

DETERMINATION

Case reference: ADA2719

Objector: Comprehensive Future

Admission Authority: The Board of Governors of the Macmillan Academy

Date of decision: 9 September 2014

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for the Macmillan Academy, Middlesbrough.

I have also considered the arrangements in accordance with section 88I(5). I determine that there are matters as set out in this determination that do not conform with the requirements relating to admission arrangements.

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 the Secretary of Comprehensive Future (the objector) in an email dated 30 June 2014 concerning the admission arrangements for September 2015 (the arrangements) for the Macmillan Academy (the school), situated in Middlesbrough, the local authority area (the LA). The objection is to an oversubscription criterion which allows the admission of pupils with an aptitude for outdoor learning.

Jurisdiction

2. The terms of the academy agreement between the Macmillan Academy and the Secretary of State require that the admission policy and arrangements for each academy school are in accordance with admissions law as it applies to maintained schools. The arrangements were determined by the Board of Governors of the Macmillan Academy, which is the admission authority for the school, on that basis.

3. The objector submitted the objection to these determined arrangements on 30 June 2014. I am satisfied that the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my powers under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a. the objection, dated 30 June 2014;
 - b. documents submitted by the LA on 9 July 2014 in response to the objection, including the composite prospectus;
 - c. the school's responses to the objection, dated 16 July and 29 August 2014;
 - d. the school's admission arrangements for 2014/2015 as published on its website;
 - e. the determined arrangements for 2015;
 - f. the school's funding agreement, dated 31 August 2005; and
 - g. post-16 information on the school's website.

The Objection

6. The Secretary of Comprehensive Future has submitted an objection to the inclusion, in the oversubscription criteria within the school's arrangements, of a criterion that gives priority to children with an aptitude for outdoor learning. This criterion allows for the allocation of up to 10 per cent of available places to such applicants, that is, up to 22 children given the current published admission number (PAN) for the school. The criterion states that *"Arrangements for selecting those students will be fair and transparent building upon expertise gained in applying such tests in other establishments with specialisms. It will be on the basis of aptitude and not ability."*
7. The objector contends that the meaning of 'outdoor learning' is not clear and that that this criterion contravenes paragraph 14 in the Introduction to the Code, which states that *"parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."* Attention is also drawn by the objector to the requirement in paragraph 1.8 of the Code that *"oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation ..."* and to paragraph 1.24, which lists those specialist subjects on which a school may select by aptitude. Although this list includes *"physical education or sport, or one or more*

sports” it does not specify outdoor learning

8. The objector further contends that it is confusing for parents to attempt to distinguish aptitude from ability and that any such testing advantages those parents who are able to take their children to participate in it and, by implication, discriminates against families without the means to do so.

Other matters

9. In the course of considering the objection I reviewed the arrangements as a whole and noted that there is no final tie-breaker in relation to those oversubscription criteria that involve distance from the academy to an applicant’s home, and that the methods of measuring distances appear unduly complex. It is not clear that looked after and previously looked after children will be admitted irrespective of testing outcomes, and parents are not given information about the timetable for testing and notifying outcomes. Arrangements for 2015/16 had not been published on the school’s website at the time of the objection. There are no published admission arrangements for entry to post-16 studies on the school’s website, although some information can be found in the LA’s composite prospectus. The information under the heading “Admission procedure” on the school’s website opens with the statement “*You must now apply on the Common Admissions Form supplied to you by your local LEA.*” However, the arrangements refer also to an “Intention to apply” form that is available in the school’s prospectus or from the school. There is no current working link to a prospectus from the school’s website and so parents are not able easily to see this form.

Background

10. The school is a former City Technology College which converted to an academy in 2005. It is a co-educational school with about 1500 students aged 11-19 on roll. A ‘fair-banding’ test is used to ensure that children across the full range of ability are admitted to the school in year 7 should there be more applications than places available. The Board of Governors is the admission authority under the articles of the funding agreement between the academy and the Secretary of State.
11. The school has a PAN of 220. The arrangements provide, as required, that children with a statement of special educational need in which the school is named will be admitted. Oversubscription criteria are then, in summary:
 - a) Looked after or previously looked after children.
 - b) Up to 10 per cent of places by reference to aptitude in outdoor learning.
 - c) Siblings of current pupils.
 - d) Applicants with significant medical needs.

- e) Of the remaining places, 51 per cent to children living within the defined inner catchment area (with priority to those living closest to the academy, measured by the shortest safe walking distance) and 49 per cent to children living within the defined outer catchment area (by independently operated random allocation).
- f) Children living outside the catchment areas, with priority to those living closest to the academy as the crow flies.

