

## **DETERMINATION**

**Case reference:** ADA 2240 and 2241

**Admission Authority:** Suffolk County Council

**Date of decision:** 1 June 2012

### **Determination**

**In accordance with section 88I (5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Suffolk County Council for 2011-2012 and 2012-2013 for schools for which the local authority has responsibility as admissions authority and consider that those parts of the arrangements referred to the Adjudicator are compliant with the School Admissions Code.**

### **The Referral**

1. The admission arrangements (the arrangements) of Suffolk County Council, the local authority (LA) for schools for which the local authority has responsibility as admissions authority, have been brought to the attention of the Schools Adjudicator by an email received on 23 March 2012 from two parents.
2. Those who wrote argued that a refusal to accept a further application for a place at the same school for the same child for the same academic year unless there is a significant change in circumstances of the parent, child, or school is contrary to the School Admissions Code 2010 (the Code) which is the relevant Code for the year in question.

### **Jurisdiction**

3. The arrangements for all the community and voluntary controlled schools in the area for the academic years 2011-2012 and 2012-2013 were determined under section 88(C) of the School Standards and Framework Act 1998 (the Act) by the LA which is the admission authority for those schools and in accordance with section 88M of the Act the LA is required to co-ordinate admissions to all schools in its area.
4. The deadline for a formal objection passed on 31 July 2011, but a referral can be made after that date. I am satisfied that under section 88I (5) of the Act, the adjudicator has the power to consider admission arrangements which come to his attention and do not, or may not, conform with requirements relating to admission arrangements.

### **Procedure**

5. In considering this matter I have had regard to all relevant legislation

and the Code

6. The documents I have considered in reaching my decision include:
- the email of referral received on 23 March 2012 and subsequent correspondence;
  - the LA's response to the referral dated 2 May 2012 and supporting documentation; and
  - the LA's determined admission arrangements and booklets for parents seeking admission to schools in Suffolk in 2011-12 and 2012-13.

### **The Referral**

7. The referrers say the matter at issue is:

"the way admissions to schools are handled by the Suffolk Admission Authority. The Admission Authority states that we are not able to make a same school application within the same academic year. Their website ...(says)...If your application for a school place is refused, we will not consider a further application for a place in the same school in the same academic year unless there has been a significant change in the circumstances of the parent, child or school. Such circumstances might be a house move or a place becoming available at the school.

If there is no significant change in circumstances, you may make another application for the following academic year but this will not be considered more than one term ahead of the date when you want your child to start at the school."

8. This position is said to breach paragraphs 3.23 and 3.26 of the 2010 Code that applied to admissions in September 2011 and applies to admissions in September 2012, and paragraph 2.21 of the Code that came into force on 1 February 2012 and applies to admissions in 2013. Following further correspondence seeking clarification about the referral, the referrers cited the specific part of the LA's booklets for 2011-2012 and 2012-2013 and it became clear that the matter relates to in-year applications for a place at a school. There was no reference to arrangements for 2013.

### **Consideration of factors**

9. The argument of the referrers is that parents have a right to apply for any school at any time and that the application must be considered. They maintain that the arrangements determined by the LA seek to make that right conditional, which is contrary to the Code. The parts of the Code that the referrers cite say at paragraph 3.23:

"Applications made outside the normal admissions round **must** be considered without delay, and a formal decision either to offer or to refuse a place **must** be made and notified to the applicant, advising them of their statutory right of appeal when a place cannot be offered.

