

DETERMINATION

Case reference: ADA2391

Objector: A member of the public

Admission Authority: The governing body of the Academy Trust for The Premier Academy

Date of decision: 1 October 2012

Determination

In accordance with section 88I (5) of the School Standards and Framework Act 1998, I have considered the admission arrangements determined by the governing body of the Academy Trust for The Premier Academy, for admissions in September 2013.

I determine that in part those matters that have been referred do not conform with requirements relating to admission arrangements; in that the determined arrangements for 2013 were not published on the School's website; and the oversubscription criteria give preference to children who attended Eaton Mill Nursery.

I determine that those aspects of the arrangements which relate to children with statements of special educational need, siblings and distance do not contravene the requirements of the legislation and the School Admission Code.

Further, in accordance with section 88I (5) I have considered the arrangements as a whole and I determine that these do not conform with requirements of the Code in relation to looked after children, the admission of children from multiple births, the maintenance of waiting lists, the inclusion of a tie breaker and deferred entry of children below compulsory school age.

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 School has already had regard to the referral and made a number of changes in order to meet the mandatory requirements of the Code.

The referral

1. The admission arrangements (the arrangements) of The Premier Academy (the School), a primary Academy in Bletchley, Milton Keynes for pupils of 4 to 11 years of age, for September 2013 have been brought to the attention of the Schools Adjudicator in an email referral dated 8 August 2012 by a member of the public who wishes to remain anonymous (the referrer), but whose name and address are known to me.

2. The referral questions whether or not the arrangements adhere to the mandatory requirements of the School Admissions Code (the Code), in that the arrangements for admissions in September 2013 are not published on the School's website; the information displayed on the website of Milton Keynes Council, the local authority (the LA) on behalf of the School, does not include reference to the admission of children with statements of special educational needs, does not explain the sibling policy nor how distance will be measured; that priority is given to children who have attended Eaton Mill Nursery, a fee paying school and finally that parents are pressured into seeking a place at the nursery at the age of 2 years, in order to be prioritised for a place at the School.

Jurisdiction

3. The terms of the Academy agreement between the proprietor (The Premier Academy Limited) 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. These arrangements were determined by the governing body on behalf of the proprietor, which is the admission authority for the School, on that basis.

4. The referral was made on 8 August 2012 and the party has met the condition in regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admissions Arrangements) (England) Regulations 2012, which requires that any person or body making a referral who wishes to remain anonymous, must provide their name and address so that they are known to the Office of the Schools Adjudicator.

5. These arrangements were referred to the adjudicator under section 88I of the School Standards and Framework Act 1998 (the Act) and I am satisfied that it is within my jurisdiction to consider them. I have also used my power under the same Act to consider the arrangements as a whole.

Procedure

6. In considering this matter I have had regard to all relevant legislation and the Code. The documents and information I have considered in reaching my decision include:

- the referrer's email of 8 August 2012;
- the LA's composite prospectus for parents seeking admission to

schools in the area in September 2013 ;

- copies of the minutes of the meeting at which the governing body of the School determined the arrangements;
- admissions information displayed on two websites for the School;
- a printed copy of the determined arrangements; and
- information about the School's admission arrangements displayed on the LA's website.

7. I held a meeting at the School on 12 September 2012 with the headteacher and school representatives and an officer from the LA and have taken account of information received and views expressed during that meeting and subsequent correspondence from the School and the LA related to revised arrangements.

The referral

8. The referral is to a view that there are several aspects of the arrangements for 2013 which do not adhere to the mandatory requirements of the Code. The first is that the determined arrangements for admission to the School in September 2013 are not published on the School's website as required by paragraph 1.47 of the Code. The second is that the information which is published on the LA's website about the School's arrangements does not include reference to the admission of children with statements of special educational needs, (Code 1.6), does not explain how siblings will be considered, (Code 1.11) or how distance will be measured, (Code 1.13). The third and final point is that priority is given in the oversubscription criteria to children who have attended Eaton Mill Nursery which is a fee paying school and that parents are pressured into seeking a place at the nursery at the age of 2 years, in order to be prioritised for a place at the School, (Code 1.9 e).

