



DETERMINATION

Case reference: ADA 2623

Referrer: A member of the public

Admission Authority: The academy trust for Durand Academy in the London Borough of Lambeth

Date of decision: 4 February 2015

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the arrangements for admissions in 2015 for Durand Academy determined by the academy trust for Durand Academy in the London Borough of Lambeth. I determine that the arrangements 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 88I(5) of the Schools Standards and Framework Act 1998 (the Act) a member of the public has brought the 2015 admission arrangements (the arrangements) for Durand Academy (the school) to the attention of the adjudicator. The school is located in the London Borough of Lambeth which is also the local authority (LA). The school is an academy school for pupils aged 3 – 18. The school has a nursery. The Durand Academy Trust is the admissions authority.
2. The particular matter of concern is that the third oversubscription criterion in the school's arrangements gives priority for places in the Reception Year (Year R) to children who have attended the school's nursery.

Jurisdiction

3. The referrer wrote to the Office of the Schools Adjudicator on 7 May 2014 to object in accordance with section 88H of the Act to the school's admission arrangements. The objection was received before the deadline of 30 June 2014.
4. The terms of the funding agreement between the academy trust 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.

5. As the school was unable to provide evidence that the arrangements had been properly determined the matter raised as an objection could not therefore be determined as an objection. The school determined its arrangements on 28 November 2014. I am satisfied that it is within my jurisdiction under section 88I(5) of the Act to consider the matter brought to my attention and the arrangements for 2015 as a whole.

Procedure

6. 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 referral dated 7 May 2014 and follow up responses from the referrer;
- b. the school's response to the matter of concern and subsequent correspondence;
- c. the minutes dated 24 and 28 November 2014 signed by the chair of governors confirming that the admission arrangements for 2015 had been determined;
- d. the LA's response to the matter of concern and subsequent correspondence;
- e. maps of the area including a map of the area that shows the distance travelled to school for the children admitted in 2014; and
- f. the LA's composite prospectus for parents seeking admission to schools in the area in September 2015.

7. In order to assist me with my enquiries I held a meeting at the school on 3 December 2014 with representatives from the school and the local authority. Following this meeting further information was shared with me and the other parties and I have taken this additional information, and comments made about it, into account in the consideration below.

The Referral

8. The matter brought to my attention is that the school's arrangements for September 2015 list as criterion 3 of the oversubscription criteria; "*a child on roll in the Durand nursery in the current year (when admissions are considered)*". The referrer considers that this criterion is not compliant with paragraph 14 of the Code that says "*in drawing up their admissions arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*"

Background

9. The school is an academy school and the governing body, acting on behalf of the Durand Academy Trust, is its admission authority. The published admission number (PAN) for the school is 125. The school has 100 full-time nursery places available for children aged four and a further 60 part-time places available in the nursery available for children aged three comprising 30 children who attend for five mornings a week and 30 children who attend for five afternoons a week. The four year olds who attend the nursery are required to attend full time for five days a week. There is no before or after school facility available for use by the nursery children. The school uses the same oversubscription criteria for admission to the nursery as it does for admission to the Reception Year (Year R) of the school although admissions are staged through the year for the three year olds. The school receives 15 hours a week early years payment on behalf of each child who attends the nursery, and for those who attend full-time the school funds the remaining 10 hours a week of nursery provision from its own resources with no charge to parents.

10. The LA's composite prospectus for admission to the Year R for September 2014 set out the admission arrangements for the school and the school referred to this in May 2014 as its determined arrangements commenting that no changes had been made since conversion to an academy in 2010. These arrangements were subsequently published in the LA's 2015 composite prospectus. These published arrangements have the following oversubscription criteria;

1. children who are looked after by a local authority and formerly looked after children;
2. children who have a brother or sister in the school at the time of admission. A sibling refers to.....;
3. a child on roll in the Durand nursery in the current year (when admissions are considered);
4. proximity to the school. Distance will be measured in a straight line.....;

Other matters

11. In order to review the arrangements it was necessary for me to confirm when the arrangements were determined. There has been uncertainty about whether the arrangements for 2015 had been determined or not at the time of the referral and whether the arrangements had been determined in compliance with the Code and then published as required. The arrangements were determined on 28 November 2014.

12. The arrangements use distance to prioritise within a criterion if necessary. However, there is no tie breaker described to separate two applicants who live the same distance from the school as required by paragraph 1.8 of the Code.

Consideration of Factors

13. I shall begin by considering the third oversubscription criterion that gives priority to children who have attended the school's nursery. The Code does not say whether or not a school can give priority to children who have

previously attended specific nursery provision, but paragraph 14 of the Code is quoted and refers to the general duty for admission arrangements to be “fair”. I shall examine the school’s arrangements for 2015 and consider how they meet the requirement for fairness.

14. In the arrangements published in the LA’s composite prospectus, the school gives priority for admissions as required by the Code to looked after and previously looked after children and then gives priority to applicants with a sibling in the school as it is permitted to do by paragraph 1.11 of the Code. The next priority is for those children who attended the nursery. The last priority is for other children who are admitted with distance as the means of setting priority within the criterion.

