



DETERMINATION

Case reference:	ADA3327
Objector:	A member of the public
Admission Authority:	The governing body of Kingsdale Foundation School, Dulwich, London Borough of Southwark, for the Kingsdale Foundation
Date of decision:	27 September 2017

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 for September 2018 determined by the governing body of Kingsdale Foundation School, Southwark on behalf of the Kingsdale Foundation.

I have also considered the arrangements for 2018 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 arrangements within two months of the date of this determination unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised by 28 February 2018.

The objection

- 1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Office of the Schools Adjudicator (OSA) by a member of the public (the objector), concerning the admission arrangements (the arrangements) for September 2018 for Kingsdale Foundation School, Dulwich (the school). The school is an academy school for children aged 11-19. The objection concerns consultation about the arrangements, the partial selection that is included within the arrangements and the effect of the admission arrangements on local children.**
- 2. The school is located in the London Borough of Southwark and the local authority is Southwark Council, which has been included as a party in this case along with the school's foundation and its governing body and the objector.**

Jurisdiction

3. The terms of the funding agreement between the Kingsdale Foundation and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. The governing body of the school, on behalf of the Kingsdale Foundation, which is the admission authority for the school, determined these arrangements on 7 February 2017, on that basis. The objector submitted the objection to these determined arrangements on 10 May 2017. The objector has asked to have her identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of her name and address to me.
4. 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. I have also reviewed the arrangements as a whole using my power to do so under section 88I of the Act as the arrangements had been brought to my attention by the objection.

Procedure

5. In considering this matter, I have had regard to all relevant legislation and the School Admissions Code (the Code).
6. The documents I have considered in reaching my decision include:
 - a. the objection form dated 10 May 2017 and supporting documents;
 - b. comments from the school in response to the objection together with supporting documents;
 - c. comments from the local authority in response to the objection and supporting documents;
 - d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2017;
 - e. the minutes of the meeting of the school governing body on 7 February 2017 at which the arrangements for September 2018 were determined; and
 - f. a copy of the determined arrangements for 2018.
7. I held a meeting at the school with representatives of the school and the local authority on 14 September 2017. The purpose of the meeting was to clarify some points about the arrangements which were not clear to me from the correspondence and which I was reviewing under section 88I of the Act. I

have taken the information I gathered into account in writing this determination.

The Objection

8. The objection covers five areas. The first part asks whether the school has fulfilled its obligation to consult on its admission arrangements in the last 7 years as required by paragraph 1.42 of the Code.
9. The second part is a concern that the admission arrangements are difficult for parents to understand and thus not compliant with paragraph 14 of the Code.
10. The third part concerns the reference to scholarships within the arrangements and the basis for partial selection. The objector suggest paragraph 1.9d of the Code applies. Paragraphs 1.21 and 1.22 are also relevant.
11. The fourth part seeks clarification about how the random allocation process is administered and whether there is independent verification as required by the Code paragraph 1.35.
12. In the fifth part the objector asks about the effect of random allocation on local children's chances of gaining a place at the school (the Code paragraph 1.8)

Other matters

13. Paragraph 1.27 of the Code says that an admission authority must "*publish the admission requirements and the process for (such) banding and decisions, including details of any tests that will be used to band children according to ability.*" I found the test schedule on the school website. The testing schedule shows that the tests for banding take place in November /December. Paragraph 1.32c of the Code says that admission authorities must "*take all reasonable steps to inform parents of the outcome of selection tests....before 31 October...*". As the tests are scheduled for after 31 October it appeared hard to see how the school is taking reasonable steps to inform parents of the results before that date.

