

DETERMINATION

Case reference: ADA2307

Objector: Hertfordshire County Council

Admission Authority: The governing body of The Bishop's Stortford High School, Hertfordshire

Date of decision: 6 August 2012

Determination

In accordance with section 88H (4) of the School Standards and Framework Act 1998, I uphold the objection to the arrangements determined by the governing body of The Bishop's Stortford High School for admissions in September 2013.

On the basis of the evidence available to me, I am not satisfied that the governing body gave due consideration at their earliest opportunity to the requirement for earlier aptitude testing in order to comply with Code.

I have also considered the arrangements in accordance with section 88I (5) of the Act. There are other aspects which appear not comply with the School Admissions Code in the ways set out in paragraph 19 of this adjudication.

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 make the remaining revisions to 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 Hertfordshire County Council (the Council) about the 2013 admission arrangements (the arrangements) for The Bishop's Stortford High School (the School), a foundation school. The objection relates to the published dates for testing which would not allow parents to receive the outcome of the sporting and musical aptitude tests before the closing date for secondary transfer applications.

Jurisdiction

2. These arrangements were determined under section 88C of the Act by the governing body which is the admission authority for the School. The Council submitted an objection to these determined arrangements on 25 June 2012. 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).

The documents I have considered in reaching my decision include:

- a. the Council's objection form dated 25 June 2012 and further email correspondence;
- b. the School's written response to the objection dated 13 July 2012, further correspondence and supporting documents;
- c. the Council's composite prospectus for parents seeking admission to schools in the area for September 2012, as downloaded from the Council's website,
- d. a map of local secondary schools supplied by the Council;
- e. minutes of a meeting of the Hertfordshire County Admissions Forum dated 23rd February 2012;
- f. the determined admissions arrangements for 2013 as supplied by the School;
- g. the 2013 admissions arrangements as downloaded from the School's website on 12 July 2012;
- h. the supplementary application form (SIF) as supplied by the Council and as downloaded from the Council's website on 12 July 2012;
- i. the minutes of governing body meetings dated 8 February and 13 June 2012;
- j. the admission reports supplied to the governing body dated October 2011 and February and June 2012; and
- k. the determinations of 1999, 2000, 2003, and 2006.

4. I held a meeting (the meeting) at the School on 17 July 2012 with representatives of the School, the Council, and the two other schools in the consortium subject to the same objection, namely The Hertfordshire & Essex High School and Science College and The Leventhorpe School. I have taken account of the views expressed and information received during that meeting and subsequent correspondence from the School and the Council related to points discussed at the meeting.

The Objection

5. The objection relates to the published dates for testing which would not allow parents to receive the outcomes of the sporting and musical aptitude tests before the closing date for secondary transfer applications. The date published for the musical aptitude test is 24 November 2012 and for sporting aptitude is 27 November 2012, and both dates are contrary to the mandatory requirement of the Code at paragraph 1.32 (c) that "admissions authorities

musttake all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on 31 October so as to allow parents time to make an informed choice of school.”

Other Matters

6. In reviewing the 2013 arrangements I drew the attention of the School to other aspects of the arrangements that appeared to contravene the requirement of the Code at paragraph 1.8 that oversubscription criteria must be reasonable, clear, objective, and procedurally fair.

Background

7. The Bishop’s Stortford High School is an all ability foundation school which is single sex for boys aged 11 to 16 years of age, and co-educational in the sixth form. The School operates pre-existing partially selective admissions for children demonstrating sporting or musical aptitude, permitted by section 100 of the Act.

8. The School prioritises for aptitude at criterion 5, with up to 5 per cent of places (8 places) allocated to pupils with a proven aptitude in one or more of the sports in which the School specialises using a sporting aptitude test; and up to another 5 per cent of places (8 places) to pupils with a proven aptitude in music using a musical aptitude test.

9. The School is part of a consortium with two other local secondary schools, which together operate combined testing arrangements. Each of the consortium schools selects 10 per cent of their annual intake by aptitude.