Appropriate and helpful definitions of looked after and previously looked after children, and of what the school considers to be siblings for the purpose of applying the oversubscription criteria are included in the arrangements. Details of the defined inner and outer catchment areas are clear and precise.

Consideration of Factors

12. In drawing attention to some of the difficulties inherent in distinguishing aptitude from ability, the objector rightly comments that it is necessary to see each individual test of aptitude in order to judge its appropriateness. That is one of the issues that I shall consider in making this determination. The others, as already suggested, relate to the clarity of the school's arrangements, notably in respect of what is meant by 'outdoor learning', and indeed whether this is a subject permitted as a specialism by the current Code. I will consider what the Code says about selection by aptitude and the subjects for which such selection is permitted.
13. It is evident that the Code, as quoted in paragraph 1.24 above, does not include 'outdoor learning' as a named specialist subject on which a school may select by aptitude. The original funding agreement for the school referred to 'sport' as a specialist subject, and this would be permitted by the Code. However, I agree with the objector that 'outdoor learning' is a vague term and does not meet the requirements either of the school's funding agreement or of the Code and that this oversubscription criterion is therefore in contravention of current legislation. I have no hesitation therefore in determining that this criterion should be removed immediately from the school's arrangements. I uphold this part of the objection.
14. Having said that, discussion of the appropriateness of the test of aptitude for outdoor learning, and whether it tests ability rather than aptitude, or whether it favours those families who are most able to attend a testing session, becomes irrelevant. Moreover, in view of my decision in the previous paragraph, it is incumbent on me to acknowledge that, in response to the objection, the Executive Principal of the school wrote in an email to the Office of the School Adjudicator, *"Having discussed this matter with the Board, I would be pleased if you could inform the adjudicator that we will remove forthwith the opportunity to admit 10% of our students by reference to aptitude in Outdoor Learning. This was a legacy issue from before conversion and we are very comfortable that it can now be removed."*

I will inform the Department for Education and local authority of this decision.”

15. I note that the most recent Ofsted report, published in June 2013, included in its summary of key findings that *“The academy uses outdoor learning exceptionally well to develop students’ skills”* and that it also refers to this area of the curriculum as one of the school’s *“many innovative and successful aspects”*. I should emphasise, therefore, that this determination relates only to the inclusion of an oversubscription criterion relating to outdoor learning in the school’s admission arrangements, and does not affect its place within the curriculum.

Other matters

16. In the school’s arrangements, there are two oversubscription criteria in which reference is made to the distance from the school to the applicant’s home as a discriminator between applications. For applicants living within the inner catchment area, the reference is to *“the shortest safe walking distance”* between home and school; for applicants living outside the catchment area, the measure of distance is *“as the crow flies”*. While this does not contravene the Code, it seems unnecessarily complicated to use different measures. Parents’ difficulty in understanding easily how places will be allocated is compounded by the use of random allocation for the 49% of places allocated to the outer catchment area, with no reference to distance. The school might wish to consider whether one system of measurement and allocation would do, thereby simplifying this somewhat complex aspect of the arrangements and making it easier for parents to weigh the potential success of applications from different catchments.
17. The first statement in that section of the arrangements detailing the procedures to be used if the school is oversubscribed states that *“Students will be assessed using a non verbal reasoning test and will be placed into equal ability bands and in direct proportion to the range of applicants.”* This statement is followed by the rank order of oversubscription criteria, with that referring to looked after and previously looked after children placed first, as required by the Code. However, the placement of the previously quoted sentence before the criterion referring to such children implies that they, looked after and previously looked after children, would be subject to the outcomes of testing whereas the Code (in paragraph 1.7) states that *“the highest priority **must** be given ... to looked after children and previously looked after children.”* This priority is not subject to any other limitation, and so the arrangements should be clarified to avoid any misunderstanding. Section 4(a) of the arrangements may have been intended to address this point but makes no sense as it stands.
18. Paragraph 1.31 of the Code imposes certain requirements on admission authorities in respect of testing for the purposes of

selection. Among these is the requirement that all reasonable steps **must** be taken to ensure that parents know the outcomes of testing before the closing date for secondary applications of 31 October, in order that they may make an informed choice of schools. It would be helpful to parents in terms of clarity and transparency if the school were to publish the timetable of testing and announcing outcomes in its arrangements.