Background

14. The school is a partially selective academy for children age 11-19. It has partially selective admissions permitted by section 100 of the Act which permits it to select a maximum of 15 per cent of its intake based on applicants' aptitude in music or sport. It refers to these selective admissions as "*scholarships*" and scholars are given specialised individual or group tuition in their specific disciplines. The school is located in Southwark but close to the neighbouring boroughs of Lambeth and Lewisham. It is a popular school and is oversubscribed. It has a published admission number (PAN) for 2018 of 300 which includes the 15 per cent selected by aptitude.
15. The school states at the beginning of its arrangements that it "*is an inclusive school and welcomes all children regardless of ability or faith. The governors are committed to ensuring that admissions to the school reflect*

the wide diversity of the community that the school exists to serve.” In my meeting at the school, the headteacher explained the way the school uses banding as a means of ensuring a spread of ability in the school. He drew attention to a recent Ofsted inspection report that commented on the success of this approach. Applicants are invited to apply for a selective place on the basis of their performance in tests for music or sport. Those who wish to do so must complete the supplementary information form (SIF) and undertake appropriate tests in the relevant subject. The test results are placed in rank order and those scoring the highest up to the equivalent to 15 per cent of the intake are selected for admission on a music or sports scholarship.

16. Other applicants to the school are banded in order to allow the school to admit a spread of ability. Applicants are required to undertake an ability test. The results are places in rank order which is then divided into three equal sized cohorts for the purpose of allocating places. Having established which cohort an applicant should be placed in, the tests results serve no other purpose.
17. The selective places and places for children with a statement of special needs or an education and health care plan are allocated places first and then the remaining places are divided into three equal sized groups. One group of places is linked to each of the three cohorts that result from the ranking by ability. If there are more applicants than there are places available in a cohort, the following oversubscription arrangements apply:
 - a) Looked after children and previously looked after children
 - b) Siblings of children who are in the school at the time of admission
 - c) Children with medical and social reasons
 - d) Children of staff
 - e) Random allocation
18. The random allocation is undertaken at the school and the arrangements state that is overseen by a local independent person.

Consideration of the case

19. The first part of the objection questions whether the school has complied with the requirements of paragraph 1.42 of the Code and held a consultation within the last seven years. The school provided evidence that it had carried out a comprehensive consultation in preparation for the 2017 arrangements. The consultation took place between 7 December 2015 and 31 January 2016. I have seen details about who was informed about the consultation, the public notices that were placed in local papers, and copies of comments made. I am satisfied that the school has complied with the requirement in the Code to carry out a consultation every seven years or when changes are proposed. The objector provided details of attempts she had made to discuss admissions with the school governing body as evidence of lack of consultation. I looked at this and considered that the school had undertaken consultation in line with the requirements of the Code. How it handles a request from a parent or a group of parents to discuss issues concerning

admissions, or indeed any other issue, is a matter for the governing body to manage, it is different to the consultation process. I am satisfied that the governing body has undertaken consultation as it is required to do by the Code and in consequence, I do not uphold this aspect of the objection.

20. The second part of the objection asks whether the arrangements comply with paragraph 14 of the Code that says “*parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*” The objector considers that the arrangements are very long at 14 pages and written in a formal language that the objector considers is off-putting for some parents. In its response, the school said that the wording for the arrangements had evolved over the years taking into account feedback from parents and addressing issues that have arisen and which have given cause for sections to be amended so that they are clearly stated. The headteacher observed that each year the school receives many times its PAN in applications and thought this heavy oversubscription makes it seem unlikely that parents are put off applying to the school.
21. I have studied the arrangements and agree that they are written using formal language. The first three pages of the arrangements set out the oversubscription criteria and the other pages are accompanying notes and provide details of how to apply for a selective place. There are sections where the wording could be made simpler and less formal if the school wished without losing the meaning but overall I do not think that the arrangements as they are written are unduly difficult for parents to understand as required by paragraph 14 of the Code. It is important that admission arrangements are precise and this mitigates the use of very informal language. I do not therefore uphold this part of the objection.
22. The third part of the objection concerns the reference to scholarships within the arrangements and the basis for partial selection. The objector says that the arrangements refer to “scholarships” and argues that this is intended to imply that the school is a selective school and to discourage local children from applying. The objector considers that the school may not be complying with the requirement in paragraph 1.9d of the Code that “*an admission authority **must not introduce any new selection by ability.***” The objector suggests that paragraphs 1.21 and 1.22 of the Code are also relevant as they refer to partially selective schools with “pre-existing selection”, which means selection in place by the 1997/98 school year. I note that the Code refers in this context to schools which select some of their pupils by ability. However, section 100 of the Act (which is referenced in the footnote to paragraph 1.22 of the Code) is clear that it applies to selection by aptitude or ability. This school’s pre-existing partial selection is by aptitude.
23. In reviewing this matter, I note that the school’s funding agreement, which is published on the school’s website, states that the school is a partially selective school. It says that “*the academy’s selective proportions are that a maximum of 15 per cent of the admission number per year group will be designated for music, mathematics or sports scholarships which qualify for use for entry to the school.*” Prior to the 1997/98 school year the school operated partial selection at this level and the school has been selecting 15 per cent of its