15. The school’s prospectus that is published on the school’s website says:

“Durand is a popular school and there are many more parents and carers who want to send their children to us than we are able to take. From those who apply, we give first preference to those who have a brother or sister in the school. The remaining places are allocated according to distance from the school. The nursery is the main point of entry and a place here guarantees admission into the Reception class at the school.Durand has a nursery schoolIt currently takes 60 children each day..... The nursery is the point of entry into Durand and a place at the nursery guarantees a place in the Reception class.”

16. The school provided the numbers of applicants for the 125 Year R places in recent years as shown in the following table:

	2012	2013	2014
Total number of applicants for places	294	306	269
Number of applicants for places who had no sibling and had not attended the nursery	192	208	170
Number of looked after and previously looked after children allocated places	0	4	0
Number of siblings who did not attend the nursery who were allocated places	1	10	6
Number of siblings who had also attended the nursery allocated places	60	45	62
Those who had attended the nursery without siblings who were allocated places	42	48	31
Children who gained places on the basis of distance	22	22	26

Children who were not allocated places	144	186	170
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17. At the meeting with the school I was informed that in recent years the numbers of applicants for the nursery more or less matched the number of places available and that in the current academic year the nursery is not full with 75 of the 100 available places taken. We discussed possible reasons for the nursery not being full. Possible reasons included: choice for parents; the fact that children are required to attend the nursery full time does not suit some families; and the nursery does not offer before and after school care, which is a difficulty for parents who work full time. The school also said that not all the children from the nursery applied for places in the school, however the table shows that in 2014 there were 93 children who had attended the nursery who gained places in Year R, in 2013 the figure was 93 and in 2012 it was 102. This means that over 90 per cent of the nursery children gained a place in Year R at the school. The picture is complicated by the fact that siblings are also given priority for admission and there is overlap between the two criteria. However, the table shows that in the last three years, 61, 55 and 68 children would have been allocated places on the grounds of a sibling in the school irrespective of whether they attended the nursery. This represents approximately half of the places available. The prioritisation of siblings is permitted by paragraph 1.11 of the Code.

18. A key consideration is that over 90 per cent of the children who attended the nursery take up a place at the school with the remaining small percentage attending other schools by choice. The situation is different for those children who have not attended the nursery: 22 gained places from 192 who applied in 2012, which is 12 per cent; in 2013 22 gained places from 208 who applied which is 11 per cent and in 2014 26 gained places from 170 applicants which is 15 per cent. These figures indicate that if a parent wishes to ensure, or at least have a high chance, that their child gains a place in Year R they have a near 100 percent chance if the child attends the nursery and less than 15 percent if the child does not attend the nursery. Given that almost all parents who apply for places in the nursery are successful in gaining a place this results in an inequality between those who do and those who do not attend the nursery.

19. At the meeting we discussed whether one of the possible consequences of the priority given to nursery children was that children who come from the nursery may come from a wider area than those who have gained places on the grounds of distance. The school gave the relevant data from the 2014 admission round to the LA and a map was created that illustrated the distance spread of applicants. The map shows that there does not appear to be a difference in the spread of distances travelled between those admitted within the different admission criteria. The school commented that from the information shown on the map it is impossible to determine whether any of the categories of pupil entering at Year R have higher priority than any other category and that the mapping information does not provide evidence to support the hypothesis discussed at the meeting that those who attended the nursery may live further from the school than those who did not attend the nursery.

20. Attendance at nursery is by choice and will depend on a number of family circumstances. Some parents who work will be looking for full-time child care to cover their working hours; others might work part-time and will be looking for part-time child care; others will not require child care, but wish to ensure that their child receives experience of nursery education either part-time or full-time. Other families may take the view that they do not want their child to go to nursery and will wait until their child is of compulsory school age.

21. There are many good arguments made for providing continuity for children and allowing those who have started in the nursery to continue in the main school. However, the Code does not give a specific permission for priority to be given to children who attend a nursery, irrespective of whether it is attached to a school, and so I must judge the matter on the basis of paragraph 14 which concerns the issue of fairness. I question the fairness of the school's criterion for two reasons. First, Durand Nursery is only one of a wider group of early years providers in the area and so it is unfair that parents might feel they need to choose this nursery in order to try and gain a place in Year R at their local school. Secondly, parents are not required by law to ensure their children attend any pre-school or other type of nursery provision before starting school. Such parents who choose not to send their child to the school's nursery are disadvantaged when seeking a place at this school and have a much lower chance of gaining a place at this school than those who did attend the nursery.

22. At the meeting we considered whether or not a possible consequence of giving priority to attendance at the nursery over distance would be that those attending the nursery came from a further distance than those who were admitted by distance. The map produced after the meeting that was based on the 2014 admissions data does not provide evidence that this is the case.