Applicants **must not** be refused the opportunity to make an application, or told that they can only be placed on a waiting list rather than make a formal application”

paragraph 3.26

“Admission authorities **must not** adopt procedures or criteria that disadvantage children who arrive in their relevant area outside the normal admission round. Arrangements **must** be in place for Gypsy, Roma and Traveller children to be quickly registered at a school whether they are residing permanently or temporarily in the area.”

and paragraph 2.21 of the 2012 Code

“... any parent can apply for a place for their child at any time to any school outside the normal admissions round,”

10. The LA’s booklets ‘Admissions to Schools in Suffolk Your guide to primary, infant, junior and middle school admissions for 2011-2012’ and ‘for 2012-2013’ include a section containing the admission arrangements for community and voluntary controlled schools for which it is the admission authority; admission arrangements for other schools in its area; and details of the co-ordinated admissions arrangements that apply to all schools in Suffolk. The wording about more than one application in a school year quoted in the referral can be found in Section 7, “How we offer school places” and Section 9 “How to make an appeal”. The referrers provided links to the LA’s website for admissions to primary schools showing Section 9 in each of the booklets for 2011-2012 and 2012-2013.

11. If a parent applies for a place as part of the normal admissions round and the child is not offered a place due to oversubscription, the child can be placed on a waiting list and the parent can appeal. If the appeal is unsuccessful, the child can remain on a waiting list. Children on the waiting list will be placed in an order that meets the oversubscription criteria. Should places become available, they will be offered in that order of priority.

12. Given the procedure for holding a waiting list and being able to appeal the decision not to offer a place, the only possibility that the position of a child on the waiting list could change would be if there is a significant change in the child’s circumstances such as moving to a different location, because the same oversubscription criteria are applied to those on the waiting list as to new applications. There would therefore be no reason to make further applications unless there had been a significant change in the child’s circumstances. As the LA says, such applications would be refused for the same reason that the first application was refused.

13. The paragraphs of the Code that have been highlighted relate to persons who for one reason or another apply for a place outside the normal admission round. The Code at paragraphs 3.23 and 3.26 specifically refer to applications for places in-year or at the start of a year which is not the normal point of entry to the school.

14. If the preferred school has places available, the applicant will be offered a place. If, however, it is already full, then the child will be refused a place, but the applicant can appeal. For applications in the normal admissions round, the Code at paragraph 3.19 requires each admission authority for every oversubscribed school to keep a waiting list for at least one term in the academic year, but there is no requirement to keep a waiting list for longer or for other year groups.

15. Paragraph 3.23 of the Code needs to be read together with the other paragraphs concerning applications for a place outside the normal admissions round. Children for whom a place is being sought are likely to need a school place so the application must be considered without delay, and if refused their highest preference they can appeal, but will also be offered a place at another school so that they continue their education with minimal interruption. I am not persuaded that "*Applicants must not be refused the opportunity to make an application*" means an applicant can make repeat applications to the same school. Rather it means that applicants cannot be told they may not make a first application for a school place which would entitle them to appeal if refused a place. So, if the applicant is applying for the first time for a place in a normal year of entry but is applying after places have been allocated for the coming year and a waiting list has already been established, or if the applicant is applying in the first term of the academic year while a waiting list must be held, such an applicant must be allowed to apply. If the application is refused, this opens up the route to making an appeal. So it would be wrong for them to be "*told that they can only be placed on a waiting list rather than make a formal application*"

16. Paragraph 3.25 requires a local authority to handle applications outside the normal admissions round in accordance with the co-ordination scheme in force at the time. It is for an individual local authority to establish a scheme which must meet the requirements for a scheme for its area.

17. Paragraph 3.26 of the 2010 Code, refers specifically to children who arrive in the area outside the admissions round and places particular emphasis on registering children quickly for a school place. Those who arrive in an area will be without a place in that area and need to be in a school without delay. I do not accept that this paragraph can be taken to support making repeated applications for a place at the same school.

18. The referrers also cite paragraph 2.21 of the 2012 Code. There are duties placed on local authorities for admissions outside the normal admissions round that will change for admissions in 2013. It will be for schools and local authorities together to decide whether the local authority should continue to co-ordinate in-year admissions. While paragraph 2.21 says parents can apply for a place at any time at any school outside the normal admissions round, there is no mandatory requirement that having applied for a place and been unsuccessful, parents can apply again and again to the same school. I am not persuaded that the Code intends an admission authority to accept repeat applications for a place at the same school. Even when there is a significant change in circumstances and a new application might reasonably be made, this still may not mean that a place at a full school will be available.

