Office of the Schools Adjudicator

DETERMINATION

Case reference: **ADA3398**

Objector: **An individual**

Admission Authority: **Danes Educational Trust for St Clement Danes School, Hertfordshire**

Date of decision: **16 July 2018**

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 2019 determined by Danes Educational Trust for St Clement Danes School, Chorleywood, Hertfordshire.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

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 of the date of the determination.

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 an individual, (the objector), about the admission arrangements (the arrangements) for September 2019 for St Clement Danes School (the school), an academy school for pupils aged 11 to 18, which is part of Danes Educational Trust (the trust). The objection is to the test used to select by aptitude for music.

2. The local authority for the area in which the school is located is Hertfordshire County Council. Other parties to the objection are the trust, the local governing board of the school and the objector.

Jurisdiction

3. The terms of the Academy agreement between the multi-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 local governing board of the school on behalf of the trust, which is the admission authority for the school, on that basis. The objector submitted the objection to these determined arrangements on 5 May 2018. The objector has asked to have his 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 his name and address to me. 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 used my power 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 objector's form of objection dated 5 May 2018;

    b. the admission authority's response to the objection and supporting documents;

    c. previous determinations of the adjudicator relating to the school and a High Court judgment with a bearing on the arrangements;

    d. the comments of the local authority on the objection;

    e. confirmation of when consultation on the arrangements last took place;

    f. copies of the minutes of the meeting at which the local governing board of the school determined the arrangements; and

    g. a copy of the determined arrangements.

The Objection

6. The objector believes that the arrangements breach paragraph 1.32(a) of the Code, which states that,

    *"Admission authorities **must** ensure that tests for aptitude in a particular subject are designed to test only for aptitude in the subject concerned, and not for ability."*

Other Matters

7. When I considered the arrangements as a whole, I considered that they might not conform with the requirements relating to admission as follows (with relevant Code paragraphs in brackets):

    a. in respect of applicants with an Education, Health and Care (EHC) Plan naming the school (1.6);

    b. the supplementary information form (SIF) used by the school (2.4); and

    c. the provisions relating to late admissions and the waiting list (2.14).

Background

8. The school became an academy on 1 July 2011. The Chief Executive of the trust has confirmed that responsibility for the annual determination of admission arrangements is delegated to the local governing board of the school. The Published Admission Number is 240. The school was heavily oversubscribed for admission in September 2018, as parents of 1126 children made the school a preference, including 410 for whom it was their first preference. The oversubscription criteria can be summarised as:

    i) Looked after and previously looked after children.

    ii) Children with a brother or sister attending the school.

    iii) Children of staff.

    iv) Up to ten per cent of places for children demonstrating musical aptitude.

    v) Up to ten per cent of places for children demonstrating academic ability.

    vi) Children living in the WD3 postcode area.

    vii) Children living outside the WD3 postcode area.

    Within each criterion, distance from the school serves to rank applicants, followed by random allocation where distances are identical. Twenty-four children, that is, ten per cent of the total, were allocated places under the fourth criterion (musical aptitude).

9. The musical aptitude criterion was introduced in September 2004. A previous criterion gave priority for children with aptitude for music, art, drama and physical education. That criterion was the subject of an objection to the Schools Adjudicator (ADA351). In July 2003, the adjudicator determined that,

    "*the school is not using lawful methods to select by aptitude. If the school wishes to continue to select for aptitude, it should devise methods that accord to the terms of the Code.*"

The adjudicator ruled that the criterion should be removed.

10. The school subsequently sought permission to vary its determined arrangements to provide for selection by aptitude for music only, using a revised method of selection. The adjudicator considered this method to be "*well-founded*" and the variation was approved in August 2003 for use in its arrangements from 2004 onwards (VAR55). The method of selection was adopted by several local schools, including Watford Grammar School for Girls and The Watford Grammar School for Boys, which now form a consortium for the administration of the selection activities.

11. In October 2003, the two Watford Schools were the subject of a case that was heard in the High Court (R (Watford Grammar School for Girls) v Adjudicator for Schools [2003] EWHC 2480 (Admin), [2004] ELR 40). Selection by aptitude for music was one of several matters considered. In his judgment, Mr Justice Collins held that the method of selecting for aptitude – which of course was the same method as used by the school – was: "*obviously one which is now in accordance with the Code*" (paragraph 86 of the judgment).

12. The school has told me that the method of selection used today has remained exactly the same as that considered by Mr Justice Collins. It comprises two parts:

    (a) a written aptitude test, based on responses to aural tests, with questions about pitch, melody, texture, and rhythm. The test is said not to require any knowledge of music theory; and

    (b) a performance, for those who achieve a high mark in the aural test. Candidates are asked to perform a single piece on their chosen instrument or vocally.

    The school provided the "*performance assessment criteria*" for the performance element of the selection process. It is used by the seven schools that are currently part of the consortium. Marks are awarded for "*accuracy*", "*musicality*" and "*communication*." The school believes that this method of selection,

    "*will enable candidates of all abilities and all cultures to succeed*."

Consideration of Case

13. I consider first the objection. The objector draws attention to the school's website, which refers to a "*Music ability test*." The objector asserts that the performance, which constitutes the second part of the test, is a test of musical ability, which the Code does not allow.

14. The objector makes reference to a determination made by an adjudicator in respect of a method of selecting by aptitude for music at Camden High School for Girls (ADA2603). The objector contends that the "performance" element of the test at that school, which was considered by the adjudicator not to comply with the Code's requirements, appears to be the same as the one used in this case.

