



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3496

Objector: A member of the public

Admission authority: The governing board of the North Kesteven Academy, Lincoln

Date of decision: 16 July 2019

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 2020 determined by the governing board of North Kesteven Academy, Lincoln, Lincolnshire.

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 28 February 2020.

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 member of the public, (the objector), about the admission arrangements (the arrangements) for North Kesteven Academy, Lincoln (the school), a comprehensive academy with a specialism in the performing arts for students aged 11-18. The objection is to the way that aptitude for the performing arts is tested for the purpose of giving priority for some places at the school.
2. The local authority (LA) for the area in which the school is located is Lincolnshire County Council. The LA is a party to this objection. Other parties to the objection are the school and the objector.

Jurisdiction

3. The terms of the Academy Agreement between the academy trust (which is known as and which I refer to as the governing board for the school) 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 school's governing board, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 7 March 2019. At the time the objection was received on 7 March 2019 the admission authority had not determined the school's admission arrangements. These were subsequently determined on 2 April which was after the deadline of 28 February prescribed by the Code. The school recognised this error and having determined its arrangements for 2020 gave an assurance that it would not make the same error in future. I report on this matter but there is no further action to be taken and once the arrangements had been determined the objection was within my jurisdiction.

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.

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 objector's form of objection dated 7 March 2019;
- b) the admission authority's response to the objection with supporting documents and correspondence;
- c) the comments of the LA on the objection and supporting documents;
- d) the LA's composite prospectus for parents seeking admission to schools in the area in September 2019;
- 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 meeting at which the governing board for the school determined the arrangements; and
- h) a copy of the determined arrangements.

The Objection

7. The school gives priority for ten per cent of places on the basis of aptitude in the performing arts and the objection is that the arrangements do not make clear how this aptitude is tested and thus do not comply with paragraph 14 of the Code that says *“admission authorities **must** ensure that the practices and criteria used to decide the allocation of places are fair, clear and objective.”* The objector asserts that he cannot assess whether the selection by aptitude complies with the requirements of the Code in paragraphs 1.31 and 1.32 to be a true test of aptitude because there is insufficient detail in the arrangements. He considers that the application form which invites applicants to record what they have done may not be objective and may favour those from advantaged backgrounds who had had the opportunity to have specialist lessons. He is also concerned that there are no procedures for offering catch up testing dates to those children who are unwell on the day of the test, or who move to the area after the test but before the national deadline of 31 October each year. This he considers may disadvantage groups of children such as service children or traveller children.

8. Paragraph 1.31 of the Code says *“tests for all forms of selection **must** be clear, objective and give an accurate reflection of a child’s ability or aptitude, irrespective of sex, race, or disability. It is for the admission authority to decide the content of the test, providing that the test is a true test of aptitude or ability.”* Paragraph 1.32 says *“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....”*

9. A second part of the objection concerned the sixth form arrangements. However, as I have already discussed, at the time of the objection the 2020 arrangements had not been determined. The matters that the objector raised were addressed within the determined arrangements and so this aspect of the original objection is no longer relevant and apart from mentioning it here I shall not consider it further.

Background

10. North Kesteven Academy is an 11 - 18 co-educational comprehensive academy in Lincoln. It is typically undersubscribed and the school has not had to use the oversubscription criteria set out in its arrangements. It is a school with a specialism in the performing arts and when oversubscribed may give priority for up to ten per cent of its intake (which is 24 places) on the basis of aptitude in this area. However, the school reports that it has to date been able to admit any student who wishes to be considered on the basis of their aptitude within a specialist subject and indeed, because it does not admit to its published admission number (PAN) of 237 has in recent years been able to offer a place to any child that has applied irrespective of aptitude. It is helpful for me to comment here that the Code permits the school to select a certain number of applicants on the basis of their aptitude in specialist subjects if the school is oversubscribed but this is not quite the same as having “specialist places”. I shall comment further about this point below.

11. For admissions in 2019 the school says that “*it received 7 applicants for the 24 specialist places and a total of 126 places were taken up against the PAN of 237*”. The LA provided the following figures that relate to the 2019 applications for places:

Pref 1	Pref 2	Pref 3	Pref 4	Total
105	135	71	0	311

12. I set out below a summary of the oversubscription criteria within the determined arrangements.

1. looked after and previously looked after children
2. applicants with a sibling who will still be attending the school when the applicant is due to start.
3. up to 24 applicants who can demonstrate aptitude in one or more of the performing arts, that is dance, drama or music. This will be done by means of an objective workshop to assess aptitude if there are more applicants than places so that places would then be awarded to the highest score first.
4. applicants who live nearest to the school measured by straight line distance.

13. The school also regularly admits to its sixth form at Year 12 (Y12). It has a PAN of 35 for this purpose. Applicants for the sixth form must meet the published minimum standards at GCSE for their chosen subjects. If there are more applicants for a course than there are places then looked after and previously looked after children have first priority and then other places are prioritised on the basis of distance.

