

DETERMINATION

Case reference: ADA/002450

Objector: Somerset County Council

Admission Authority: The governing body of Draycott and Rodney Stoke Church of England Voluntary Aided First School, Draycott

Date of decision: 29 August 2013

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of Draycott and Rodney Stoke Church of England Voluntary Aided First School.

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. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by Somerset County Council (the council), about the admission arrangements (the arrangements) for Draycott and Rodney Stoke Church of England Voluntary Aided First School (the school), a 5-9 first school for September 2014. The objection is to criterion 3 of the school's over subscription criteria. This criterion gives priority to children attending Stepping Stones Pre-school, which is based at the school, at the time of application.

Jurisdiction

2. These arrangements were determined under section 88C of the Act by the school's governing body, which is the admission authority for the school. The objector submitted the objection to these determined arrangements on 18 June 2013. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

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:
 - a. the objector's form of objection dated 18 June 2013;
 - b. the school's response to the objection and supporting documents;
 - c. the response from the Diocese of Bath and Wells (the diocese) to the objection;
 - d. the council's composite prospectus for parents seeking admission to schools in the area in September 2013;
 - e. confirmation of when consultation on the arrangements last took place;
 - f. copies of the minutes of the meeting of the governing body at which the arrangements were determined;
 - f. the 2011 Ofsted inspection report for the school; and
 - g. a copy of the determined arrangements.

The Objection

5. The council has objected to the school prioritising for admission to the reception class children who attend an early years setting. After prioritising children with statements naming the school, looked after and previously looked after children and siblings, the oversubscription criteria give priority to "children attending 'Stepping Stones Pre-school' based at the school at the time of application and whose age entitles them to transfer to a reception year group in the September following application." The council believes that this criterion contravenes paragraphs 1.9(e) and 1.9(l) of the Code. Paragraph 1.9(e) says that admission authorities **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. Paragraph 1.9(l) forbids the naming of fee-paying independent schools as feeder schools. The objection refers to recent rulings by schools adjudicators upholding objections to the inclusion of early years settings in oversubscription criteria.

Background

6. The school is a small first school. Stepping Stones is a pre-school that is run by the school's governors. The school took on the responsibility for running the pre-school as a response to parental requests. It did so to provide an additional facility for the community and as a response to a request from the community it serves.
7. Stepping Stones is accommodated as part of the school's foundation stage unit (FSU) and housed in the same classroom as the reception children. It offers early years provision for children from the age of 3

years old. It also takes rising threes. The FSU provides morning and afternoon sessions, from 9 to 12 and from 12 to 3, with the option of children attending both and staying for lunch. The FSU on the school's website states that Steeping Stones is an accredited provider and can receive early years entitlement funding for nursery education and makes additional provision. Provision costs £3.70 an hour. The website also features a fee-paying policy which states that fees are payable termly, in advance. There is no mention of holiday or extended hours provision.

8. The previous School Admission Code was specific on the subject of nursery attendance priority criteria, but the current Code that came into force in February 2012 is silent on this matter.
9. The diocese says that, following the introduction of the current Code in February 2012, it became clear that a number of governing bodies intended to alter their arrangements for 2014-15 "in order to reflect new freedoms and responsibilities stemming from the 2012 Code." It reports a strong desire among most admission authorities to introduce nursery attendance priority, not least because of a view that there is an increasing parental preference for all through schooling. The diocese took the view that nursery priority was a good thing providing it did not disadvantage other children and that the inclusion of such a criterion did not contravene the Code.
10. Accordingly and in order to comply with the Code, the diocese says that admission authorities took advice concerning the precise meaning of "an independent nursery" and in some schools where the setting was deemed truly independent, priority criteria were not introduced. Where nurseries were deemed not to be independent, nursery priority criteria were introduced.
11. The school first proposed the introduction of a nursery attendance priority criterion in 2013 when it consulted on its arrangements for September 2014. During the consultation process, the council sent an email to the school on 1 March 2013 explaining its potential objection and the reasons for it and asking the school to re-consider the inclusion of this criterion. The school's admissions committee met to discuss the issue raised by the council. The committee decided that they wished the criterion to remain as it was and referred it to the full governing body. The governing body considered the views of the council at its meeting on 17 April 2013. The governors agreed that they would like to adopt the admission arrangements for 2014-2015 as they stood with no amendments to the criteria.
12. The governors state that they are aware that admission arrangements must be determined by 15 April annually. However, the consultation comments from the council needed to be discussed by the full governing body and 17 April was the earliest date on which this key meeting could be arranged. The arrangements were determined at that meeting.