19. What does contravene the Code, however, is the lack of a tie-breaker where two applicants live at exactly the same distance from the school, for example, within the same house or block of flats, or indeed in different homes that are nevertheless inseparable by distance. In such situations, it is clear that paragraph 1.8 of the Code applies: *“Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.”* The school needs to identify and publish an appropriate tie-breaker within its arrangements as quickly as possible.
20. At the time of the objection, the arrangements on the school’s website were for 2014/15, but the Code, in paragraphs 1.46 and 1.47, requires admission authorities to determine their arrangements by 15 April every year, even if they have not changed, and for them to be published on the website once determined. The school must comply with this requirement as soon as possible.
21. The arrangements refer also to an “Intention to apply” form that is said to be available in the school’s prospectus, or from the school. There is no current working link to a prospectus from the school’s website and so parents are not able to easily see this form. On making further enquiries, I was told that this form was used solely for the purpose of identifying potential applicants for the outdoor learning places, although this was not clear to me from the wording in the arrangements. However, as well as undertaking that all references to outdoor learning would be removed from the arrangements, the Executive Principal confirmed to me that references to this form would also be removed.
22. In considering various documents during the course of making this determination, I have not been able to find any reference on the school’s website, including the sub-site devoted to post-16 matters, to admission arrangements for pupils aged 16. However, I have found *“There is no catchment area for Post 16 at Macmillan, we welcome applications from all local areas”* which indicates the school admits students new to the school into the sixth form. The LA’s composite prospectus does publish a post 16 PAN of 40 external students and refers to a distance criterion being used in the event of over subscription. Again, however, there is no tie-breaker and this information is neither on the school’s main website nor the post 16 sub-site. Paragraph 1.7 of the Code states that *“All schools **must** have oversubscription criteria for each ‘relevant age group’”, a*

“relevant age group” being defined as *“the age group at which pupils are or will normally be admitted to the school”*, which in this case would be to post-16 studies as well as to year 7. The school must ensure that its full arrangements for entry to post-16 studies are published, and that they meet all the requirements of the Code as they apply to other ‘relevant age groups’ as well as those specific to sixth form entrants.

Conclusion

23. The objection drew attention to the school’s designation of ‘outdoor learning’ as a specialist subject, and of its applying a test of aptitude in that subject to determine the allocation of ten per cent of places to applicants for year 7. This criterion, it was suggested, does not conform to several parts of the Code.
24. I agreed that outdoor learning is not a specialist subject permitted by the Code in paragraph 1.24 and therefore upheld that part of the objection on those grounds. Given that, other aspects of the objection concerning lack of clarity in the term ‘outdoor learning’ (as required by paragraph 1.8 of the Code) and the suggestion that parents would not find it easy to understand how places were allocated (as required by paragraph 14 of the Introduction to the Code) became irrelevant, along with the objection that the practicalities of taking children to participate in an aptitude test might disadvantage some families. The question of whether any such test would assess ability rather than aptitude also became irrelevant, given the determination that the criterion to which it related should be removed from the arrangements.
25. I also noted, however, that in response to the objection the school has decided to remove forthwith from its arrangements the criterion relating to aptitude in outdoor learning. I was informed by the school that the reference to an “Intention to apply” form concerned solely those applicants who would be seeking one of the outdoor learning places and so reference to it would also be removed from the arrangements.
26. In considering the arrangements as a whole, I found that they do not include an appropriate tie-breaker, as required by paragraph 1.8 of the Code, to discriminate between applications that cannot otherwise be separated. I suggested that the school might consider simplifying the use of two methods of distance measurement for different categories of applicant, and the use of random allocation for one category of application, so that parents could understand more easily how places might be allocated.
27. The arrangements do not make it clear that looked after and previously looked after children will be allocated places irrespective of the outcomes of ability-band testing or whether they take the test or not. The timetable for testing is not given, and so it is not apparent

that parents would be aware of the outcomes before the closing date for secondary applications.

28. Determined arrangements for 2015/16 were not yet published on the school's website.
29. I was unable to find any published arrangements for post-16 applicants, in contravention of paragraph 1.7 of the Code, on the school's website. Information relating to post-16 entry to the school in the LA's composite prospectus is incomplete.
30. It is for these reasons that I conclude that the arrangements are not compliant with the Code and must be revised as soon as possible.

Determination

31. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for the Macmillan Academy, Middlesbrough.
32. I have also considered the arrangements in accordance with section 88I(5). I determine that there are matters as set out in this determination that do not conform with the requirements relating to admission arrangements.
33. 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: 9 September 2014

Signed:

Schools Adjudicator: Andrew Bennett