15. Determinations of schools adjudicators do not create precedents. Each case is

considered on its merits according to the circumstances of the individual school. It is therefore not necessary for me to consider in detail the determination relating to Camden High School for Girls cited by the objector. However, I do note in passing that there appear to be some differences between the approach taken by Camden High School for Girls in the way it administered its test for musical aptitude and the criteria used for assessing the "performance" element, compared with the method used by the school that is the subject of this determination.

16. As noted above, the school has confirmed that the method of selection for aptitude in music that it had adopted by way of the variation to its admission arrangements in August 2003 was exactly the same one adopted by the Watford schools at the same time. This is the method of selection that was found to comply with the Code in the High Court judgment cited above. The school has also confirmed that there have been no changes to the method of selection since its introduction for admissions in September 2004. In the light of the judgment of Mr Justice Collins I do not uphold the objection.

17. The school has amended that part of its website that referred to a "*Music ability test.*" The wording is now "*Music aptitude test.*" The school has apologised for what it describes as "*an administrative error*."

18. I turn now to the other matters. First, I was concerned that the school appeared to be imposing conditions in relation to the admission of a child with an EHC plan. These conditions included receipt by the school of all necessary documentation by the closing date for admissions and that "*the Governors believe the school is suitable for meeting the identified needs of the child.*" The Code makes clear in paragraph 1.6 that "*all children whose…EHC plan names the school **must** be admitted."* No conditions can be put in place. The school has undertaken to amend the wording to remove any suggestion that conditions might be attached to the admission of such pupils. The Code requires that it do so.

19. The local authority pointed out, in its comments on the school's arrangements, that there are to be aspects of the school's Supplementary Information Form (SIF) that appear not to comply with the Code. The Code states, in paragraph 2.4, that admission authorities,

> "***must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria.*"

20. The SIF is referred to as an "*Application Form*" and all applicants are required to fill it in. It asks for information, such as the applicant's present school, which is not required in order to apply the school's oversubscription criteria. The SIF for admission in September 2019 cannot be found on the school's website.

21. The school accepts that it is not necessary for all applicants to complete the SIF. Only those applicants wishing to be considered under those oversubscription criteria for which the local authority's Common Application Form (CAF) does not provide the required information (that is, the aptitude criteria and children of staff) need to provide a SIF. The school has agreed to amend its arrangements to make this clear.

22. The school states that it makes the SIF available to parents in the September of the application year. I consider that this does not comply with the requirements of the Code. The SIF forms part of the school's admission arrangements, which must, according to paragraph 1.47, be published on their website once they have been determined. A copy must also be provided to the local authority by 15 March (paragraph 1.49).

23. The school also states that it is "*highly counter intuitive and unnecessarily confusing to parents*" not to refer to the SIF as "*in part an application form*." I do not agree. On the contrary, the application form for all publicly funded schools for children living in Hertfordshire is the Hertfordshire CAF. To refer to other forms as "*application forms*" creates more of a risk of confusion. In any case, the form cannot be an application form for children whose applications do not rely on the information it contains and the school has accepted this. With careful explanation, parents will understand that the SIF provides information specific to their application that is not included in the CAF.

24. Finally, in relation to the SIF, the school argues that it is entitled to ask for details of the applicant's siblings and their present school in order, respectively, to make the application process more efficient and to help it investigate potentially fraudulent applications, where a false address had been given. It supplied me with a copy of email correspondence with the secretariat of the Office of the Schools Adjudicator dating from 2008, indicating that an adjudicator had confirmed that, as the school had an annual problem with the use of false addresses, it was in order to ask for the applicant's present school on the SIF, "*due to these special circumstances*." I note that this was not in the context of an adjudicator determination, although the email does say that member of the secretariat concerned had sought the opinion of "*an adjudicator*". Whatever the status or locus of that advice, it was provided when an earlier version of the Code was in force and when the co-ordination of admission applications by local authorities was less well established than it is now. The local authority now has thorough and robust processes for checking that applicants provide correct addresses on the CAF. It also provides information to schools about siblings. Indeed, as the SIF needs to be completed only by applicants seeking priority for a place under certain oversubscription criteria, the school would only obtain this information for a proportion of applicants. I find that it is unnecessary for the school's SIF to ask for details about applicants' siblings or their present school and it is therefore a breach of paragraph 2.4 of the Code. The Code requires that the arrangements in relation to the SIF be changed in order to meet my findings set out above.

25. The local authority also pointed out that the school's arrangements for "late applications" and the administration of its waiting list appeared, in some respects, to take into account the date the application was received. This is contrary to paragraph 2.14 of the Code which states that "*priority **must not** be given to children based on the date their application was received or their name was added to the list*". The school has agreed to alter its procedures for dealing with late applications and the administration of its waiting list, so that the Code is complied with and the Code requires that this be done.

Summary of Findings

26. The method of selection by aptitude for music used by the school was considered in the High Court in 2003. It was found to comply with the Code's requirements. The method is unchanged since then and I do not uphold the objection. I have found that the school's admission arrangements do not comply with the Code in other ways.

Determination

27. 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 2019 determined by Danes Educational Trust for St Clement Danes School, Chorleywood, Hertfordshire.

28. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

29. 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 of the date of the determination.

Dated: 16 July 2018

Signed:

Schools Adjudicator: Peter Goringe