



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA2935

Objector: A parent

Admission Authority: The Academy Trust for Yavneh College,
Borehamwood, Hertfordshire

Date of decision: 2 September 2015

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the academy trust for Yavneh College, Hertfordshire.

I have also considered the arrangements in accordance with section 88I(5). I determine that they 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 within two months.

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 a parent, the objector, about the admission arrangements for September 2016 (the arrangements) for Yavneh College (the school), a Jewish academy school for children aged 11 to 18. The objection is to the priority the school gives to children who attend feeder schools and other matters set out below.

Jurisdiction

2. The terms of the academy 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. These arrangements were determined by the governing body on behalf of the academy trust, which is the admission authority for the school, on that basis. The objector submitted the objection to these determined arrangements on 25 June 2015. 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.

3. In the objection reference is made to the circumstances of a particular child, the objector's son. I am not able to comment on how admission arrangements affect a specific child; my jurisdiction is limited to whether the arrangements comply with the requirements of the Code and other relevant legislation.
4. I have also considered the 2016 arrangements as a whole under section 88I(5) of the Act. This includes considering matters which the objector raised after the 30 June, the last date on which objections to the 2016 arrangements could be made.
5. One matter raised by the objector after 30 June was that the school did not, in the objector's view, comply with the requirement in its funding agreement and section 1(6) of the Academies Act 2010 which require "*the school provides education for pupils who are wholly or mainly drawn from the area in which the school is situated*". Compliance with a school's funding agreement is not within my jurisdiction.

Procedure

6. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
7. The documents I have considered in reaching my decision include:
 1. the objector's form of objection dated 25 June 2015 and subsequent emails and attachments;
 2. the school's response to the objection dated 6 and 24 July 2015, supporting documents and its responses to my enquiries;
 3. the response from the Office of the Chief Rabbi which is the body representing the religion for the school;
 4. the response and other comments from Hertfordshire County Council, the local authority (the LA);
 5. the LA's composite prospectus for parents seeking admission to schools in the area in September 2015;
 6. a map of the area identifying relevant schools;
 7. confirmation of when consultation on the arrangements last took place;
 8. copies of the minutes of the meeting at which the governing body of the school determined the arrangements; and
 9. a copy of the determined arrangements.

The Objection

8. The school gives a degree of priority in its admission arrangements to children who have attended two primary schools, Hertsmere Jewish Primary School and Clore Shalom Primary School. The objector said this is unfair because the admission arrangements of both primary schools had been found by the Schools Adjudicator not to comply with

the Code in the past. The objector stated that children who had been admitted to the two primary schools in years when the arrangements did not comply with the Code now have greater priority for places for the secondary school than other children. This, the objector argued is unfair and contravenes paragraphs 1.8 and 1.15 of the Code.

9. The objector also said that the certificate of religious practice (CRP) used by the school has no relevance as it does not prove religious practice. This, the objector said, results in Jewish children being prevented from entering a Jewish school.
10. I was also asked by the objector to consider the arrangements for 2015 as they were not aware of the Code in time to submit an objection to those arrangements.

Other Matters

11. In an email of 8 July the objector raised questions about the consultation on the admission arrangements and whether the school complies with paragraph 2.17 of the Code requiring admission authorities to “*make clear in their admission arrangements the process for requesting admission out of the normal age group.*” These matters were raised after the date for lodging objections to the 2016 arrangements had passed, however as these matters were brought to my attention I have considered them under section 88I(5) of the Act.
12. The definition of a previously looked after child used in the arrangements did not appear to me to comply with paragraph 1.7 of the Code.
13. The wording of the oversubscription criterion numbered 5 did not appear clear to me. This would not comply with paragraph 1.8 of the Code.
14. Some aspects of the supplementary information form (SIF) used by the school appeared to me not to comply with paragraph 2.4 of the Code.
15. The Code requires the arrangements for admission to be published on the school’s website once they are determined. On 1 July 2015 I was unable to find the arrangements for admission into Year 12 in 2016 on the school’s website. When the school provided me with a copy of these arrangements on 17 July 2015, the oversubscription criteria and the SIF appeared to me not to comply with the Code.

