



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3655

Objector: Medway Council

Admission authority: Skills for Life Trust for Hilltop Primary School in Rochester, Kent

Date of decision: 22 June 2020

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2021 determined by the Skills for Life Trust for Hilltop Primary School in the local authority area of Medway Council.

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 Medway Council about the admission arrangements for September 2021 (the arrangements) for Hilltop Primary School (the school) which is an academy school for children aged between four and eleven. The objection is to the inclusion in the oversubscription criteria of a priority for the children of those working at any school in the Skills for Life Trust.

2. The parties to this objection are:
 - 2.1. the Skills for Life Trust which is the admission authority for the school (the trust);
 - 2.2. the local governing board for the school (the governing board); and
 - 2.3. Medway Council which is the local authority for the area in which the school is located and is also the objector in this case (the local authority).

Jurisdiction

3. The terms of the academy agreement between the trust 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. These arrangements were determined by the trust on that basis. The local authority submitted its objection to these determined arrangements on 24 March 2020. 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. confirmation that the arrangements were determined by the trust on 1 June 2020;
 - b. a copy of the determined arrangements;
 - c. the local authority's form of objection;
 - d. the trust's response to the objection and further information in response to my requests;
 - e. maps identifying relevant schools; and
 - f. information available on the websites of the local authority, the trust, the school and the Department for Education.

The Objection

6. The objection is that the oversubscription criteria for the school includes a priority for children of a member of staff working at a Skills for Life Trust school and that this does not comply with paragraphs 1.9f and 1.39 of the Code. The local authority explained that it understood such a priority was countenanced by paragraph 1.39 for those employed at the school but, as other schools in the trust are some distance from the school, there is a risk of

unfairly disadvantaging children who live near to the school if priority were given for places at this school to children of staff working at other schools in the trust.

Background

7. The school is a member of the Skills for Life Trust which is a multi-academy trust consisting of five schools. Three are primary schools, including the school, and two are secondary schools. The schools in the trust have different admission arrangements. The oversubscription criteria for the school are, in summary:

- 1) Looked after and previously looked after children
- 2) Siblings of existing pupils
- 3) Children of staff
- 4) Children with a medical reason for attending the school
- 5) Distance of the home from the school.

8. The trust is the admission authority for the school and the school also has a governing board. Following the objection it transpired that there was some confusion over whether the trust or the governing board was responsible for determining the arrangements. The trust determined the arrangements on 1 June 2020, advised as I understand it by a meeting of the governing board on 22 May 2020.

Other Matters

9. When I considered the arrangements, I found other matters which did not meet the requirements of the Code. These are listed below (with the most relevant paragraphs of the Code in brackets):

- a. The arrangements were not determined by the trust by 28 February 2020 (1.46).
- b. The arrangements say, *“The level of ability of a child or any special needs that s/he may have, plays no part in the admissions policy of this school where we are properly equipped to deal with the needs of the child.”* This statement is ambiguous and therefore unclear as it may imply that an assessment will take place before a child is admitted and this would not comply with the Code (14, 1.6, 1.8 and 1.9h).
- c. The arrangements say, *“Places are offered to children with a statement of special educational needs where, following consultation with the Local Authority that the child’s individual needs can be met, the school is named.”* In nearly all cases statements of special educational needs have been replaced with Education, Health and Care Plans (EHC plans) and by using this statement, which does not mention EHC plans, the arrangements may be unclear although there is further information later in the arrangements which does mention EHC plans (14 and 1.8).

- d. Paragraph 2.16c of the Code says that, *“the child’s parents can defer the date their child is admitted to the school until later in the school year but not beyond the point at which they reach compulsory school age and not beyond the beginning of the final term of the school year for which it was made.”* The arrangements say, *“Parents are not obliged to start their child at school until the beginning of the term after the child is five. Therefore, parents who have been offered a September place may ask to defer their child’s admission until the beginning of the spring term without losing the offer of a place.”* This statement does not reflect the requirements of the Code as it implies that there is not the possibility of starting school at the beginning of the summer term (depending on the date of birth) by mentioning one term and not the other (14 and 2.16b).
- e. The arrangements do not, as required by the Code, make it clear that *“where the parents wish, children [who have not reached compulsory school age] may attend part-time until later in the school year.”* (14 and 2.16c).
- f. The arrangements say, *“Parents of children with summer term birthdays (1 April to 31 August 2017) may ask to start their child in Year 1.”* As there is no further information this does not comply with the requirements of paragraph 2.17 of the Code that *“Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group. (emphasis by underlining added)”* (14 and 2.17).
- g. The first oversubscription criterion is for *“Children in public care - as defined in the Medway Council Co-ordinated admissions scheme.”* This does not comply with paragraph 1.7 of the Code. The Code actually requires that first priority is given to looked after and previously looked after children. Looked after children includes not only children in public care but those provided with accommodation by a local authority and clearly a child who was previously looked after (or indeed previously in care) is no longer necessarily looked after. In addition, any definition relevant to a parent’s understanding of the arrangements should be in the admission authority’s arrangements rather than the parent expected to look elsewhere. The arrangements also contain a fuller and more accurate definition of looked after and previously looked after children but it is still not entirely consistent with the Code and so the arrangements are unclear (14 and 1.7).
- h. Criterion 5 in the oversubscription criteria is, *“Nearness of children’s homes and ease of access to schools (sic).”* Nearness of a child’s home to the school is not necessarily the same as ‘ease of access’ so this is not clear (14 and 1.8).
- i. Criterion 5 continues, *“In the event of a tie within any criterion, before the last criterion, places will be allocated to those living closest to the school measured by the shortest available walking route.”* It is not clear how distance is measured. For example, it is not clear at what point in the school or the home that the measurement is taken from and whether any consideration is taken of the safety of possible walking routes (14 and 1.13).
- j. There is no tie-breaker as required by the Code (1.8).

