this consortium of schools, as the number of students selected by aptitude criterion is relatively small, and because each applicant is considered under at least one or more other criteria in addition to aptitude.
- The music test date has now been published and communicated to various parents, so governors believe that a change of date at this late stage would cause unnecessary confusion among parents, which may have a significant impact at appeal.

14. The school accepted at the meeting on 17 July that they may have interpreted wrongly the wording of the Code at paragraph 1.32 (c) and advised that, despite deep reservations about the benefits to parents as well

as issues regarding the timings and communication, it would reconsider matters for admissions in 2014. I have noted all that the School has said about its reasons for choosing to refuse to comply with the Code. I am of the opinion that, as the Code was published in February, the School did have sufficient time to adjust the test arrangements to comply with the Code, but the School decided not to do so.

15. As it appeared to me that there were other aspects that did not comply with the requirements relating to admission arrangements, I used my powers under s88I of the Act to review the arrangements as a whole for full compliance with the Code. At the meeting I therefore raised with the School several points which appeared to me to contravene the Code, as these points could be amended immediately by the School as a permitted variation under paragraph 3.6 of the Code. The points that require revision are as follows:

- a. On the School's website, under the heading "Admission to Leventhorpe 2013", musical aptitude is at criterion 6; but under the heading "Procedure for Admissions 2013", musical aptitude is criterion 5. The SIF also shows musical aptitude as criterion 5. To comply with paragraph 1.8 of the Code, oversubscription criteria must be clear so the priority given to the musical aptitude criterion needs to be resolved.
- b. To be able to decide whether to opt for the music aptitude test, parents need to understand what is entailed in the assessment process, but there is insufficient detail in the admissions section on the School's website. Paragraph 1.17 of the Code requires for selection by ability or aptitude that "All selective schools **must** publish the entry requirements for a selective place and the process for such selection". Although some information is provided on page seven of the School's on-line prospectus, parents need to be able to access all the information relevant to admissions within the section on the website designated for that purpose. The School must comply with the requirements concerning publishing the relevant information.
- c. Attendance at a number of named primary schools is given priority at oversubscription criterion 4. The Code at paragraph 1.15 permits the naming of feeder schools in the oversubscription criteria when the selection is transparent and made on reasonable grounds. At the meeting the School explained that these are the primary schools closest to the School, and it seems reasonable to give priority to children attending local primary schools as long as children from more deprived areas near the school are not unfairly disadvantaged. I have not investigated fully why the School names so many feeder schools, but when determining its arrangements for 2014, the School will need to look carefully at the number of, and reasons for including, primary schools as named feeder schools to ensure compliance with the Code.
- d. The requirement included in the School's arrangements that parents must complete a SIF is in breach of the Code as it implies conditionality. The wording of the Arrangements should not do other

than advise the completion of the SIF, and the Council have already suggested an alternative form of wording.

- e. The SIF requires the parent/guardian to sign a declaration to support the school in matters of work, discipline and extra-curricular activities should their child be admitted. As this is in breach of paragraph 2.4 (d) of the Code, the SIF should be amended so that the parent's/ guardian's signature confirms only that the details given on the form are true to the best of their knowledge and belief. The hope that the parent/guardian will support the ethos of the School may be included as a statement in the introductory paragraphs to the admission arrangements.
- f. To suggest within the SIF that stamped, addressed envelopes should be enclosed for acknowledgement of application, and information about the test venue is contrary to the Code at paragraph 1.9 (n). This requirement should be removed, and in this respect, the use of email and on-line information may be helpful.
- g. Paragraph 2.4 of the Code makes clear that admission authorities must only use the SIF to request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability, and must not ask, or use supplementary forms that ask, for any of the information prohibited by paragraphs 1.9 or 2.4. I have not investigated fully why the School believes that all parents must complete the SIF given that all parents will already have had to complete the Council's common application form, particularly as the School selects only 10 per cent of its annual intake by aptitude. As a range of issues regarding the SIF need to be addressed, the School would be advised to review the SIF to ensure that it does not ask for information prohibited by the Code.
- h. In accordance with recent Council advice, the reference that children with a statement of special educational needs which names the School will be admitted should be included in the introductory paragraphs of the arrangements. It appears the statement may have been omitted in error when the arrangements were revised
- i. The Council had suggested that a published admission number (PAN) for the sixth form must be set, but the School did not consider this to be required under the Code. However paragraph 1.2 of the Code makes clear that as part of determining their admission arrangements, the School must set an admission number for Years 7 and 12.

Conclusion

16. On the basis of the evidence available to me, the governing body did consider at length the mandatory requirement to publish earlier dates for testing which would allow parents to receive the outcomes of the musical aptitude tests before the closing date for secondary transfer applications. However, the governors decided that any benefit to a small group of parents

applying for the 18 places available under musical aptitude was outweighed by other considerations such as the tight timing, communication, the possibility of confusion amongst parents and the likelihood of complications at appeal. Accordingly the governors decided it was more important to retain what they considered was a well-established timeline rather than bring forward the date for testing which would comply with the Code.

17. Other Hertfordshire schools did appear to have had enough time to bring forward their testing procedures in compliance with the Code. It is clear that paragraph 1.32 of the Code is mandatory for all schools, and the School needs to ensure that it has lawful admission arrangements.

18. The other aspects which appeared not comply with the Code are set out in paragraph 15 of this adjudication. The Code requires an admission authority to make revisions to its admission arrangements as quickly as possible in order to comply with the Code.

Determination

19. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I uphold the objection to the arrangements determined by the governing body of the Academy Trust for The Leventhorpe School for admissions in September 2013.

20. On the basis of the evidence available to me, I am satisfied that the governing body did consider the requirement for earlier testing, but have failed to take all reasonable steps to comply with paragraph 1.32 (c) of the School Admissions Code.

21. I have also considered the arrangements in accordance with section 88I (5) of the Act. There are other aspects which appear not comply with the School Admissions Code in the ways set out in paragraph 15 of this adjudication.

22. 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 make the remaining revisions to its admission arrangements as quickly as possible.

Dated: 6 August 2012

Signed:

Schools Adjudicator Cecilia Galloway