Background

16. The school became an academy in 2011; it has a published admission number (PAN) of 150 and is oversubscribed. The school uses a CRP to establish whether a child is of the faith before applying oversubscription criteria which are:

- A. Looked after and previously looked after children who meet the faith test.
- B. Other children who meet the faith test.
- C. Other looked after and previously looked after children.
- D. Other children.

17. In the event of oversubscription in criteria B and D the following criteria are used:

- 1. Siblings of current or former pupils at the school.
- 2. Children attending Hertsmere Jewish Primary School or Clore Shalom Primary School.
- 3. Children of members of staff.
- 4. Children for whom the school is the nearest Jewish secondary school.
- 5. Distance of the child's home from the school.

18. The school uses random allocation as the final tie-breaker.

Consideration of Factors

Feeder schools

19. Paragraph 1.9b of the Code says that admission authorities **must not** *"take into account any previous schools attended, unless it is a named feeder school"* and paragraph 1.15 of the Code says *"Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds."*

20. The objector said it is possible that children may have been offered places at either of the named feeder schools in 2009 on the basis of oversubscription criteria which were later found not to comply with the Code. The objector continued to say if different oversubscription criteria had been in place which complied with the Code, other children would have been offered places at the two primary schools. The objector said *"at the time of admission for reception places at the two named feeder schools, neither of the feeder schools admission policies complied with the code."* And argued that by giving priority in their oversubscription criteria to children who have attended the two feeder schools the school is *"indirectly perpetuating the unfairness and inequality that was applied by the named feeder schools."*

21. The objector stated that over 100 places were allocated in both 2013 and 2014 to siblings and feeder school children. The objector pointed out that there are up to 90 children in each year group at the two feeder schools and some of these children will be admitted as siblings, so only the first child in a family would be identified as admitted under the feeder school criterion masking the proportion of children who are admitted in this category. This, the objector said, leaves just one third

of the places available for other children making attendance at a feeder school “*very important to gain entry to Yavneh College*”.

22. The objector pointed out that Clore Shalom School is also a feeder school to the Jewish Community Secondary School (JCoSS) in New Barnett. The objector questioned whether it is reasonable for it to remain a feeder school to Yavneh College.
23. In response to the objection, the school said that the objector had not shown that the admission arrangements of either feeder school did not comply with the Code in 2009. It pointed out that “*the law relating to admissions had changed over the years and so too had the admission arrangements for both feeder primaries.*” It also said that if the objector had felt that the arrangements of the two feeder schools were unlawful in the past, the objector should have raised an objection with the Schools Adjudicator at that time.
24. The school justified the selection of the two feeder primary schools on the grounds that the school was established for Jewish children in Hertfordshire and these are the two Jewish primary schools in the county. The two feeder schools have been feeder schools since the school was established. At that time a third feeder school was considered, but as it was not situated in Hertfordshire it was not made a feeder school. The school’s response pointed out that as Clore Shalom is also a feeder school for JCoSS, this may lead to fewer children transferring to it from that feeder school.
25. There is no prohibition on a primary school being a feeder to more than one secondary school. I am satisfied that the school has named the two feeder schools on transparent and reasonable grounds.
26. The school provided data on the places offered at the school in September 2013, 2014 and 2015. The objector commented on discrepancies between the figures provided by the school and the LA for September 2015. These discrepancies are relatively small and the school provided explanations for each one of them. The figures confirm the objector’s statement that after places have been offered under the sibling and feeder school criteria, typically about one third remain to be offered under other lower criteria.
27. Some children admitted under the sibling criterion may have attended one of the feeder schools. The LA provided data on where pupils at the two feeder schools were offered places in 2014 and 2015. These figures show that in 2014 there were 62 children admitted from the two feeder schools and in 2015 there were 74 admitted from the two schools. A small majority of places therefore appear to be offered to children who did not attend either of the feeder schools.
28. Having established that the feeder school criterion meets the

requirements of paragraphs 1.9b and 1.15 of the Code and that there is scope for children who have not attended the feeder schools to be offered places I turn to the objector's main argument. That is in this case the use of a feeder school criterion is unfair and contravenes paragraph 1.8 because it gives priority to children who may have been unfairly admitted to the feeder schools under arrangements which did not comply with the Code which was in place at the time.