10. The trust has told me that it will address these matters, as permitted by paragraph 3.6 of the Code, which is welcomed. As the trust has accepted that changes are required, I will therefore not discuss these points further here. However, the Code requires that the arrangements be varied in order to address the points set out here.

Consideration of Objection

11. Paragraph 1.9f of the Code prohibits children being given any priority in admission arrangements based on their parents' occupation. The only exception is "*children of staff at the school...in accordance with paragraph 1.39.*" Paragraph 1.39 of the Code says, "*Admission authorities may give priority in their oversubscription criteria to children of staff in either or both of the following circumstances:*

a) where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made, and/or

b) the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage."

12. The criterion for children of staff in the arrangements is, "*Children of a member of staff working at a Skills for Life Trust School at the time of application for admission.*" In its objection the local authority noted the potential positive effects for staff recruitment and retention when there is a priority for children of school staff in oversubscription criteria. It was therefore not the principle of giving a priority to children of school staff that underpinned the objection. It was rather that the local authority said that the Code only permits the priority to be used for those employed at the individual school for which a place is sought. In addition, the local authority said that to extend this priority to staff who work for any school in the trust was potentially unfair to children living close to the school.

13. In quoting the Code the local authority emphasised the use of the term "*at the school*" from both paragraphs. The trust told me that its rationale for the priority for children of staff working at any one of its schools was that all trust schools have been rated as good by Ofsted and have a particular ethos for learning which staff have said that they would like their children to experience. In addition, when recruiting staff for one school, "*it may be that the possibility of admission to a Trust Primary nearer to where they live rather than to where they will work, is a key factor in them agreeing to take the job and therefore fill that vacancy.*" The inclusion of this permission for children of staff is motivated by matters around recruitment, retention and developing a particular learning ethos.

14. I was also provided with the minutes of the governing board which recorded that one of the advantages of the trust was that staff employed by the trust could work at any of the schools in the trust. This gives the schools and the trust considerable flexibility in making best use of the staff available. The governing board registered their support of this priority as they described it as key to life/work balance and "*it ensures every child in the Trust gets the best education possible by attracting best teachers, thus benefiting all schools.*" I did not enquire further to understand the benefits of work/life balance as the Code is clear. It only provides for a priority for children whose parents are staff at the school. It is therefore not permitted to have a priority for those who are employed at any school in the trust. I uphold the objection on these grounds.

15. In addition, the permission given by the Code to give a priority to children of staff at the school is in specific circumstances as stated in paragraph 1.39. The Code is not giving examples of possibilities in paragraph 1.39; it is restricting the permission to particular circumstances. The arrangements, however, give the priority to children of all staff. The arrangements do not comply with the Code in this regard.

16. I note that the local authority said in its objection “*a criterion giving priority to children of teaching staff at Hilltop Primary School is a positive step to help teacher recruitment and retainment.*” I wish to be clear that the permissions given by the Code relate to staff and are not restricted by the Code to teachers.

17. The local authority also said in its objection that the priority was unfair as it could give a priority to staff employed by the trust who lived some distance from the school and so make it less likely that a child who lived more closely was admitted. I have not debated the possible effect of this as the priority as currently constructed does not comply with the Code and therefore the arrangements will need be changed as a result of my finding so that any priority for children of staff is brought into line with the limits set by paragraph 1.39 of the Code. However, I do note that if a priority for children of staff was determined in the arrangements as permitted by the Code then a child of a member of staff who gained priority, possibly living at some distance from the school, could have priority over a child living close to the school and this would be lawful.

Summary of Findings

18. The arrangements give a priority for children of staff working at any school in the trust. This is not permitted by the Code which restricts permission to provide a priority for children of staff to those employed at the school. In addition, the parameters for a priority for children of staff is specified by the Code and the arrangements do not meet the requirements of the Code in this regard and I therefore uphold the objection.

19. There are other matters as described above which do not comply with the Code. The Code requires the trust to revise the arrangements to address these matters.

Determination

20. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2021 determined by the Skills for Life Trust for Hilltop Primary School in the local authority area of Medway Council.

21. 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.

22. 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: 22 June 2020

Signed:

Schools Adjudicator: Deborah Pritchard