Other Matters

9. At the meeting to review the 2013 arrangements I raised other aspects of the arrangements that contravened the requirements of the Code and which relate to looked after children, children from multiple births, the maintenance of waiting list, the operation of a tie breaker and the matter of deferred entry for children under compulsory school age.

Background

10. The School for pupils aged 4 to 11 years, opened on 1 September 2010, the conversion date within the meaning of the Academies Act 2010, replacing Eaton Mill Primary School which ceased to be maintained by the LA on that date. The School had a planned capacity of 420 pupils. However, the School now has a published admission number (PAN) of 90 and has approximately 445 pupils on roll. Eaton Mill Nursery operates in a unit within the School and admits 120 pre-school children, making provision for 60

children in two sessions. Eaton Mill Nursery also provides a breakfast club and after school care.

Consideration of Factors

11. In the view of the referrer there are several aspects of the arrangements for 2013 which do not adhere to the mandatory requirements of the Code. The first is that the determined arrangements for admission to the School in September 2013 are not published on the School's website as required by paragraph 1.47 which says, 'Once admission authorities have determined their admission arrangements, they must notify the appropriate bodies and must publish a copy of the determined arrangements on their website displaying them for the whole offer year (the academic year in which offers for places are made).'

12. When I viewed the website for the first time I followed the link to 'Parents' and then to 'Admissions' and found the following statements,

'The Premier Academy is a non-selective state funded Academy and as such welcomes applications from all.

The Premier Academy is an Academy and, as such, the Trust of the Academy and not Milton Keynes Local Authority (the LA), is responsible for deciding on admissions. The dates and process of application will be in accordance with the Council's Primary Co-ordinated Admissions Scheme, details of which will be published by the LA.

The number of intended admissions is 90.

At 4+ years old the school prioritises children who have attended the attached Nursery after Children in Care so it's a good idea to enrol and reserve nursery places as soon as your children are born, as we accept children from 2 years old.'

13. I found it difficult to access the school website and found that the only route available at the time was through the Eaton Mill Nursery web address which took me straight to the School. I too concluded initially, that there was no information about the arrangements, which should include all aspects of the admissions policy including the oversubscription criteria. However, a further search under 'Home' presented five options, one of which was 'Prospectus' and provided a link to a power point presentation of a prospectus for 2012-13. Page seven provided the determined arrangements for 2012, but not 2013. The referrer is therefore correct that the arrangements for 2013 were not published on school's website and I uphold this aspect of the referral.

14. When this matter was considered with the School, it was explained that two live websites have been running concurrently, with different information on each one. It was agreed that there must be a single website that provides a very clear pathway for parents to provide the complete set of arrangements

for 2013 quickly and easily. The School has now published its arrangements and they are clearly signposted for parents to find them.

15. The second aspect of the referral contends that the information which is published about the School's arrangements on the Council's website does not include reference to the admission of children with statements of special educational needs, does not explain how siblings will be considered or how distance will be measured. In one particular view of the webpage, the text is in two columns and I can understand how the referrer might have concluded that s/he had reached the end of the information about the School's arrangements, but nonetheless, information about children with special educational needs is included as required.

16. However, the arrangements state that the School will 'give priority' to children with statements of special educational needs, which implies that some discretion may be exercised by the School when in fact the Code is clear in paragraph 1.6 that, 'All children whose statement of special educational needs names the school must be admitted.' The School readily agreed to change the relevant text to meet the mandatory requirement of the Code.

17. With regard to the policy on siblings and distance, paragraph 1.13 of the Code says 'Admission authorities must clearly set out how distance from home to the school will be measured, making clear how the 'home' address will be determined and the point in the school from which all distances are measured. This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent'. Paragraph 1.11 says, 'Admission authorities must state clearly in their arrangements what they mean by 'sibling' (e.g. whether this includes step siblings, foster siblings, adopted siblings and other children living permanently at the same address or siblings who are former pupils of the school)'. I found that the required information was provided on both sibling definition and distance measurement and these elements of the arrangements meet the requirements of the Code. I therefore do not uphold any part of this referral.

