



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3377

Objector: Chief Executive Officer of Sigma Academy Trust, Essex

Admission Authority: Governing Board of The Gilbert School, Colchester, Essex.

Date of decision: 17 July 2018

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 September 2019 as determined by the governing board of The Gilbert School, Colchester, Essex.

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 unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised by 1 September 2018.

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 representative of Sigma Academy Trust, a local academy trust, (the objector) about the admission arrangements (the arrangements) for The Gilbert School, Colchester, Essex (the school) for September 2019. The school is a mixed academy school for 11 to 16 year olds. The objection is to the use of an audition as part of the selection by aptitude to a number of music places and also to the inclusion of additional evidence as part of the application process.
2. The local authority for the area in which the school is located is Essex County Council. The local authority is a party to this objection. Other parties to the objection are the objector and the school.

Jurisdiction

3. 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 board, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 28 March 2018. 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.

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 28 March 2018 and subsequent additional correspondence;
 - b. the admission authority's response to the objection, supporting documents and subsequent additional correspondence which included suggested amendments to the supplementary information form (SIF);
 - c. the comments of the local authority;
 - d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2018;
 - e. a map of the area identifying relevant schools;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. copies of the minutes of the meetings at which the governing board of the school discussed and subsequently determined the arrangements; and
 - h. a copy of the determined arrangements.

The Objection

6. The objection refers to the supplementary information form (SIF) which forms part of the admission arrangements for September 2019. The objection is to two elements of the SIF; the audition used as part of the selection process for aptitude to music and the reference to supplementary evidence to be submitted by applicants which includes accredited music qualifications.

Background

7. The Gilberd School is an oversubscribed academy school for 11 to 16 year olds in Colchester, Essex. Admission arrangements for September 2018 included a published admission number (PAN) of 324 and the following oversubscription criteria in priority order;
 - Looked after and previously looked after children;
 - Siblings of current pupils;
 - Catchment area pupils (by distance from home to school if oversubscribed within this criterion)
 - Others by distance.
8. A proposal to change the admission arrangements for September 2019 was discussed at a number of governing board meetings during December 2017. The governing board agreed a set of proposed admission arrangements which included a reduced PAN of 312 and the following oversubscription criteria in priority order;
 - Looked after and previously looked after children
 - Priority A, a minimum of 284 pupils in the priority order of; siblings, children of members of staff and straight line distance from home to school.
 - Priority B; up to 28 pupils selected by aptitude for music. This criterion applies to applicants living in the Colchester area (as defined by a map of the area) and scoring the highest marks in aptitude tests.
 - If undersubscribed in Priority B then places allocated under priority A.
9. These proposals were subject to an extensive consultation process in line with the Code which took place from 8 December 2017 to 25 January 2018. During this consultation, a letter of concern was received from the current objector representing a number of local schools. The letter was acknowledged by the school although no full response was sent to the objectors. The letter was discussed at length during the meeting of the governing board on 20 January 2018 and minor amendments to the arrangements were agreed. At this meeting, the arrangements were determined by the governing board and subsequently published in accordance with the Code.
10. The local authority received 374 first preference applications for admission to the school in September 2018 and 325 places were allocated as follows (this is one over PAN due to one successful appeal);

- 4 pupils with Education Health and Care plans (EHCP)
- 5 looked after or previously looked after children
- 107 siblings
- 209 children living within the catchment area.

These allocation proportions are similar to those admitted in 2015, 2016 and 2017. In three of the last four years, distance has been applied within the catchment criterion resulting in a number of applications from families who live within the catchment area being unsuccessful. The school suggests that this number is approximately 50 pupils for September 2018 and this is the primary reason why the school proposed the radical changes to the admission arrangements for September 2019.

Consideration of Case

11. The objector wrote in the objection that as a representative of a number of local schools, he expressed concerns about the changes to the arrangements during the formal consultation process but that he did not receive a response to this. He acknowledges that the school complies with the Code in terms of introducing an oversubscription criterion which selects up to 10 per cent of total admission by aptitude to music under paragraph 1.24 of the Code. *“Schools that have arrangements to select by aptitude **must** not allow for more than 10 per cent of the total admission intake to be allocated on this basis of such aptitude (even if the school has more than one specialism.) The specialist subjects on which a school may select by aptitude are; b) performing arts or any one or more of those arts”.*
12. The objection refers to paragraph 1.32a 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.”* The objector maintains that the use of an audition in the selection process is not compliant with this requirement. He further maintains that the submission of further information about the applicant in terms of accredited musical qualifications as indicated in the SIF is also not compliant with this requirement under the same paragraph.
13. The determined and published arrangements for September 2019 state that up to 28 places will be allocated to children who are identified as having a proven aptitude in Music as determined by the school’s aptitude tests. They go on to say that, if applicants are seeking admission under this criterion then they should complete a SIF and return it to the school. Tests/auditions will then be scheduled and concluded so that parents can be notified of the outcomes prior to the 31 October 2018.

14. The SIF is published as part of the arrangements and this too, refers to an audition. In addition it states that *“Musical aptitude may involve any of the following;*

- *a flare for music as demonstrated by practical performance and listening skills. Applicants may have had no formal training but would like to pursue the subject and have clear potential for doing so;*
- *applicants may have received music tuition as evidenced by accreditation or have accredited qualifications but these aren't essential to prove aptitude;*
- *applicants may have membership of a school Church or similar orchestra for example or other musical organisation.”*

15. The SIF also contains a section on how the school assesses aptitude and contains a tie breaker in the event of two candidates having equal scores in the tests. The tie breaker is based on QCA (Qualification and Curriculum Authority) accredited qualifications such as ABRSM (Associated Boards of the Royal Schools of Music) or Trinity College certificates or Rock School qualifications.