Consideration of Factors

10. The School has been unable to provide the minutes of the governing body meeting of 13 October 2011, but advised that at the meeting the governing body had determined that the 2013 admission arrangements should remain as those agreed for 2012. In the admissions report circulated for that meeting, it was noted that the admissions criteria for future years would require revision in the event of the School relocating to its new site. In the School’s response to the objection, the School clarified that governors were aware that the new Code would impact on the 2013 arrangements but felt that the School should not second guess what was to be in the new Code. Given that governors were aware that a consultation had taken place on a new Code which was intended to be issued in time for the 2013 arrangements it does not seem prudent for the School to have determined its 2013 arrangements in October 2011.

11. The School reported that as the Council at that stage raised no objection to the arrangements determined in October 2011, the arrangements were promulgated accordingly. At the meeting with the other consortium schools and the Council on 17 July 2012, the School noted again that the Council had not challenged its decision at the time. The Council responded in the meeting, and then more fully in writing afterwards, that it had not been appropriate to raise the issue formally until the publication of the new Code on

1 February 2012 which confirmed the mandatory change in requirements about testing before preference. I agree that it would have been difficult for the Council to object earlier since the Code had yet to be laid before Parliament. However the Council appears to have made every effort to support the School to make the mandatory changes before then submitting a formal objection.

12. In its written response of 13 July 2012, the School reported that at the governing body meeting on 8 February 2012, the governors determined that as a decision had already been taken and promulgated, it would at that stage be unreasonable to vary the admission arrangements for September 2013, since such a variation would serve to confuse potential applicants. It is of note that the Code had, by that time, been published and as paragraph 1.47 required admission authorities to send a copy of their full, determined arrangements for 2013 admissions to the local authority as soon as possible before 1 May 2012, the School at that stage may have had sufficient time to adjust the testing arrangements to meet the requirements of the Code.

13. However, scrutiny of the other evidence presented by the School raises a question mark about whether the governors did agree in February that any variation at that early stage would be unreasonable. It is clearly the case that in the admissions report circulated before the meeting, there was a statement to the effect that, as the School had already determined its admission criteria for September 2013, it was agreed that amendments would not be made unless strictly required by the new legislation. The report also envisaged that the school would consider the meaning and effect of the Code when, in October 2012, it would determine the arrangements for September 2014. However the minutes of the governing body meeting in February comment only that the report summarised the proposals for change from the Council, and the changes imposed by the new Admissions Code; there is nothing in the minutes recording a discussion nor is there a note of any outcome or decision. It appears that the majority of the meeting was taken up with agreeing the recruitment procedure for a new headteacher. I am not satisfied that the matter of changing the timing of the aptitude assessments and issuing the results was given due consideration at that meeting.

14. From the evidence available to me, it is clear that before submitting its objection, the Council had communicated with the School, met with the Headteacher and Admissions Officer and also sought advice from the Department for Education (DfE), so as to support the School to be compliant with the Code. In a letter dated 9 March 2012, the Council advised the School that in order to comply with the Code, the arrangements should explain the School will be holding its aptitude tests earlier, to ensure that parents can be informed of the outcome of the test before the closing date for application. The Council reports that it offered assistance to all Hertfordshire schools in communicating arrangements for new testing timescales, including providing information to primary schools through the schools bulletin and, where relevant, circulating information to neighbouring local authorities. Although 16 schools in Hertfordshire include aptitude and / or academic testing as part of their admission arrangements, only the three schools in this consortium have not altered their testing arrangements to adhere to the new Code.

15. In the admissions report prior to the governing body meeting on 13 June 2012, it was acknowledged that the Code required that the School must take all reasonable steps to inform parents of the test outcome before the closing date for applications, but the School had previously taken the view that it is impracticable for the aptitude tests to be held sufficiently early in the autumn term. The report noted that the governing body having already communicated its criteria for September 2013, it would not be reasonable, and, indeed, muddling for parents, at this late stage, to change the criteria for 2013. The report also noted that the Council had suggested revised wording as to the voluntary completion, by parents, of SIF, and that governors agreed to adopt the amended wording for September 2014 admissions, but considered that it would not be reasonable, at this late stage, to adopt the same for September 2013. The decisions were confirmed in the minutes of the meeting.

