

DETERMINATION

Case reference: ADA/002452

Objector: Somerset County Council

Admission Authority: The proprietor of Axbridge Church of England First School Academy

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 proprietor of Axbridge Church of England First School Academy.

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 Schools 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 Axbridge Church of England First School Academy (the school), a first school for children aged 3-9, for September 2014. The objection is to the inclusion of a nursery priority criterion in the school's oversubscription criteria.

Jurisdiction

2. The terms of the academy agreement between the proprietor and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the proprietor, which is the admission authority for the academy school, on that basis. The objector submitted the objection to these determined arrangements on 19 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 19 June 2013;
 - b. the school's response to the objection and supporting documents;
 - c. the response of the diocese to the objection and supporting documents;
 - c. the council's composite prospectus for parents seeking admission to schools in the area in September 2014;
 - d. confirmation of when consultation on the arrangements last took place;
 - e. copies of the minutes of the meeting at which the proprietor of the school determined the arrangements; and
 - f. a copy of the determined arrangements.

The Objection

5. The council has objected to the school giving priority for admission to the reception class to children who attend an early years setting. The school's oversubscription criteria are as follows;
 1. Looked after children – children who are in the care of a Local Authority or have previously been and are now formally adopted or the subject of a residence or special guardianship order.
 2. Children living in the catchment area with an older sibling at the school at the time of admission and who live at the same address.
 3. Children living in the catchment area.
 4. Children living outside the catchment area with an older sibling at the school at the time of admission and who live at the same address.
 5. Children and/or parent(s) who attend a service of Christian worship at a registered church or place of worship on at least one day per month and have attended consecutively for the previous six months prior to application.
 6. Children who have attended Busy Bees Nursery for a minimum period of 12 months and are still attending at the time of application.
 7. Children assessed as eligible to receive free school meals at the time of admission.
 8. Children not satisfying a higher criterion.

6. The council has objected to criterion 6. It contends 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.

Background

7. Axbridge Church of England First School closed on 31 August 2012 and Axbridge First School Church of England Academy opened on 1 September 2012. The school's funding agreement permits it to give priority to children attracting the pupil premium. The 2014 admission arrangements were first discussed on 28 November 2012 by the governing body. Consultation was delegated to the local authority and the arrangements were subsequently determined on 13 March 2013.
8. "Busy Bees" was originally a local authority run nursery governed by the school. It is now part of the exempt charitable company that is the academy.
9. Busy Bees provides pre-school education for rising three and four year olds. It offers morning and afternoon sessions of 2.5 hours each as well as breakfast, lunchtime and tea time clubs. Early Years Entitlement provision is offered up to the maximum 15 hours and parents are charged for any additional sessions attended. Additional sessions over and above the 15 hour entitlement can be booked at a rate of £4 an hour. Busy Bees is situated on-site at the school and offers use of the school environment and equipment, including weekly PE sessions. It appears to operate during term time only.

Consideration of Factors

10. The council describes Busy Bees as a voluntary nursery run by a committee and notes that it is fee paying. It says that children are not on the school roll. It adds that parents are making the choice to send their children to this setting and for the funding to be given to the setting, whether that is through the entitlement or by paying themselves. It therefore believes that it could be seen as a "fee paying independent school".
11. The school says that Busy Bees is governed, like the school, by the governing body of the academy. It is registered as part of Axbridge Church of England First School Academy and not as a separate legal entity. The school says that children are on the school roll from the date of admission and have a unique pupil number assigned to them. They are also included as part of the academy within the statutory census that occurs three times a year.