18. The third aspect and final point of the referral states that, "Eaton Mill Nursery is a paid-for nursery run by a company, Eaton Mill Nursery and Out of School Day Care Limited. The Code says that schools must not give priority to children attending a fee-paying independent school. It also seems that The Premier Academy is pressurising parents to put down their children's name at birth for admission at age 2 into the independent nursery in order to be prioritised for a place at the academy."

19. The referrer cites the part of the Code, paragraph 1.9l that prohibits giving priority for admission to children who have attended a fee-paying independent school. Eaton Mill Nursery is not a school and therefore this part of the Code is not applicable. Nevertheless, I must consider whether giving priority for attending Eaton Mill Nursery complies with the Code.

20. The School accepts that on one of its websites information did state that, 'At 4+ years old the school prioritises children who have attended the attached Nursery after Children in Care so it's a good idea to enrol and reserve nursery places as soon as your children are born, as we accept children from 2 years old'. The headteacher explained that the nursery admits up to 120 children between the ages of two and four years old and is always oversubscribed. For this reason therefore, they do encourage parents to register as soon as possible in order to secure a nursery place.

21. The oversubscription criteria b and c or 2 and 3, depending on the version of the arrangements that one is reading, currently give priority to 'Children who have attended Eaton Mill Nursery and have a sibling on roll at TPA at the time of admission' and then 'Children who have attended Eaton Mill Nursery', respectively. The Code states in paragraph 1.9e, "It is for admission authorities to formulate their admission arrangements, but they must not: give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority." So the issue is whether Eaton Mill Nursery and the School are "associated".

22. At our meeting at the School I was advised that Eaton Mill Nursery and Out of School Day Care Limited is a separate limited company from the parent company The Premier Academy Trust Limited and operates from a unit on the School premises. For the majority of parents whose children attend the pre-school unit, the cost of the provision is covered by state funded grant. The School confirmed that parents can purchase additional provision to supplement the 15 hours of funded nursery education but only a minority of parents currently choose to pay for additional provision or wrap-around care, from early in the morning, through the day and for a period of care after the school day.

23. It could be argued that it is immaterial whether the nursery place being taken up is 'free' to the parent who is taking up their entitlement or is purchased by the parent who pays the daily fees; the fact remains that the company which receives the funding, Eaton Mill Nursery is an independent private limited company. Parents are free to select the nursery of their choice and had the parents entitled to nursery funding elected to attend a different nursery, then Eaton Mill Nursery would not have received that funding.

24. I was advised by the School that the breakfast club and after school provision and holiday provision is paid for by parents. Although the majority of pre-school places are currently 'purchased' through the mechanism of grant funding, it remains possible for places to be paid for directly by parents. As Eaton Mill Nursery and Day Care Limited is an associated organisation, that receives the funding, the School cannot give priority to children who have attended the nursery.

25. When the School converted to Academy status in September 2010 the Funding Agreement noted that the capacity of the School would be 420 pupils. The number on roll has increased to approximately 445 children on roll but the School now has a PAN of 90 and would therefore be expected to

admit up to the total of 630 places, if there was such a level of demand. However, for a number of years the School has been undersubscribed and I was advised that governors had never had to apply the oversubscription criteria. So in practice the children attending the nursery are likely to gain a place without having any priority for attending the nursery and removing such priority would achieve compliance with the Code.

26. There can never be automatic transfer from any nursery provider into primary education and the School confirmed that it would provide clarity for parents by explaining that a separate application must be made for admission to the School and that there would be no guarantee of a School place for children attending the nursery.

27. In view of the considerations above I therefore agree with the referral in the matter of the priority given in the oversubscription criteria to pupils who have attended the non-maintained, associated nursery, where provision is made by an independent limited company, and find that arrangements in this regard do not conform to the requirements of the Code.

28. The School has now reviewed its arrangements for 2013 and has removed these oversubscription criteria from its admission policy.