16. In their written response to the objection of 13 July 2012, and at the meeting on 17 July 2012, the School explained they had been concerned to avoid giving any impression to prospective parents that, far from having a determined admissions policy, it had a policy subject to last minute variations, and accordingly, that there could be no guarantee that further variations would not be introduced. The School commented further that this risk of confusion was exacerbated by the cross-county border nature of the intake and that, whilst the Council might be confident that it would be able to notify all potential applicants of a change in admission arrangements, no such assurance has been forthcoming from neighbouring Essex County Council.

17. In their written response to the objection of 13 July 2012, the School described its open evening at the end of September / beginning of October as an important part of the process by which applicants and their families would decide on the school for which they would wish to apply. Consequently, if the School had changed its admission arrangements for September 2013, it follows that the aptitude tests would have to be held before such an Open Evening, with the very real risk of some potential applicants learning for the first time of aptitude tests having already taken place. At the meeting of the governing body on 13 June 2012, the governors had debated the test of reasonableness imposed by the Code and decided it weighed in favour of not disturbing the arrangements for 2013, but committed to making the requisite amendment for September 2014. At the meeting on 17 July 2012, the School offered their opinion that the Code had been drafted badly but that the governing body had decided that however badly it had been drafted, the School would do what was required for the 2014 arrangements.

18. I am of the view that from the evidence available to me the School had no intention of trying to make any change to comply with the Code. The argument that to change would be confusing for parents is an assertion that is not substantiated and with the assistance of the council there is no reason why the change could not have been implemented.

19. As it appeared to me that there were other aspects that did not comply with the requirements relating to admission arrangements, I used my powers under s88I of the Act to review the arrangements as a whole for full compliance with the Code. At the meeting I therefore raised with the School several points which appeared to me to contravene the Code, as these points could be amended immediately by the School as a permitted variation under paragraph 3.6 of the Code. The points that require revision are as follows:

- a. Oversubscription criterion 1 prioritises “children looked after or previously looked after (children who ceased to be looked after because they were adopted or became subject to a residence order or special guardianship order) or children in respect of whom there are compelling medical grounds for admission (in which respect supporting evidence will be required....)”. The School accepted that paragraph 1.7 of the Code makes clear that the highest priority in oversubscription criteria **must** be given to looked after children and to previously looked after children who have ceased to be so because they were adopted or became subject to a residence or special guardianship order. The School agreed to amend the wording of this criterion.
- b. Oversubscription criterion 3 categorises a large number of primary schools in six groups, A to F. It is clear that Group F which applies to “other schools which lie within a six mile radius of the School” does not comply with the Code at paragraph 1.9 (b). Paragraph 1.9 (b) clearly states that admission authorities **must not** ... “take into account any previous schools attended, unless it is a named feeder school”, and therefore Group F should be removed from criterion 3. I have not investigated fully why the School names so many feeder schools, but when determining its arrangements for 2014, the School will need to look carefully at the number of, and reasons for including, primary schools as named feeder schools.
- c. To be able to decide whether to opt into the aptitude tests for sport or music regarding criterion 5, parents need to understand what is entailed in the assessment process, but there is insufficient detail in the admissions section on the School’s website. At the meeting the School explained that the tests are for aptitude and that only the pupils who pass an absolute benchmark in the sporting or music tests are considered. The School confirmed that more information is given to parents at the open day, but the School must ensure that the information is available for those who may be unable to attend the open day. Paragraph 1.17 of the Code requires for selection by ability or aptitude that, “All selective schools **must** publish the entry requirements for a selective place and the process for such selection”. The School must comply with the requirements concerning publishing the relevant information.