12. The provision at Busy Bees is visited and monitored by governors as is provision in the school. This is particularly the case where children with special needs are concerned. Some staff work between the school and the nursery, spending time in each. Sports days, nativity plays and other events are joint.
13. There are clearly strong links between Busy Bees and the school but Busy Bees is not a school as defined in law. It is pre-school provision. The prohibition in paragraph 1.9I of the Code of giving priority for admission to a school for including attendance at a fee-paying independent school is not relevant in this case as the nursery provision is not a school.
14. 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. Busy Bees is fully embedded within the exempt charitable company that is the academy. Nonetheless, it is not a school as defined in law. It could be described as “an associated organisation” operating under the over-arching umbrella of the academy trust.
15. The school’s funding agreement says that the academy trust may charge persons who are not registered pupils at the academy for education provided and for facilities used by them at the Academy. Accordingly, parents are paying for Busy Bees provision whether through the entitlement or by paying for top up sessions and for breakfast, lunchtime and tea time clubs.
16. The Code prohibits “financial support” to an associated organisation. It is not clear to me whether “financial support” in this context covers any payment by parents to an associated organisation. The applicability of paragraph 1.9(e) here depends on the interpretation of “financial support”. If “financial support” covers any payment by parents directly to an associated organisation, then the arrangements could be said to contravene 1.9(e). As the paragraph is not clear in this respect, I do not base my decision on paragraph 1.9(e).
17. As it is, I have looked at the general fairness of the arrangements under paragraph 1.8 of the Code and concluded that some aspects are unfair for other reasons. My decision in this case is not based on paragraph 1.9(e).
18. I have considered the published admission number (PAN) of the school and the capacity of the nursery. The PAN is 35. The school is not oversubscribed and in 2013 it expects to admit 28 children. The nursery currently has 50 children attending on a part time basis. Not all the children in the nursery cohort will be of an age to move into reception in any one year. Nonetheless many will be. This is a potentially large group that could in principle fill the nursery, displacing other children.

19. In this case, siblings, children living in the catchment and faith criteria applicants all have higher priority than nursery attendees. Those potentially displaced, who are covered by criteria seven and eight, are children on free school meals and all other children.
20. On the website, the policy for admissions and allocation of places in Busy Bees nursery states that places are allocated on a first come, first served basis. The school has said that “children are allocated places as they reach the appropriate age, which is not a first come, first served basis but is as the need arises for the parent.” The policy goes on as follows; “if oversubscribed, we follow the same admissions procedure as Axbridge Church of England First School Academy.” This is incompatible with both the earlier statement to the effect that places are allocated on a first come, first served basis and the statement from the school saying that they are allocated “as the need arises for the parent.” Nor is there any mention on the website of an appeals procedure for entry to the nursery.
21. These arrangements are not regulated by the Code and they would not be lawful for entry to the reception class in a school. In effect, under criterion 6 children admitted to the nursery under arrangements that would be unlawful for a school, would secure priority entry to the reception class of the school.
22. Those parents who are unable to use the nursery or who choose not to do so or who are not given a place for their child could find themselves unable to gain admittance to the school as a result of children attending the nursery having priority, on the basis of arrangements that would be unlawful for entry to the reception year in the school.
23. Paragraph 14 of the introduction to the Code and paragraph 1.8 of the Code both set out requirements for fairness in oversubscription criteria. The school’s governing body has clearly given thought to these requirements. It has said that it understands that “the prioritisation of children from a nursery or preschool setting must not be placed so highly within the oversubscription criteria that it would disadvantage all other children, hence its placement as criterion 6.”
24. The priority position of the criterion does indeed ensure that the criterion does not disadvantage all other children. Nonetheless, the use of this criterion does potentially disadvantage the two groups of children covered by criteria 7 and 8. For this reason, these arrangements do not meet the Code’s requirement for fairness.

Conclusion

25. For the reasons given above, my view on this case has been determined not on the basis of 1.9(l) or 1.9(e), but on the question of the general fairness of the arrangements. Although the school is not currently oversubscribed, this could change and the ratio of nursery places to school places could result in displacement of children not attending the nursery by attendees admitted under arrangements that would be unlawful for admittance to the school. This would be unfair. Under

paragraph 14 of the introduction to the Code and paragraph 1.8, I therefore uphold the objection.

Determination

26. 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 Axbridge Church of England First School Academy.
27. 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