23. The school states that the admissions policy for the nursery is the same as that for the school. However, this does not ameliorate the situation for those parents and their children referred to above. Where the nursery is not at capacity then the oversubscription criteria will not be used and any applicant will be given a place. Where the number of applicants exceed the number of places available, this policy will allocate places in the nursery to those families who either have siblings or to those who live closer to the school because places are then allocated on distance. An important difference between admission to the nursery and to Year R is that there is no formal appeal mechanism for admission to the nursery.

24. In its admission policy and in response to my enquiries, the school says that children who attend nursery do not transfer automatically to the main school and have to apply for a Year R class place but acknowledged that it does give a priority to children who attended the school's nursery. It was considering adding some clarification to the arrangements by making it clear that admission to the nursery class does not automatically guarantee a place in the main school and that applicants will be required to re-apply for a place in Year R. The school prospectus is quite clear when it states that a place in the nursery guarantees a place in the school and as the criterion stands the

suggested clarification about reapplication will not make any change to this outcome.

25. At the meeting I was informed that the LA had made an error in reproducing the school's 2015 arrangements in its 2015 composite prospectus. It had rolled the 2014 arrangements forward and when the referral was made it pre-empted my consideration and a determination that might say that the priority for the nursery children was unfair and so should be removed. In error the LA then removed this criterion from the school's policy that was published in the composite prospectus. When the error was discovered the LA added a correction slip to printed booklets and corrected the version on the website.

26. It is my view that criterion 3 of these arrangements confers a clear advantage to those children attending the nursery over those children who, for whatever reason, do not, or are not able to, attend the nursery even if their parents wished them to do so. Parents should not feel that their child has to take a place at the nursery in order to have a reasonable chance of gaining a place in the school. The Code is clear that admission authorities must not require children to take up their school places until the term in which the child reaches compulsory school age. I therefore conclude that this part of these arrangements is unfair and not compliant with paragraph 14 of the Code.

27. I now turn to the other matters that I raised concerning the school's arrangements. The first matter concerns the determination of the arrangements. I looked for the school's admission arrangements on its website in early June 2014. The admissions policy on display had been updated on 18 October 2010 and did not make any reference to the year that it applies to or when the arrangements were determined. In correspondence the school said that its arrangements had remained unchanged since 2010. On 21 August 2014 the school sent a copy of a governing body minute signed by the chair of governors that said the governing body had agreed its admissions policy along with a list of other policies on 18 December 2013. The note states that the policy will be reviewed in December 2015.

28. When I queried this with the school I was informed on 22 September 2014 that the governors' meeting in December 2013 had agreed the 2014 arrangements and that the 2015 arrangements had yet to be determined. When the governing body did determine the arrangements in November 2014, the minute includes a comment that this was a reconfirmation of the arrangements that had been determined in December 2014.

29. Given that it took some persistence to obtain information from the school and that it took repeated requests to gain the information confirming when the arrangements were determined and that the information received was inconsistent and contradicted itself, I conclude that the school does not have a robust procedure for ensuring that it complies with paragraph 1.46 of the Code which says that " All admission authorities **must** determine admission arrangements by **15 April** every year, even if they have not changed from previous years and a consultation has not been required."

30. In addition, the school is not complying with the requirements of paragraph 1.47 of the Code concerning the display of its admission arrangements on its website. The Code says *“Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year (the academic year in which offers for places are made). Admission authorities **must** send a copy of their full, determined arrangements to the local authority as soon as possible before **1 May**.”* When I viewed the website in June and in August 2014 and again in January 2015 I could only find reference to an admission policy that was placed there on 2 November 2010 with no reference to arrangements for 2014 and 2015 as is required by the Code. In addition, I have seen no evidence that the arrangements had been sent to the LA before the 1 May.

31. Paragraph 1.8 of the Code requires admission arrangements to “include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.” In order to comply with this requirement, the school needs to ensure that the arrangements include a suitable tiebreaker in the event that two applicants live the same distance from the school.

32. These are matters that the school must rectify in order to be compliant with the Code and with its funding agreement which requires it to comply with admissions law and the Code.

Conclusion

33. I find that criterion 3 of these arrangements does not comply with paragraph 14 of the Code on the grounds that it is unfair to parents who choose that their children attend a different early years provider or who decide that they do not wish their child to attend an early years setting at all or may wish their child to attend the school’s nursery but do not gain a place.

34. I have looked at the school’s overall arrangements. The school has not complied with the Code’s requirement in paragraph 1.46 to determine its arrangements before 15 April every year or with the requirement in paragraph 1.47 to display them on the school’s website once determined and for the whole of the offer year. The school must rectify this matter without delay.

35. The school needs to introduce a tie-breaker for children who cannot otherwise be separated in order to comply with the code.

Determination

36. In accordance with section 88(5) of the School Standards and Framework Act 1998, I have considered the arrangements for admissions in 2015 for Durand Academy determined by the academy trust for Durand Academy in the London Borough of Lambeth. I determine that the arrangements do not conform with the requirements relating to admission arrangements.

37. 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: 4 February 2015

Signed:

Schools Adjudicator: David Lennard Jones