19. The LA itself stands by its policy and asserts that it is fully compliant with the Code. It confirms that parents can apply for a place for their child at any time to any school outside the normal admissions round. However, while a parent may make second and subsequent applications after an unsuccessful appeal arising from their first application, unless there is significant and material change in circumstances of the parent, child or school, such applications will be bound to be refused for the same reason that the first application was refused.

20. The LA points out further a refusal can only be appealed if the refusal is made despite a material and significant change in circumstances having been acknowledged. It points to paragraph 4. 1 of the School Admission Appeals Code 2010

Appellants who have appealed unsuccessfully can apply for a place at the same school in respect of a later academic year and have a further right of appeal if that application is unsuccessful. Appellants do not have a right to a second appeal in respect of the same school for the same academic year, except in the following circumstances: a) the admission authority agrees to arrange a second appeal because there were faults in the first appeal which may have significantly affected the outcome e.g. the appeals process was not properly conducted or significant evidence which had been submitted was not forwarded to the panel (this may be on the recommendation of the Local Government Ombudsman or because the admission authority decides to do so on its own initiative); or b) the admission authority accepted a further application because of a significant and material change in the circumstances of the parent, child or school, but has determined that the new application should also be turned down. Common examples where the admission authority may wish to consider a fresh application due to changes in circumstances since the original application was made include medical reasons, that the family has moved house, or any other factor which would affect the level of priority given to the application.

21. In an email of 4 May 2012 the referrers assert that the Admissions and Appeals Codes are separate and should not be used in conjunction with each other. I do not accept this assertion. The Appeals Code only comes into action following an unsuccessful admissions application and as the conditions and grounds for an appeal are linked with the applications process the admissions and the appeals processes are clearly linked.

22. In the same email, the referrers suggest that the LA does not hold waiting lists, which would be contrary to 3.19 of the Code. As noted above, there are definite requirements for holding a waiting list for admissions in the normal admissions round, but not for other year groups. Local authorities have to know which schools have places available outside the normal admissions round and such lists must be available when the arrangements for co-ordination of in-year admissions change from 2013 onwards.

23. This LA's determined co-ordination arrangements clearly show that it

does comply with the Code in respect of waiting lists for the normal admission round. Their Admissions Policy for all Suffolk Community and Voluntary Controlled Schools reads:

If you apply for a school place in the normal admissions round and one or more of your preferences are refused, your child's name will automatically be placed on a waiting list for these schools. Names are placed on the waiting list in the priority order set out in our admissions oversubscription criteria.

The order of children does not remain static - as circumstances change a child's place on the waiting list can go up or down, for example due to withdrawals or additional applications. If you change your address while your child is on a waiting list you must let us know. Please be aware that this may change your child's position on the waiting list, particularly if you move into or out of the school's catchment area. Having your child's name on a waiting list will not affect your right to appeal for a school place in any of the schools you have applied for. If a place becomes available, we will offer it to children on the waiting list for that school in priority order. We do not offer places on the basis of the date on which names were placed on the list. The waiting lists will operate up to the end of the first full week of the spring term."

24. The LA is not required to and does not hold waiting lists specifically for school places for in-year applications.

### **Conclusion**

25. Having carefully considered the arguments put forward by those who referred the arrangements to me, for the reasons spelled out in the paragraphs above, I have concluded that those arrangements as presented in the LA's booklets for 2011-2012 and 2012-2013 that have been referred to me are compliant with the relevant legislation.

### **Determination**

26. In accordance with section 88I (5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Suffolk County Council for 2012-2013 for schools for which the local authority has responsibility as admissions authority and consider that those parts of the arrangements referred to the Adjudicator are compliant with the relevant Admissions Code.

Dated: 1 June 2012

Signed:

Schools Adjudicator: Dr Stephen Venner