



DETERMINATION

Case reference: ADA2824

Objector: A member of the public

Admission Authority: The governing body of Sinai Jewish Primary School, Brent

Date of decision: 12 November 2014

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the arrangements determined by the governing body of Sinai Jewish Primary School in Brent for September 2015. I determine that they 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 authority to revise its admission arrangements as quickly as possible.

The referral

1. The admission arrangements (the arrangements) of Sinai Jewish Primary School (the school) for September 2015 have been brought to the attention of the Office of the Schools Adjudicator (OSA) by a member of the public (the referrer) in a referral dated 21 July 2014. The school is a voluntary aided (VA) primary school for children aged 3 to 11 in the London Borough of Brent, the local authority, (the LA), with a Jewish religious character. The matter brought to my attention concerns the inclusion in the school's arrangements of priority for admission to reception (YR) for children who attend the school's nursery class.

Jurisdiction

2. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the school's governing body which is the admission authority for the school. Objections to admission arrangements for admission in September 2015 had to be made on or before 30 June 2014. However, as it appeared to me that the arrangements may not conform with the requirements relating to admission arrangements I am using my power under section 88I(5) of the Act to consider the matter brought to my attention and the arrangements as a whole.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 1. the referral dated 21 July 2014;
 2. the school's response to the referral dated 15 September 2014 and supporting documents;
 3. the LA's response to the objection dated 19 August 2014 and supporting documents;
 4. the LA's composite prospectus for parents seeking admission to schools in the area in September 2015;
 5. confirmation of when consultation on the arrangements last took place;
 6. copies of the minutes of the meeting of the governing body at which the arrangements were determined; and
 7. a copy of the determined arrangements.
5. I have also taken account of information received during a meeting I convened on 13 October 2014 at the United Synagogue attended by representatives of the school, the LA and of the Chief Rabbi of the United Hebrew Congregation of the British Commonwealth/United Synagogue which is the Rabbinic Authority body for the school according to schedule 4 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012.

The Referral

6. The reason given for bringing the arrangements to the attention of the adjudicator is that a number of Jewish primary schools in north-west London had included in their admission arrangements priority for admission to YR for children who had attended that school's nursery. The referrer said that in several previous rulings by the OSA this practice had been found not to comply with the Code and argued that *"It is only fair that all Jewish schools in the same geographic area have to live by the same rules and interpretations of the Code as determined by the OSA."* The referrer quoted that fairness is required by paragraphs 14 and 1.8 of the Code.

Other Matters

7. While considering the arrangements I became concerned that they were not as clear as they might be in a number of places. Paragraph 14 of the Code requires arrangements to be clear.

8. The Code in paragraph 2.4 prohibits admission authorities from asking certain questions on their supplementary information forms (SIF). It appeared to me that the school's SIF included questions which should not be asked.

Background

9. The school was formerly known as Michael Sobell Sinai School. An instrument of government came into effect on 1 September 2014 changing the school's name to Sinai Jewish Primary School.
10. There are 60 places available in the school's nursery each year for children aged 3. All children attend the morning sessions funded by the early years grant and some attend afternoon sessions which parents pay for. Attendance at afternoon sessions is not compulsory.
11. The school has a published admission number (PAN) of 90 and I was told that it is the largest Jewish primary school in Europe. It is usually oversubscribed and its oversubscription criteria are:
 1. Children who are looked after by a local authority, or a child who was previously looked after, with a completed and validated certificate of religious practice (CRP);
 2. Children who are currently attending the Sinai Nursery, with a completed and valid CRP;
 3. Siblings of pupils attending the school, with a completed and valid CRP;
 4. Siblings of former pupils of the school, with a completed and valid CRP;
 5. Other children who have a completed and valid CRP;
 6. Other children who are looked after by a local authority, or a child who was previously looked after; and
 7. Any other children.
12. Footnotes clarify the terms in these criteria and the tie-breaker is based on distance with children living nearest to the school having priority. Random allocation is used if two children live the same distance from the school.

Consideration of Factors

13. Although the referral made reference to previous cases considered by the OSA concerning priority for admission to YR for children attending a particular nursery, all determinations are made in the light of the circumstances of the school, relevant legislation and the Code.
14. The argument set out by the referrer was that schools which had been

required to stop using attendance at their nursery to give priority for YR had seen their nurseries “*placed at a disadvantage in relation to other Jewish schools*”. The referral said this was “*unfair as parents who want to send their children to one of those nurseries will have a disincentive to do so because if their children don’t get into that school’s reception class they will have little or no chance or be extremely unlikely to get a place at one of the other Jewish schools*”.