Other Matters

29. I noted that there were several matters where the arrangements do not comply with the mandatory requirements of the Code and discussed these with the School. Although current arrangements do prioritise looked after children, the new Code which came into force in February 2012 and applies to admissions in 2013 requires all admission authorities to include previously looked after children. Paragraph 1.7 says, 'All schools must have oversubscription criteria for each 'relevant age group' and the highest priority must be given, unless otherwise provided in this Code, to looked after children and previously looked after children. Previously looked after children are children who were looked after, but ceased to be so because they were adopted (or became subject to a residence order or special guardianship order). The School agreed to revise the text of the first oversubscription criterion.

30. There has also been a change to the regulations about Infant Class Size. Paragraph 2.15g refers to change which gives the School permission to admit children from multiple births into infant classes. It says, 'Infant classes (those where the majority of children will reach the age of 5, 6 or 7 during the school year) must not contain more than 30 pupils with a single school teacher. Additional children may be admitted under limited exceptional circumstances. These children will remain an 'excepted pupil' for the time they are in an infant class or until the class numbers fall back to the current infant class size limit.' Among those children covered under this provision the Code now includes 'children whose twin or sibling from a multiple birth is admitted otherwise than as an excepted pupil'. The School agreed to make this revision to its arrangements.

31. Arrangements need to provide full information about how the waiting list will operate. The Code provides clear guidance in paragraph 2.14 and says, 'Admission authorities must maintain a clear, fair and objective waiting list for at least the first term of the academic year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria. Priority must not be given to children based on the date their application was received or their name was added to the list. Looked after children, previously looked after children, and those allocated a place at the school in accordance with a Fair Access Protocol, must take precedence over those on a waiting list'. The School agreed to amend its arrangements to comply with this requirement.

32. The Arrangements need a final tie-breaker to comply with the Code at paragraph 1.8, which says, 'Admission arrangements must include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated'. The School acknowledged the need to include a final tie breaker.

33. Arrangements must include a statement that explains for parents of children below compulsory school age, that they can request a part-time place and deferred entry. Paragraph 2.16b says, 'Admission authorities must provide for the admission of all children in the September following their fourth birthday. The authority must make it clear in their arrangements that: a) parents can request that the date their child is admitted to school is deferred until later in the academic year or until the term in which the child reaches compulsory school age, and b) parents can request that their child takes up the place part-time until the child reaches compulsory school age'. The School confirmed that its arrangements would be amended to meet this requirement.

Conclusion

34. With regard to the three aspects of the referral I have concluded that the arrangements of the School do not comply fully with legislation and the Code. Mandatory requirements were not fully met and the full arrangements were not published on the School's website as required. I have therefore determined for the reasons given above that I should agree with the referral in relation to the first and third elements but not the second.

35. In addition I have considered the 2013 arrangements with the School and have concluded that several aspects of the arrangements do not comply with the Code. Once admission arrangements have been determined for a particular academic year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements.

36. In this case, the School has readily accepted that some aspects of its arrangements did not meet the requirements of the Code and it has immediately agreed to amendments for inclusion in the revised arrangements in order give effect to mandatory requirements.

Determination

37. In accordance with section 88I (5) of the School Standards and Framework Act 1998, I have considered the admission arrangements determined by the governing body of the Academy Trust for The Premier Academy, for admissions in September 2013 and I determine that in part those matters that have been referred do not conform with requirements relating to admission arrangements.

38. I determine that in part those matters that have been referred do not conform with requirements relating to admission arrangements; in that the determined arrangements for 2013 were not published on the School's website; and the oversubscription criteria give preference to children who attended Eaton Mill Nursery

39. I determine that those aspects of the arrangements which relate to children with statements of special educational need, siblings and distance do not contravene the requirements of the legislation and the School Admission Code.

40. Further in accordance with section 88I (5) I have considered the arrangements as a whole and I determine that these do not conform with requirements of the Code in relation to looked after children, the admission of children from multiple births, the maintenance of waiting lists, the inclusion of a tie breaker and deferred entry of children below compulsory school age.

41. 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.

42. The School has already had regard to the referral and made a number of changes in order to meet the mandatory requirements of the Code.

Dated: 1 October 2012

Signed:

Schools Adjudicator: Mrs Carol Parsons