29. While the objector has referred to determinations by the Schools Adjudicator since 2009 which found fault with both feeder schools' admission arrangements, this does not mean that all children, or indeed any children, were admitted to those schools unfairly. The feeder school criterion is permitted by the Code and complies with paragraphs 1.9b and 1.15; it is not unfair and does not contravene paragraph 1.8 therefore I do not uphold the objection.

Certificate of Religious Practice

30. The objector said "*it strikes us that the CRP has no relevance as it does not prove religious practise. Given that children of all faiths attend synagogue simply to get the CRP signed, does not prove that they are practising the Jewish faith.*"
31. The school responded that it had considered the guidance from the Office of the Chief Rabbi as it "*wanted to ensure that the religious practice could be demonstrated in accordance with admissions law.*"
32. The faith body questioned the evidence for the objector's claim that "*children of all faiths attend synagogue simply to get the CRP signed*". The objector said that they do not have any written evidence to support this claim but quoted conversations with Rabbis.
33. A particular concern of the objector is that the CRP includes attendance at synagogue on Friday evenings towards demonstrating that the child is of the faith. They argue that this is less onerous than attending on Shabbat morning.
34. The school asked me to note that other Jewish secondary schools in the area accept attendance at synagogue on Friday evening towards meeting their synagogue attendance requirement. It also considered attendance on Friday evenings important as it marked the beginning of the Sabbath.
35. The Office of the Chief Rabbi was very clear in its view that "*It should not be suggested that Friday evening services are less important than the Shabbat morning service*". It expressed support for the CRP used by the school.
36. In Paragraph 1.38 the Code says "*Admission authorities for schools designated as having a religious character **must** have regard to any*

guidance from the body or person representing the religion or religious denomination when constructing faith-based admission arrangements, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code.”

37. I have examined the CRP and the guidance from the Chief Rabbi and it is consistent with the mandatory provisions and guidelines of the Code. I do not uphold this part of the objection.

Other Matters

Arrangements for 2015 and the consultation on 2016 arrangements

38. The objector asked me to consider the 2015 arrangements as well as the 2016 arrangements, saying they were not aware of the Code at the time objections to the 2015 arrangements could be lodged. The objector also noted changes to the wording of the arrangements which they say were not consulted on.

39. I have looked at the 2015 arrangements; these are in practice the same as the 2016 arrangements with the exception of some changes to wording which I am satisfied come within the scope of being *“necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements”*, as set out in paragraph 3.6 of the Code. There was no requirement for the school to consult on such changes.

40. Places for September 2015 will have been already been offered on the basis of these arrangements. The 2015 arrangements continue to affect admissions to the school from the waiting list until 31 December 2015 as explained in paragraph 2.14 of the Code. I have not upheld any element of the objection and none of the matters I will address below would lead to any changes in the operation of the waiting list.

Admission outside of the normal age group

41. The objector noted that they could not find the process for requesting admission outside of the normal age group in the arrangements. Paragraph 2.17 of the Code says *“Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.”*

42. The LA has said the process is set out in its literature covering all schools in the county. This does not absolve the school as the admissions authority from setting out what the process is for requesting such admission in its arrangements. I therefore find that the arrangements do not comply with the Code on this matter. The school has already acknowledged it is at fault on this point and has proposed additional wording in its arrangements to meet the requirements of the Code.

The definition of previously looked after children

43. I drew the school's attention to the wording in their arrangements regarding the definition of looked after and previously looked after children. The school agreed this did not comply with the definition in the current version of the Code and undertook to amend the wording of the criterion and its footnotes to comply with paragraph 1.7 of the Code.

