



## **DETERMINATION**

<b>Case reference:</b>	<b>ADA2822</b>
<b>Referrer:</b>	<b>A member of the public</b>
<b>Admission Authority:</b>	<b>The governing body of Mathilda Marks Kennedy Jewish Primary School, Barnet</b>
<b>Date of decision:</b>	<b>6 November 2014</b>

### **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 Mathilda Marks Kennedy Jewish Primary School in Barnet 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 Mathilda Marks Kennedy 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 Barnet 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:
  - i. the referral submitted on an objection form dated 21 July 2014;
  - ii. the school's response to the referral dated 16 September 2014 and supporting documents;
  - iii. the composite prospectus published by the London Borough of Barnet which is the local authority (LA) for the area for parents seeking admission to schools in the area in September 2014, this being the most recent version of this document available on the LA's website;
  - iv. information received from the LA about the recent pattern of admissions to the school;
  - v. copies of the minutes of the meeting of the governing body at which the arrangements were determined; and
  - vi. a copy of the determined arrangements.
5. I have also taken account of information received during a meeting I convened on 1 October 2014 at the school 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 2013.

## **The Referral**

6. The reason given for bring 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. When I read through the arrangements I was concerned that they may not comply with paragraphs 15d, 1.36, 2.8 and 2.9 of the Code which require a school to consider all applicants whether they have completed any certificate of religious practice (CRP) and supplementary information form (SIF) or not.

8. I was also concerned with the clarity of the arrangements about the admission of children with special educational needs (SEN).

9. I also considered that that the CRP and SIF might not meet the requirements of paragraphs 2.4 and 2.5 of the Code which prohibit admission authorities from seeking certain information.

## **Background**

10. The school offers 26 places in its nursery to children who are aged 3 on 1 September each year. These 26 children all attend morning sessions funded by the early years grant. Some of these children also attend optional afternoon sessions which parents pay for.

11. The nursery class is oversubscribed and the oversubscription criteria are the same as those for YR with the exception of the criterion referring to the nursery.

12. There are 30 places available in YR. Again the school is usually oversubscribed and the CRP is used to identify "*priority children*" who score sufficient points on the form. The oversubscription criteria are then:

- i.* looked after and previously looked after priority children;
- ii.* priority children who are on the roll of the morning nursery class;
- iii.* priority children with siblings at the school;
- iv.* priority children who are the children of staff;
- v.* other priority children;
- vi.* other looked after and previously looked after children; and
- vii.* other children.

## **Consideration of Factors**

### Priority for children at YR who have attended the nursery

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 relevant legislation, the Code and the circumstances of the school.

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 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 has put forward the case that because there are 26 places in the nursery and 30 in reception at least four places are available for children who did not attend the nursery. Furthermore, the school says that as the oversubscription criteria for the school and nursery are the same they are not aware of any child who has *"lost out on a place in reception who would have received a place had there been no priority for nursery children."*

17. The school also made the case that because the nursery criterion specifically referred to attendance at the free morning session and there was no compulsion for parents to send their child to the paid for afternoon session the arrangements did not breach paragraph 1.9e of the Code which prohibits giving priority on the basis of any financial support parents may give the school.

18. The school also drew my attention to the benefits of continuity through the early years foundation stage and how the school is organised to maximise this.

19. The LA said that, based on the pattern of parental preferences, it believed that parents in the Jewish community had clear views on the Jewish ethos they wanted for their children at school. This meant that unless they were able to access a specific school they would consider private or non-denominational schools in preference to other publicly funded Jewish schools.

20. The Code neither specifically permits nor prohibits 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.

21. 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"***.

22. The school has said that, because there are at least four places in YR available for children who did not attend the nursery, this gave the opportunity for others to take up places. This could be looked at the other way around; up to 26 of YR places may already be taken one year ahead of time. The LA has supplied data on the recent pattern of admissions. The PAN was increased from 28 to 30 in 2013 and since then 24 of the 30 places have been allocated to children from the nursery in both years. In the two previous years 26 and

25 of the 28 places available went to children from the nursery.

23. The law does not require parents to educate their children until the term following their fifth birthday. From the figures above it would appear that if a parent does not send their child to the nursery class at this school when they are 3 years old, then the possibility of them securing a place when the child is of statutory school age is greatly reduced. This would seem to me to be unfair on parents who for example might wish to have their children at home with them, or for grandparents or other family members to provide childcare or to use other childcare facilities until they are of school age.

24. Other groups who would be disadvantaged include a family who moved into the area after places at the nursery had been allocated or one who might not have been able to score sufficient points on the CRP at age 3, but could do so a year later, having changed their religious practice or having different family circumstances.