Consideration of Case

14. The first part of the objection is that there is insufficient detail given about the operation of the ten per cent selection by aptitude to be able to assess whether the selection is objective. In the second part of the objection, the objector considers that the application form which invites applicants to record what they have done may not be objective and may favour those from advantaged backgrounds who had had the opportunity to have specialist lessons. He is also concerned that there are no procedures for offering catch up testing dates to those children who are unwell on the day of the test, or who move to the area after the test but before the national deadline of 31 October each year.

15. I begin by commenting that the school is permitted by the Code to select up to ten per cent of its intake on the basis of aptitude in the performing arts where it is oversubscribed. The school refers to specialist places but the ability to offer places on the basis of aptitude in the specialist subjects is an oversubscription criterion and will only be used as a means of selecting those children with the relevant aptitude if there are insufficient places available for all those who apply for places. If the school is

undersubscribed children with aptitude in the performing arts will be admitted and there is no reason to label them in any different way than other applicants. If the school chooses to identify aptitude once children have started at the school that is not a matter that has any bearing on the admissions process.

16. The school provided me with further clarification about the procedure and process for allocation of places for aptitude in the performing arts. The school refers to the allocation of places for the performing arts and comments that it has been able to allocate these places to all who apply in recent years because the school has been undersubscribed. In response to my enquiries it describes a process as follows:

“a parent completes a form, available from the academy, with their name and contact details, along with a rationale for applying on this basis. They are asked to provide details on any activities they undertake, qualifications they have received and interest in this area.

The academy contacts all parents who have completed these forms. In recent years, we have received fewer applications on the basis of aptitude in the performing arts and therefore the expression of interest in applying on this basis has been sufficient grounds for us to allocate places to those students.

Should the academy receive more applications of interest to be admitted on aptitude, all students who have expressed an interest by completing the form would be invited into the academy to take part in a workshop of their choice in one or more of Dance, Drama and Music.

The teachers of these subjects would each run a workshop of approximately 90 minutes, which would include a variety of activities to assess the aptitude of these students.” The school goes on to explain that the applicants are assessed against four criteria which are *“strong technical ability; strong expressive skills; strong creativity or an interest or enthusiasm for the arts.”*

17. The academy comments *“we are fully comprehensive, taking students from all backgrounds and prior learning starting points and we are proud to do so. We are an inclusive academy in every way. It is important to us that all students and particularly those from disadvantaged backgrounds have an opportunity to learn about, participate and excel in any subject area that they are interested in. This is the reason for us to continue to offer these subjects across all year groups in our academy at a time when funding is challenging and other schools are limiting their curriculum, particularly in the area of performing arts.”*

18. The LA commented that it considered that the offer of a workshop to assess aptitude in the performing arts was likely to be in compliance with the Code and made the same point that the school had made about undersubscription and that it has not been necessary to test for aptitude because all applicants have been offered places in this undersubscribed school.

19. The first part of the objection is about whether the arrangements contain sufficient detail for the objector to be able to judge whether or not the process for selection is objective. I have considered this point and whilst the Code requires arrangements to be “clear” and “objective”, there is no requirement that there should be sufficient detail that the objector, or any other reader, can judge for themselves if the arrangements are objective. The responsibility for the arrangements being objective rests with the admissions authority. If a person believes that they are not objective it is open to them to challenge the admissions authority on that basis and for the admissions authority to provide evidence of how it ensured objectivity. I do not think the assertion by the objector that he should be able to make a judgement about objectivity on the basis of what is included in the arrangements is what is intended by paragraphs 1.31 and 1.32 of the Code. I would also add that the Code in paragraph 14 sets out the requirement that “*parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*” It is my view that a parent could do this with this set of arrangements. In consequence I do not uphold this part of the objection.

20. The second part of the objection concerns the use of a supplementary information form in the admissions procedure that allows parents to indicate their interest in asking for their child’s aptitude in the performing arts to be used as part of the admissions process. Parents are invited to indicate their interest and are asked to describe the achievement of their child in the chosen specialist area. The objector asserts that by asking for information about prior achievements and experiences in the performing arts, the school is potentially discouraging expressions of interest from children who may have an aptitude but for whatever reason, no previous experience. I have looked at this point and have the following comments.

21. I do not consider that the arrangements are sufficiently clear and there is a possibility that there may be other parents who decide to say that their child has an aptitude when they apply for a place on the common application form before the deadline of 31 October. In my view, if the school wishes to use its ability to select children on the basis of their aptitude, it should decide on the deadlines that it wishes to use and communicate these clearly to parents. The school has no certain means of knowing before 31 October 2019 (as that is in fact the closing date for applications for places in September 2020) if it will be oversubscribed. Paragraph 1.32 of the Code says that the school **must** “*take all reasonable steps to have informed parents of the outcome of any selection tests before the 31 October*”. The only certain way for the school to comply with this requirement is for the school to provide an aptitude test well before 31 October 2019 for any child whose parent wishes them to be eligible to be considered for a place under the specialism criterion if the school is oversubscribed. If the school is undersubscribed the results of the tests will not need to be used as an oversubscription criterion but the school and parents are not to know this until after the 31 October when the number of applicants is known.