- d. The School was aware of paragraph 1.24 which states that “schools... **must not** allow for more than 10 per cent of the total admissions intake to be allocated on the basis ofaptitude” but advised that a previous adjudication had ruled that the selection of 8 pupils in sport and 8 pupils in music was common sense where the published admission number is 155 pupils. Despite what may have been said previously, the Code is clear that a school must not select more than 10 per cent by aptitude. As it is not possible to have 15.5 pupils, the School can have 15 or fewer places on the basis of aptitude, but to allocate more would be unlawful.
- e. In addition to the common application form, the School encourages parents to complete the School’s application form (a SIF) by the closing date of 2 November 2012, which post-dates the national deadline of 31 October for secondary applications. To avoid the possibility that completion of the SIF is a condition, which would be in breach of the Code, the School has agreed to use an alternative form of wording suggested by the Council.
- f. The expectation that the SIF should require details about two parents/ guardians may be discriminatory against families with one parent, contrary to paragraphs 1.8 and 1.9 of the Code.
- g. The SIF requires the parent / guardian to sign an undertaking to support the School in matters of work, discipline and extra-curricular activities should their child be admitted. As this is in breach of paragraph 2.4 (d) of the Code, the SIF should be amended so that the parent’s / guardian’s signature confirms only that the information given in connection with the application is correct. The hope that the parent / guardian will support the ethos of the School may be included as a statement in the introductory paragraphs.
- h. To request within the SIF that a stamp be attached for acknowledgement of application is contrary to the Code at paragraph 1.9 (n). This requirement should be removed, and in this respect, the use of email may be helpful.
- i. Paragraph 2.4 of the Code makes clear that admission authorities must only use the SIF to request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability, and must not ask, or use supplementary forms that ask, for any of the information prohibited by paragraphs 1.9 or 2.4. I have not investigated fully why the School believes that all parents must complete the SIF given that all parents will already have had to complete the Council’s common application form, particularly as the School selects only 10 per cent of its annual intake by aptitude. As a range of issues regarding the SIF need to be addressed, the School would be advised to review the SIF to ensure that it does not ask for information prohibited by the Code.

- j. In the arrangements the School has set at 80 the published admission number (PAN) for the sixth form. However, for sixth form admissions states that the intended number to be admitted is 180. To avoid confusion for parents and students the PAN needs to be fixed and made clear that this is the number of pupils admitted to the School for the first time.

Conclusion

20. On the basis of the evidence available to me, the governing body determined the admission arrangements for 2013 in October 2011, ahead of the publication of a new admissions code. Having determined the arrangements some six months ahead of deadline, the School then decided not to change the dates of the sporting and musical aptitude tests, despite the mandatory requirement to take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on 31 October. Although the knowledge of earlier test outcomes may have allowed parents time to make an informed choice of school, the School had taken the view that it is impracticable for the aptitude tests to be held sufficiently early in the autumn term for the results to be known before the October applications closing date.

21. It is clear that by their June meeting, the governing body had agreed that making any change to the determined admission arrangements by that late stage would be unreasonable and would serve to confuse potential applicants. However from the evidence available to me, it appears that in their earlier meeting in February, the governing body did not consider fully the changes required by the Code. Scrutiny of the minutes of governing body meetings and the associated admission reports suggest that the School had planned not to consider the meaning and effect of the Code until October 2012, when the arrangements for September 2014 would be determined. The School needs to note that consultation on admission arrangements should take place for eight weeks between 1 November and 1 March. Planning to determine its arrangements for 2014 in October 2012 may therefore result in further difficulties.

22. Other Hertfordshire schools did appear to have had sufficient time to bring forward their testing procedures in compliance with the Code. It is clear that paragraph 1.32 of the Code is mandatory for all schools, and the School needs to ensure that it has lawful admission arrangements.

23. The other aspects which appeared not comply with the Code are set out in paragraph 19 of this adjudication. The Code requires the admission authority to make revisions to its admission arrangements as quickly as possible in order to comply with the Code.

Determination

24. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I uphold the objection to the arrangements determined by the governing body of The Bishop's Stortford High School for admissions in September 2013.

25. On the basis of the evidence available to me, I am not satisfied that the governing body gave due consideration at their earliest opportunity to the requirement for earlier aptitude testing in order to comply with Code.

26. I have also considered the arrangements in accordance with section 88I (5) of the Act. There are other aspects which appear not comply with the School Admissions Code in the ways set out in paragraph 19 of this adjudication.

27. 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 make the remaining revisions to its admission arrangements as quickly as possible.

Dated: 6 August 2012

Signed:

Schools Adjudicator Cecilia Galloway