25. Applications for a place in YR in September 2015 do not have to be submitted until January 2015; however, the school is currently asking parents to apply for a place in the nursery class for September 2015 by 31 October 2014. Some of these applications could be for children as young as 26 months old. This seems to me to be very early for parents to be required to take action to give their child the possibility of attending a particular primary school. Also by being so early it is conceivable that the deadline would not be expected and would be missed by some parents who would be subsequently disadvantaged if they wanted to apply for the school.

26. I have also considered the fairness to those families who have decided to place their child at the nursery if there were no priority for YR for children from the nursery. The school has said that they are not aware of any child who has *“lost out on a place in reception who would have received a place had there been no priority for nursery children.”* The criteria (with the exception of the nursery criterion and an appeal process which I address below) are the same for the nursery and YR. This means that any child from the nursery who failed to get a place in YR could only have been displaced by another child who would have had higher priority for a place at the nursery if their parents had wanted or been able to apply for one.

27. The school expressed a view that continuity across the early years foundation stage was important. I do not dispute this, but without the nursery criterion, most nursery children would still be likely to have priority for places in YR and have that continuity. There is no inherent reason why children who have been in other settings will not assimilate quickly into YR or why children from the nursery will not assimilate smoothly into YR at other schools.

28. 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. Therefore it might be possible for a child to gain

admission to the school in a non-compliant way through the nursery or directly into YR.

29. The second way in which the arrangements differ is that there is no right of appeal in the arrangements for the nursery. The right of appeal is an important compulsory element of the school admissions system. While it is not required for admissions to nursery, the fact that there is in the case of this nursery no right of appeal leaves the possibility that someone entitled to a place in the nursery might fail to secure one and thereby lose priority for a place at the school. This would not be fair.

30. For these reasons I consider giving priority in the oversubscription criteria for YR to children attending the nursery is unfair to families who either choose not to send their child to the nursery or are unable to send their child to the nursery or would like to but are not allocated a place. This does not comply with the Code's requirement for fairness in admission arrangements.

### **Other Matters**

31. I was concerned that the wording of the arrangements suggested that the school might be unwilling to consider the admission of children who did not meet the faith criteria and did not complete the CRP and SIF.

32. The fourth paragraph of the school's admission arrangements says "*The School seeks to admit children who have completed the school's Certificate of Religious Practice (CRP) and scored the appropriate number of points, as evidenced by the CRP.*" The sixth paragraph continues to say that all three of the LA's common application form, the CRP and the school's SIF are required or "*the Governing Body may not be able to consider your application*".

33. Paragraph 15d of the Code says "*If a school is undersubscribed, any parent that applies must be offered a place.*" This is reinforced by paragraphs 1.36, 2.8 and 2.9 of the Code. Paragraph 1.36 says "*As with other maintained schools, these schools [schools with a religious character] 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.*"

34. 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.

35. I was also concerned that the reference to the admission of pupils with statements of SEN on the third page of the arrangements did not reflect what is required by the Code. It says "*The admission of pupils with Statements of*

*Special educational Needs is dealt with by a completely separate procedure*". Parents should be made aware that if a child has a statement of SEN naming the school they **must** be admitted before other places are allocated and if the statement of SEN does not name the school the admissions process is the same for as for all other children.

36. The CRP for entry to the school in September 2015 says on the ninth bullet point "*The completed CRP may be used at any time when applying for a place at a primary school or a school with a nursery unit where the identical form is used. Parent(s)/guardian(s) are therefore advised to keep a copy of the completed form and supporting documents. They must be produced when transferring from Nursery to Reception in the school.*" The tenth bullet point says "*A CRP for entry in September 2014 cannot be used when applying for a place in September 2015 or later.*"

37. This appeared to me to be a contradiction and not clear as required by the Code. The school agreed it was not clear and said they would review the wording.

38. The CRP also requires the parent or guardian to tick a box agreeing to respect the ethos of the school. Paragraph 2.4 of the Code says admission 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**". A parent's respect for the ethos of the school does not have a bearing on decisions about oversubscription criteria so paragraph 2.4 prohibits asking this question on the CRP.

39. The SIF asks for proof of date of birth; however this is prohibited by paragraph 2.5 of the Code until after a place has been offered. The SIF also has space for the names of both parents; paragraph 2.4e says admission authorities **must not** ask both parents to sign the SIF.

40. It is my conclusion that the CRP and the SIF do not conform with the Code.

## **Conclusion**

41. Parents are not required by law to send their children to nursery at the age of 3. By giving priority for places in the reception class to children who have attend the school's nursery only a small number of places are available for others when children are required to attend school. There could be families who have made other choices of pre-school provision or who were unable to apply for a place at the nursery. For the arrangements to be fair, these families need to be able to apply for places in reception on an equal footing with those in the nursery. The priority afforded to applicants on the basis of having attended the nursery does not meet the Code's requirement for arrangements to be fair.

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 Mathilda Marks Kennedy Jewish Primary School 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: 6 November 2014

Signed:

Schools Adjudicator: Mr Phil Whiffing