intake on this basis since then. The school currently selects by aptitude in music and sport, it has chosen not to select by maths ability but after the admission process has been completed it does identify those children within the school with strong maths ability for particular support. The objector refers to paragraph 1.9d of the Code that prevents any new selection by ability. In this case the 15 per cent selected for sports and music is not new and is permitted through the school's funding agreement with the Secretary of State and through section 100 of the Act. The objector then makes reference to paragraphs 1.21 and 1.22 of the Code. Paragraph 1.21 requires a school to publish its entry requirements for a selective place and paragraph 1.22 refers to the proportion of students that can be selected. It is clear that the arrangements comply with these paragraphs. In the objection there is a suggestion that the school is taking more children of higher ability and cites another local school which appears to have lower levels of ability in its intake. The school responded that it uses a banding test and then random allocation within the bands to try and ensure that it has the full range of ability in the school. The way the school operates the banding is to divide the rank of scores from the testing into three equal sized portions. This means that the ability spread is across the applications received. These are other means of allocating places in a banding system and the school as the admission authority has chosen to use this system and is able to give reasons for this decision. I am satisfied that the school takes steps to try and ensure a spread of ability, and the use of banding and random allocation helps to achieve this. The objector asserts that the ability level of applicants is high in comparison to other schools. I was not shown evidence that this is the case although the headteacher agreed that the range of applicants is skewed towards those of higher ability but he suggests that this is a reflection of the area as a whole. I do not uphold this element of the objection.

24. The third part of the objection concerns the use of the word scholarships and that the objector thinks that it is intended to put off applications from those with lower ability. The school responded by saying that it does not use this term to try and put applicants off. It does, however, wish to ensure that those with the aptitude in these areas can be encouraged to develop their potential. The school said that it provides up to £1000 funding for students admitted on the grounds of their aptitude to allow them to have additional tuition and coaching in the areas of music or sport. The school tests for aptitude and then selects those who score highest in the tests for a scholarship place. It argues that although it is selecting those with the most aptitude in these areas, the applicants come from across the ability range and in its view it is encouraging applications from those with a particular set of aptitudes.

25. I have considered the points made by the objector and the school. The school has chosen to call the places available "*scholarships*". This is a matter for the admission authority to decide and it was clearly explained to me that these pupils receive special support to develop their talents in music or sport. The school is permitted to select this proportion of the admissions by the Act in order to select those with the most potential in music and sport. The objector is concerned that applicants of lower ability are discouraged from applying. I have seen no evidence that this is the case and take the point made by the school that there is not necessarily a correlation between those with the

highest aptitude in music or sport and those with the highest academic ability. I consider that the arrangements for selection of students for their aptitude for music or sports complies with the Act and the Code and I do not uphold this part of the objection.