Consideration of Factors

13. In this case, the council has argued that Stepping Stones is a separate entity to the school since the children are not on the school's roll and the governors are responsible for it as a committee. It is not in dispute that parents have to pay for the provision, whether through the early years entitlement or by paying themselves. The council says that parents are making the choice for their children to attend the pre-school and for the funding to be given to the pre-school therefore it could be considered a "fee paying independent school".
14. The school says that Stepping Stones is an integral part of the FSU as evidenced by the fact that it is housed in the same room as the reception children and the school is responsible for all staffing, cleaning, administration, premises maintenance, heating, lighting and running costs. The FSU cost centre sits within the school budget.
15. Stepping Stones has different governance arrangements from those of the school, it is fee paying and its pupils are not on the school roll so it is technically a separate entity. However practically speaking and on an everyday basis it evidently operates as part of the school. Stepping Stones is not a school as defined in law. It is a pre-school. The prohibition of priority for attending a fee paying independent school is not relevant in this case as the nursery provision is not a school.
16. Paragraph 1.9(e) of the Code says that admission authorities **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. Stepping Stones is closely associated with the school as detailed above. In this case, some parents are paying fees of £3.70 per session to Stepping Stones. If the prohibition in the Code is intended to cover any payment by parents to an associated organisation, then this falls foul of the intention of 1.9(e) of the Code. Paragraph 1.9(e) is not clear in respect and I have not formed a definitive view on this matter.
17. In this determination I have looked at the general fairness of the arrangements under paragraph 14 of the Code and concluded that some aspects are unfair for other reasons and so paragraph 1.9(e) is not the factor that has determined my decision in this case.
18. I have considered other factors such as the published admission number (PAN) of the school and the capacity of the nursery. The PAN of the school is 18. The school is currently undersubscribed and will admit eight children in September 2013. Stepping Stones has 12 full time equivalent (FTE) places. This could translate into 24 children seeking places in the school. It would therefore theoretically be possible for the school to fill under criteria 1, 2 and 3 (looked after and previously looked after children, siblings and nursery priority), leaving no places for children under the distance or other remaining criteria.
19. Furthermore, although the school says that places in Stepping Stones are "normally made available according to whether a place exists or

not, exactly as happens in school”, in principle Stepping Stones admits on a first come first served basis until 10 FTE or 20 part time equivalent (PTE) places have been allocated. Two FTE or four PTE places are held available “for children arriving unexpectedly at the school in need of a place and having been referred by social services or who are on the child protection register or who are economically disadvantaged or who have special educational need.” All applications are placed on the waiting list by order of the date of receipt. Applications are not accepted from parents who have more than three months to go to the birth of their child. There is no reference to an appeals process anywhere on the website. These admissions arrangements are very different from those of the school and would not be lawful if used for admission to the school.

20. Paragraph 14 of the introduction to the Code states that admission authorities **must** ensure that the practices and criteria used to decide the allocation of school places are fair, clear and objective. In this case, the inclusion of the nursery priority criterion makes it potentially much more difficult for children whose parents choose not to send their children to the nursery or are unable to do so, or who did not secure a place, to secure admittance to the school. It is unfair in my view therefore that priority for a place at the school should be affected by whether or not the child attends the pre-school
21. It is commendable that the nursery holds four PTE places available for vulnerable or disadvantaged children. Nonetheless, it allocates most of its places on a first come first served basis. In effect, children achieve priority for nursery places against arrangements that would be unlawful for admission to the reception year in the school. There is no independent appeal process for those who do not gain places. Were the school to be oversubscribed, the figures I have given above demonstrate that children living close to the school, but not attending the nursery, could lose out to nursery attendees and fail to secure places. Irrespective of the fact that the school is currently undersubscribed, these arrangements do not in my view meet the Code’s requirement for fairness.

Conclusion

22. It is clear to me that the school’s intentions, both in making pre-school provision and in introducing a nursery priority criterion, were to provide educational benefits to children and the community. However there are potential unforeseen consequences for the fairness of the school’s arrangements. I have considered the implications of paragraphs 1.9(e) and 1.9(l) and concluded that the arrangements are unfair for other reasons. I uphold the objection under paragraphs 14 and 1.8 of the Code which set out a general requirement for fairness.

Determination

23. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission

arrangements determined by the governing body of Draycott and Rodney Stoke Church of England Voluntary First School.

24. 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: 29 August 2013

Signed:

Schools Adjudicator: Mrs Janet Mokades