22. The school currently attempts to deal with this situation by asking for information about a child’s previous experience in the specialist area. However, I do not consider that this meets the requirement of the Code in two respects. The first is that the criteria that were shared with me by the school do not appear to test aptitude but are more oriented to

prior achievement which is not the same. In particular, the criterion that refers to “*interest and enthusiasm*” cannot be assessed objectively and these are not qualities that are related to aptitude in a subject. Whilst I note the school’s statement quoted in paragraph 16 about its desire to be inclusive, a child may have aptitude in any of the school’s specialisms but may have no opportunity to gain any prior experience. The only way that the school can assess this fairly is to offer a genuine aptitude test. My second reason is covered above and concerns the Code’s requirement that the school must make every reasonable effort to make the outcome of any test available before 31 October so that the test result can inform a parent’s application for a place.

23. Section 102 of the School Standards and Framework Act permits an admissions authority to select up to ten per cent of its intake if it is satisfied that the school has a specialism in one of the permitted subject areas. In its correspondence to me the school said that it enhances its curriculum to promote its specialisms. This is consistent with this requirement. However, the use of the supplementary information form to gather information about previous experience does not provide the school with information about the aptitude of those children nor am I persuaded that it encourages those children with aptitude but limited experience in the performing arts to come forward. I also observe that although the school asserts that it would offer a test if it was oversubscribed it has not shown me any evidence of the test that it would use and how the governing board would ensure that it was a true test of aptitude as required by paragraph 1.32 of the Code. For these reasons I uphold this part of the objection.

24. The last part of the objection is that the school does not offer alternative dates for tests and by not doing so might disadvantage groups such as service children or traveller children. I do not uphold this part of the objection because there is no requirement on an admission authority to publicise alternative dates for selection tests. The arrangements involve the school contacting each family about testing and I have seen no evidence that any child is disadvantaged.

25. In the school’s response to me the headteacher informed me that she was new to the school and was seeking the advice of the LA on matters relating to admissions. This will provide an opportunity for some discussion about how best to meet the requirements of the Code in the respects discussed above.

Summary of Findings

26. This is currently an undersubscribed school and it admits all children who apply for places. It seeks to have a comprehensive intake and it wishes to emphasise the performing arts and to be recognised as a specialist school. As a specialist school it is permitted to select up to ten per cent of its intake on the basis of aptitude in the specialist subject areas.

27. The objector draws attention to the lack of clarity in the process for selection by aptitude as described in the admission arrangements. I have concluded that I do not uphold the part of the objection that relates to the objector being able to judge the objectivity of the selection process on the grounds that the responsibility for ensuring the

objectivity rests with the admission authority, in this case the governing board for the school. I do however uphold the objection concerning the process for selection by aptitude. I have said that in order to comply with the Code, if the school has an oversubscription criterion based on an applicant's aptitude, the school must offer a suitable aptitude test or tests for those who may wish to be considered under the oversubscription criterion for those with aptitude in the specialist subjects and take all reasonable steps to inform them of the outcome of the selection test before 31 October. I understand this to mean that parents should know whether or not the school has assessed their child to have the required aptitude and what they scored in the test. If the school is undersubscribed this information will not be used in the admission process, but neither the school nor the families applying for places will know if this will be the case until the 31 October deadline for applications for places has been reached.

28. The Code in paragraph 1.32 requires the admission authority to ensure that such assessment is for aptitude rather than ability. In this case the admission authority is the academy governing board and in determining the arrangements it is this board that must satisfy itself that the assessment arrangements comply with the Code. Advice is available from the local authority or other specialist advisers.

29. I do not uphold the part of the objection that says the admissions authority must publish alternative dates for selection tests because there is no requirement within the Code for this to be done.

30. This admission authority recognises that it determined its 2020 arrangements after the deadline of 28 February that is set out in the Code. I have reported on this error and the school has rectified it with a late determination. It has given an undertaking to meet the deadline of 28 February when determining its 2021 admission arrangements.

31. I have partially upheld the objection and require the admission authority to consider its arrangements and make changes to ensure that they comply with the Code. Paragraph 3.1 of the Code requires admissions authority to revise the admissions arrangements within two months of the date of this determination unless an alternative timescale is specified. In this case I do not think that there is merit in asking the admission authority to make urgent changes to its arrangements because as the school is likely to be undersubscribed such changes will have no effect on the anticipated applications to be received by 31 October. I therefore set a deadline of 28 February 2020 to enable the admission authority to take advice on how it wishes to test by aptitude and to have sufficient time to consider its options and consult with parents and other interested parties on how to amend its procedures accordingly.

Determination

32. 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 2020 determined by the governing board of North Kesteven Academy, Lincoln, Lincolnshire.

33. 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 28 February 2020.

Dated: 16 July 2019

Signed:

Schools Adjudicator: David Lennard Jones