15. This assertion appears to me to be saying that linking admission to YR to attendance at the nursery is an incentive or in practice a requirement for parents to send their child to the nursery. It also identifies the link between nursery and YR as reducing the likelihood of a child obtaining a place in YR if he or she did not attend the school’s nursery
16. The school made a number of points in response to the referral. It said that unlike other schools where the number of places available in the reception class (YR) was only slightly greater than the number of children in the nursery it had 30 more places available.
17. The school also said that it did not serve a local Jewish community with just two per cent of its pupils living in Brent. I was told that parents send their children to the school if they do not obtain a place at their local Jewish school.
18. In its response the school argued that the success of the nursery was dependent on the priority given to nursery children in the oversubscription criteria for YR. This was because there would be no incentive for parents to travel long distances to the nursery and they would keep children at local synagogue or non-Jewish nurseries. It was also pointed out that as the uniform for the nursery was the same as for YR, parents might not apply for a place at the nursery because of the cost of buying new uniform for YR at a different school.
19. Other points put forward by the school referred to older and possible future versions of the Code. Reference was also made to a previous determination on the school’s arrangements made under a former version of the Code.
20. The school also drew my attention to the position of a parent of a child in the nursery becoming a parent governor and finding that their child does not get a place at the school. The final point made by the school was that the LA had recognised the points it had made in defence of giving children from the nursery priority at the school when challenged on the matter by the LA.
21. The LA sent me a copy of an email dated 28 March 2013 in which it advised all VA schools and academies in the borough to remove criteria giving priority to children attending nursery schools for places in YR. They also sent me a copy of the school’s response to this advice.
22. The representative of the Rabbinic Authority confirmed the picture of demand for places at the school reflecting the changing distribution of

Jewish families in the area.

23. The Code does not specifically permit or prohibit giving priority for places in YR to children who attend a school's nursery class. It does however make it clear in paragraph 15d that *"a separate application **must** be made for any transfer from nursery to primary school"*. Prioritising children at the nursery for places in YR must therefore be tested against the Code as a whole and, in particular, against the key provisions of paragraphs 14 and 1.8.
24. Paragraph 14 of the Code says *"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."* Furthermore paragraph 1.8 says *"Oversubscription criteria **must** be reasonable, clear, objective, [and] procedurally fair"*.
25. The law does not require children to be in full-time education until the term after their fifth birthday. Parents therefore have the freedom to choose whether to send their child to a pre-school setting or not. Some parents who would like their child to attend the school in YR, may consider another pre-school setting more suitable for their child, others may, for a range of valid reasons, be unable to send their children to the school's nursery even if they had priority for a place.
26. The school and LA provided me with the following data on recent admissions to the school.

Year	Applications	Number admitted from nursery	Number admitted under other criteria	Number of nursery children who would not have been allocated a place if there was no priority for nursery children
2011	161	59	31	23
2012	162	59	31	24
2013	166	58	32	18
2014	207	60	30	25

27. The point of oversubscription was in the fifth criterion, other children with a completed and valid CRP. It would appear that while at least 30 children who did not attend the nursery were able to get a place at the school in YR, there were between 18 and 25 wanting a place in YR who lived nearer the school than some children in the nursery. These 18 to 25 children would have been offered places in YR if there was no

priority for children from the nursery.