26. In the fourth part of the objection, the objector seeks clarification about how the random allocation process is administered and whether there is independent verification as required by the Code paragraph 1.35. The school explained how it conducts the random allocation process and explained that there was always at least one independent person present at the day when this takes place to ensure that the process is conducted properly and fairly. The school also said that the process is open to parents and others to attend if they wished. Paragraphs 1.34 and 1.35 of the Code set out the requirements for random allocations of places and I am satisfied that the arrangements comply with these requirements so I do not uphold this element of the objection.
27. In the fifth part the objector asks about the effect of random allocation on local children's chances of gaining a place at the school. The objector refers to paragraph 1.8 of the Code that says "*oversubscription criteria must be reasonable, clear, objective, procedurally fair (and)...not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group.....*".
28. The school explained that it seeks a broad balance across the ability range which is why it undertakes banding. It considers that the use of random allocation of places within each band (rather than say distance from the school) is the fairest way to allocate the places to ensure that there is a wide spread of ability within the school. It observes that its location is near the edge of Southwark and close to Lambeth and Lewisham and the random allocation allows applicants from across the area equal access to the school. I searched for primary schools on the Department for Education's schoolfinder website and it lists 16 primary schools within one mile and 167 primary schools within three miles of the school. The objector argues that there should be some priority for children from one particular local primary school which is located on the same estate as the secondary school. Paragraph 1.8 of the Code quoted above does not require an admission authority to prioritise children who attend a local school but does require the arrangements to be reasonable and not disadvantage a particular group. I considered whether the children attending this particular primary school were being disadvantaged and concluded that while they did not have a particular priority in the arrangements they were not being disadvantaged either. I was shown no evidence, apart from distance, that there is any greater relationship between these two schools than any of the other 16 schools within a distance of one mile. The school has chosen to use random allocation of the available places within the ability bands to ensure fairness and I am satisfied that the arrangements were compliant with the Code in this respect.

Other matters

29. In the 2010 School Admission Code it was clearly stated in paragraph 2.98 that "*grammar schools, and other schools, or their admission authorities,*

*which are permitted to use selection by ability or aptitude, **should** ensure that parents are informed of the outcome of entry tests before they make their applications to other schools. This does not apply to testing as part of banding arrangements.....”.*

30. The 2010 Code has been replaced by the 2014 Code. Paragraph 1.25 of the 2014 Code states that “*pupil ability banding is a permitted form of selection...*”, and paragraph 1.32c) says that admission authorities must “*take all reasonable steps to inform parents of the outcome of selection tests....before 31 October...*”. The school currently arranges the banding tests in November/December when it has received the applications for places. By holding its banding tests after 31 October, there is clearly no scope to inform parents of the results before that date. I consider that the school is not acting in conformity with the requirement to take all reasonable steps to inform parents of the outcome of the tests before 31 October. It is clearly not possible for the school to consider how to reschedule its tests in order to comply with this requirement of the Code before 31 October 2017. Paragraph 3.1 of the Code says that “*an admission authority must revise their arrangements within two months of an adjudicator’s decision unless an alternative timescale is specified by the adjudicator*”. In this case, given the need for the school to plan its changes and then inform parents of the revised arrangements I have decided that the arrangements must be revised by 28 February 2018 in order to implement the changes for 2019.

Summary of Findings

31. I have considered the five elements of the objection in turn. I am satisfied that the school has consulted as it is required to do by paragraph 1.42 of the Code. I have not upheld the second part of the objection that suggests the arrangements are not compliant with paragraph 14 of the Code and are difficult for parents to understand. I have agreed that the arrangements are written in a formal style but I do not think that the arrangements are written in a way that prevents parents understanding how they work.
32. I have not upheld the part of the objection that concerns the reference to scholarships within the arrangements and the basis for partial selection. I am satisfied that the basis for the selection was established by 1997/98 and that the references to scholarships are compliant with the Code. I am also satisfied that the arrangements meet the requirements of paragraph 1.35 in respect of the way that random allocation of places is conducted and paragraph 1.8 of the Code in not discriminating against any particular groups of applicants.
33. There is a matter where the arrangements do not comply with the Code. The school must consider how best to amend its arrangements so that they comply with the Code in respect of paragraph 1.32c).
34. Paragraph 3.1 of the Code says that “*admission authorities must, where necessary, revise their admission arrangements....within two months of the decision unless an alternative timescale is specified...*”. Parents must be given adequate notice of changes to test arrangements so I have decided that the school must amend its arrangements by 28 February 2018.

Determination

35. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2018 determined by the governing body of Kingsdale Foundation School, Southwark on behalf of the Kingsdale Foundation.
36. I have also considered the arrangements for 2018 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.
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 arrangements within two months of the date of this determination unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised by 28 February 2018.

Dated: 27 September 2017

Signed:

Schools Adjudicator: David Lennard Jones