16. In its response to the objection, the local authority stated that *“The Council has no direct comments on the objection itself”*. It then went on to say that *“we do understand that parents of children in the area local to the school itself have expressed concern”* This statement was questioned by the school and the local authority responded that they had no details of names of concerned parents or dates on which they expressed concern.

17. The school's response to the objection covered five main areas;

- a) The school explained its strong tradition and strength in the arts and music in particular. The school has three fully equipped classrooms running Cubase (a digital audio workstation for arranging, recording and editing music). There is a team of 10 peripatetic staff and over 250 students having instrumental lessons weekly. Music is a popular and thriving subject at GCSE level. There are extensive opportunities for students to perform in weekly assemblies, regular concerts, whole school musical production and external appearances. A rolling programme of music support for primary schools is in place.
- b) The school provided details of the governors' discussion following the consultation process which made major changes to the arrangements. One joint response was received by the school from a group of schools. The school states that the objection was acknowledged and that the governors discussed each of the elements of the objection in detail. The objection during the consultation process covered concerns about the introduction of aptitude tests and their likely impact on priority admission for local

children. It also expressed concern that selection would have a negative impact on other schools in the area and would increase the movement of students across the town. It asked questions about the process of mid-year admissions and whether or not aptitude tests were also to be introduced in the admission arrangements for a new school which is sponsored by The Gilbert School.

- c) The school documented its communication with the local authority concerning the comments about local parents expressing concern and reiterated that no comments had been received by the school during the consultation process except the response from the local group of schools.
- d) The school provided an extensive list of other schools which have oversubscription criteria which use musical aptitude as a priority.
- e) The school stated that they had no interest in selecting children on prior attainment and accepted the objector's suggestion that the inclusion of accredited music qualifications could be indicative of prior learning rather than aptitude. The school suggested amendments to the SIF. In addition the school accepted that the term 'audition' was not clear enough to ensure that applicants understand the content and suggested a change in term to 'improvisation workshop'.

18. As noted above, I am aware that the background to this case involved a lengthy objection made by a group of local schools to the proposed changes to the arrangements as published in the consultation phase. The school provided me with notes of the detailed discussions which the governors had about each element of the objection and how they came to their conclusions. Had this document been shared with the current objector at the time, some of the matters which were of concern may have been better understood. The current objection concentrates on two aspects of the arrangements; the use of an audition to select applicants under the musical aptitude oversubscription criterion and the references in the arrangements to accredited music qualifications.

19. A dictionary definition of 'audition' is 'a short performance given by an actor, dancer, musician or other performer that tests whether that person's skills are suitable for a particular event or group'. (Cambridge English Dictionary). It is a term used widely in music fields and normally involves a pre-prepared piece learned and perfected before the audition. However, the definition does not exclude unprepared performance. I therefore do not believe that the use of the word audition, as used in the arrangements, is contrary to paragraph 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.*" I therefore do not uphold this element of the objection. The school has proposed that the word 'audition' is replaced with 'improvisation workshop' in order to clarify the process and I think this is a sensible amendment. More important,

however, is the content of this workshop.

20. I requested and received from the school details of both tests used in the selection process. The initial test covers pitch, rhythm, melody and musical shape. The improvisation workshop covers rhythm and rhythmic improvisation and melody and melodic improvisation. Having studied these tests, I am satisfied that they require no prior knowledge or training on the part of the applicant and are therefore tests of aptitude rather than prior knowledge or experience as would have been the case in a prepared performance. I am therefore of the view that the tests, which are the sole vehicles for musical aptitude selection, conform to the Code at paragraph 1.32a.
21. The SIF as published with the determined arrangements includes references to formal music qualifications, music tuition and membership of musical groups and organisations. In the tie breaker it asks for supplementary evidence in the form of QCA accredited qualifications. The objector suggests, and I agree, that these references are contrary to paragraph 1.32a of the Code and I therefore uphold this element of the objection.
22. The school also agrees with the objector and has suggested new wording in the SIF which excludes all reference to membership of musical groups or formal musical qualifications. In addition, there is a suggested amendment which includes the sentence *“Supplementary evidence cannot be considered as a part of the aptitude selection so please do not send us this”*. I am of the view that this version of the SIF conforms with the Code.
23. Paragraph 3.6 of the Code allows amendments to admission arrangements under certain specific circumstances. These include to give effect to a mandatory requirement of the Code, admissions law or a determination of the Adjudicator and therefore the revised SIF can be published as part of the arrangements immediately and without the need to consult.

Summary of Findings

24. I do not believe that the use of the term ‘audition’ automatically means a prepared performance demonstrating prior attainment or ability in music and I have not therefore upheld this element of the objection. I think it sensible however that the school has clarified the arrangements by replacing the term ‘audition’ with the term ‘improvisation workshop’. Having reviewed the content of this workshop, I am satisfied that it assesses the musical aptitude of the applicants and not their musical ability and is therefore compliant with the Code.
25. Wording on the SIF to include participation in musical groups and accredited musical qualifications is non-compliant with the Code and I uphold this element of the objection. The school has proposed amendments to the SIF which are compliant and these now need to be published as part of the arrangements.

Determination

26. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2019 as determined by the governing board of The Gilbert School, Colchester, Essex.

27. 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 unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements must be revised by 1 September 2018.

Dated: 17 July 2018

Signed:

Schools Adjudicator: Ann Talboys