28. As the oversubscription criteria for the nursery are, with the obvious exception of the nursery criterion, the same as for YR, any child who had higher priority than another for a place in YR would also have had higher priority for a place in the nursery the previous year, unless there had been a change of address. These families would either have exercised their right to send their child to another pre-school setting, to no pre-school setting at all or would have been unable to send their children to this nursery possibly due to family circumstances.
29. It is also possible that a mistake led to one of the 18 to 25 children not being offered a place at the nursery. With no right of appeal against the refusal of a place such a child would find themselves disadvantaged when applying for a place in YR.
30. I have also considered whether it would be possible for a child to gain admission to the nursery and thereby the school in a way that was not compliant with the Code. As noted above, the arrangements for admission to the nursery and YR are the same in all but two respects, the nursery criterion and the right of appeal. I have identified below ways in which I consider the arrangements for YR do not comply with the Code and so neither would the nursery arrangements if they were required to do so. Therefore it might be possible for a child to gain admission to the school in a non-compliant way through the nursery.
31. I was told there were 170 applications for the nursery for September 2014; I am not therefore convinced by the school's argument that the nursery would not be viable without attendance leading to priority for a place at the school. Nor am I convinced by the argument in the referral that maintaining the nursery priority for YR at the school threatens the viability of other nurseries. Children can only attend one nursery at a time, there will be the same number of children and the same number of nursery places. It would seem to me that the viability of a pre-school setting should rest on the quality of its provision, not on it being the route of entry to a primary school. Parents should be able to choose a setting for their 3 year-old child, or to choose no setting at all, on the basis of what is right for the child at that age without the risk of that choice compromising their chances of getting a place at a school a year later when seeking a place at compulsory school age.
32. I recognise that there are at least 30 places available in YR for children whose parents do not, or are unable to, send them to the nursery. However, the figures provided by the school and the LA suggest a substantial number of families who would otherwise have priority for places at the school lose out on a place because they did not attend the nursery. This, together with there being no right of appeal against the refusal of a place at the nursery leads me to the view that the giving priority for places in YR to children attending the nursery is unfair. It is not fair that attending the nursery or not has a significant effect on the chances of being allocated a place at compulsory school age. The priority for children attending the nursery does not comply with

paragraphs 14 and 1.8 of the Code.

Other matters

Clarity of arrangements

33. Paragraph 14 of the Code quoted above requires admission arrangements to be clear. My first concern about the clarity of the arrangements is found in the first sentence in the section under the heading oversubscription. It says "*If the school is oversubscribed, after the admission of SEN⁵ children, priority will be given to ...*". In discussion at the meeting the school confirmed that this meant children whose statement of special educational needs (SEN) names the school. While the last sentence in the preceding section of the arrangements says children with a statement of SEN naming the school will be admitted, note 5 simply gives a definition of what a statement is. As written, any child with SEN, whether or not they had a statement would be included. The school agreed this was not clear and undertook to clarify the wording.
34. I was also concerned that the first five oversubscription criteria used the term "*children ... with a completed and valid CRP*". This appeared to me to be about the possession of a document, not about being, to use the term found on the CRP itself, "*a priority applicant*" through scoring sufficient points on the CRP as the school intended. After discussion the school agreed this could be clarified.

Supplementary Information Form

35. Under the heading "*How to Apply*" the arrangements say the school's application form "*must be completed*". The Code says in paragraph 1.36 "*As with other maintained schools, these [faith] schools are required to offer every child who applies, whether of the faith, another faith or no faith, a place at the school if there are places available.*"
36. The data provided by the LA shows that in the last four years the school has been oversubscribed by children who meet the faith-based criteria. Therefore the question of admitting all applicants or one who had not completed the CRP or SIF has not arisen and it would not appear to be a likely situation in the future. This does not mean the school can ignore the requirements of the Code. Arrangements are required by paragraph 14 and 1.8 to be clear and this includes being clear that anyone can apply for a place at the school. Governors cannot refuse to consider applications submitted without the CRP or SIF, but clearly such applications would not be able to meet any of the faith-based criteria.
37. Paragraph 2.4 of the Code says that admissions authorities "*must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability.*" The SIF includes questions about whether the child has SEN, whether they are looked

after or previously looked after, whether they are new to the area, transferring from another school or have been permanently excluded. Apart from the second item which should be known through the common application form (CAF), none of these questions have a direct bearing on the decisions about the over subscription criteria.

38. At the meeting the faith body said that the form was originally designed for in-year applications and not as a SIF. It was agreed that asking these questions did not comply with the Code.

39. The SIF also asked for proof of date of birth. Paragraph 2.5 of the Code says this may only be asked for after a place is offered.

Conclusion

40. Paragraphs 14 and 1.8 of the Code require admission arrangements to be fair. I consider that giving priority for admission to YR to children attending the school's nursery is not fair.

41. I have reached this view principally because parents should be free to make a decision about pre-school provision for their child without prejudicing their chances of obtaining a place at their preferred school in YR. I am also concerned that without the right of appeal against the refusal of a place in the nursery a child could have their priority for a place in YR reduced erroneously.

42. There are a number of other matters in the arrangements which do not comply with the Code for the reasons set out above.

Determination

43. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the arrangements determined by the governing body of Sinai Jewish Primary School in Brent for September 2015. I determine that they do not conform with the requirements relating to admission arrangements.

44. By virtue of section 88K(2) 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: 12 November 2014

Signed:

Schools Adjudicator: Mr Phil Whiffing