Clarity of the fifth oversubscription criterion

44. The wording of the fifth oversubscription criterion is "*In the event of oversubscription after each of the above criteria 1 - 4 has been applied, proximity to the School of the child's permanent home address as at the deadline for applications will in each of the above categories be the determining factor.*"
45. This appeared to me to be unclear as it could be understood as a tie-breaker for the first four criteria. This would leave no way for a child who was not a sibling, did not attend a feeder school, did not have a parent working at the school or for whom the school was not their nearest Jewish secondary school to be ranked by the oversubscription criteria. Paragraph 1.8 of the Code quoted above requires oversubscription criteria to be clear.
46. The school said that the criterion serves two purposes, as both a tie-breaker for criteria one to four and as a further oversubscription criterion for other children. It acknowledged it could be clearer and proposed simplifying the criterion to "*All other children*" and setting out the tie-breaker separately.

The supplementary information form

47. Paragraph 2.4 of the Code says that admission authorities "***must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability***".
48. The SIF used by the school asks questions about shared parental responsibility, the existence of a statement of special educational needs, whether the child is in public care and whether the common application form has been completed.
49. The school has acknowledged that these questions should not appear on the SIF and has undertaken to remove them and at the same time it is planning to clarify the wording in other parts of the SIF.
50. I was also concerned that the SIF asked for the child's gender. The school explained that as some of the Jewish secondary schools in the area are single sex schools, knowing the applicant's gender was

necessary to ascertain whether the school was the closest Jewish secondary school to the applicant's home. I am satisfied that this information is necessary to make decisions about oversubscription criteria.

Sixth form arrangements

51. The Code requires in paragraph 1.47 that the arrangements for admission are published on the school's website once they are determined. On 1 July 2015 I was unable to find the arrangements for admission into Year 12 in 2016 on the school's website. When the school provided me with a copy of these arrangements on 17 July 2015, the oversubscription criteria and the SIF appeared to me not to comply with the Code.
52. Some of my concerns were common to both the Year 7 arrangements and the sixth form arrangements. In its response the school agreed to amend the definition of previously looked after children and to amend the SIF as described above and identified some other changes to the wording which it considered may help clarify some points. There were however other matters which appeared to me may not comply with the Code.
53. The first paragraph in the arrangements for entry to the sixth form states the PAN, the second reads "*Places on individual courses of study are limited. In the event of oversubscription for a particular course of study, priority will be given to i) siblings of pupils attending Yavneh College at the deadline for applications and who will still be attending Yavneh College in September 2016 or ii) have formerly attended Yavneh College for a period of at least two academic years (for these purposes, 'siblings' means the sister, brother, half-brother or sister, step-brother or sister, adopted brother or sister, and in every case living permanently in the same house from Monday to Friday) and any remaining places on the course or courses in question will be given to applicants in descending order of their total GCSE (or equivalent qualification) point scores.*"
54. The allocation of places on any particular course once a student has been admitted to a school is not a matter for the adjudicator, however finding this statement at the beginning of the arrangements detracts from the clarity of the arrangements as a whole. As it follows the statement of the PAN it could be read as being one of the oversubscription criteria, or confused with them.
55. The oversubscription criteria themselves are:
 - A. Looked after and previously looked after children who meet the faith test.
 - B. Other children who meet the faith test.
 - C. Other looked after or previously looked after children.

D. Other children.

56. In B and D priority is given to children of members of staff. There is no other way of discriminating between applicants. The school has acknowledged this does not comply with requirements and has proposed allocating any remaining places on the basis of distance in the same way as Year 7 places are allocated which includes the use of random allocation if two applicants live the same distance from the school.

57. The school also undertook to ensure the Year 12 arrangements were displayed on its website as required by paragraph 1.47 of the Code.

Conclusion

58. For the reasons set out above I do not uphold the objection. I also determine that the arrangements do not comply with the Code in other ways and commend the school's willingness to make the necessary changes to make the arrangements comply with the Code.

Determination

59. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the academy trust for Yavneh College, Hertfordshire.

60. I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform with the requirements relating to admission arrangements.

61. 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 within two months.

Dated: 2 September 2015

Signed:

Schools Adjudicator: Phil Whiffing