



Office of
the Schools
Adjudicator

Determination

Case reference: REF3741

Admission authority: The Governing Board for Hillyfield Primary Academy, Waltham Forest

Date of decision: 21 July 2020

Determination

I have considered the admission arrangements for September 2020 for Hillyfield Primary Academy, Waltham Forest in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the matters set out below, the arrangements do not conform with the requirements.

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. The admission arrangements for 2021 (the arrangements) for Hillyfield Primary Academy (the school) came to my attention when considering an application from the London Borough of Waltham Forest (the local authority) to vary the admission arrangements of a nearby community school. It appeared to me that the arrangements did not, or may not, conform with requirements for admission arrangements. I have consequently used my power under section 88I of the School Standards and Framework Act 1998 (the Act) to consider them as a whole.

2. The matters of concern included: the determination and publication of the arrangements, the published admission number (PAN), points of clarity and omission from the arrangements and possible discrimination against children with additional needs. The parties to the case are the governing board of the school and the local authority. The local authority has declined to make any comments on this case.

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 under section 88C of the Act by the school's governing board, which is the admission authority for the school, on 22 May 2020 on that basis. I note that this is after 28 February 2020, the date by which section 88C of the Act required admission authorities to determine their arrangements for 2021. However, the arrangements have been determined and so are within the jurisdiction I have under section 88I of the Act.

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) a copy of the determined arrangements;
- b) copies of the minutes of the meeting of the governing board at which the arrangements were determined;
- c) comments from the governing board on the matters raised;
- d) information available on the school's website and the Department for Education's (DfE) website;
- e) the local authority's composite prospectus for parents seeking admission to schools in the area in September 2021 sent to me by the school; and
- f) a map of the area identifying relevant schools.

Background

6. The school is a large primary school for children aged 3 to 11 with over 1300 pupils on roll. It is based on two sites called Hillyfield on the Hill and Hillyfield at the Park in Walthamstow. The sites are just under a mile apart. The school became an academy in January 2011, with a single-academy trust which has the same name as the school. The school was inspected by Ofsted in December 2018 and was found to be "Good".

7. The oversubscription criteria are set out in the arrangements as:

"1. Looked after and previously looked after children.

2. Medical or social reasons or Children 'At Risk'

3. *Siblings*
4. *School Staff Children*
5. *Distance*

Determination and publication of the arrangements

8. Paragraph 1.46 of the Code says “*All admission authorities **must** determine (i.e. formally agree) admission arrangements every year, even if they have not changed from previous years and a consultation has not been required. Admission authorities **must** determine admission arrangements for entry in September 2016 by **15 April 2015** and for all subsequent years, by **28 February** in the determination year*”. The governing board was, therefore, required to determine the admission arrangements for September 2021 by 28 February 2020.

9. The next paragraph in the Code says “*Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year (the school year in which offers for places are made). Admission authorities **must** send a copy of their full, determined arrangements to the local authority. Admission authorities **must** send a copy of their determined admission arrangements for entry in September 2016 as soon as possible before **1 May 2015**, and for all subsequent years, as soon as possible before **15 March** in the determination year.*” The admission arrangements for September 2021 should, therefore, have been published on the school’s website by 15 March 2020.

10. I visited the school’s website on 29 May 2020. From the home page I clicked on “*Parents*” then “*Admissions*”. The first heading on this page was “*Primary Admissions Procedure*” which described the dates and process of applying for admission in September 2020. Under this heading I could find details of the number of places available and oversubscription criteria for 2020. The next section was on “*In-year Admissions*” followed by one on “*Children with Additional Needs*” then “*Reception Admissions*” which contained nothing more than a sentence about part-time places and deferment. Then came a section on “*Nursery Admissions*” before I found the heading “*Admissions Policy*”. This displayed a link to “*Admissions Policy 2018-19*”. This was followed by more sections concerning admission to the nursery. I could find no information on the school’s website concerning the admission arrangements for 2021.

11. When I first raised the difficulty which I had in finding the 2021 arrangements on the school’s website with the school I was told that “*The arrangements were published in the body of the website admissions page on 15th March*” and was provided with a hyperlink to the school’s website. The hyperlink took me to the same page that I had visited on 29 May, but when I compared it to the screenshots I had taken on that day a number of additions appeared to have been made. Information about 2021 admissions was now included.

12. The changes included a section at the very end headed “*Admission Arrangements following PAN consultation 2021*”. This section contained a link to a consultation letter dated 19 October 2019 setting out proposals for a reduction in PAN for 2021. The other link in this section was a letter to consultees dated 15 March 2020 setting out the outcome of the

consultation process. Given that I was told “*The policy could not be added [to the website] until it had been ratified*” and that the arrangements were not determined by the governing board until 22 May, I conclude that the requirement to publish the 2021 arrangements on the school’s website by 15 March 2020 was not met. Failure to meet this requirement can prevent parents and others from seeing admission arrangements in time to lodge any objections to the adjudicator.

13. The consultation documents on the school’s website suggest to me that the governing board did not fully understand the role of the PAN or the process for determining and varying admission arrangements. I will consider the nature of the PAN in the next section of this determination.

14. If an admission authority wishes to make a change (other than increasing PAN) to its admission arrangements, then it must consult on the proposed change, it must also consult if it has not consulted for a period of seven years. The requirements for such consultation are set out in paragraphs 1.42 to 1.45 of the Code. The governing board would appear to have consulted on a change to the PAN between 14 October 2019 and 28 November 2019. I can see no reason why it was not possible to determine the 2021 arrangements by 28 February 2020. The fact that the governing board was also seeking approval of a variation to the 2020 admission arrangements from the Secretary of State at the same time should not have delayed the determination of the 2021 arrangements. Correspondence from the school indicates that the governing board had requested approval of a reduction to the PAN it had set for 2020 from the Secretary of State and this was given on 13 March 2020. It was not necessary for the governing board to wait for this approval before determining and publishing the arrangements for 2021. The two matters are independent.

15. The Act and the School Admissions Regulations (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) set out the requirements for determining admission arrangements. These also appear in the Code as quoted above. Admission authorities, in this case the governing board, must determine admission arrangements for the following year by 28 February every year. By 28 February 2020 the governing board was required to determine its arrangements for September 2021. It did not do so until 22 May 2020.

Consideration of Arrangements

Published Admission Number

16. It is clear to me that the school, although on two sites, is just one school. It has one entry in the DfE database, one Ofsted report, one set of accounts and operates under a single-academy trust (as distinct from a multi-academy trust). There can, therefore, only be one set of admission arrangements. Paragraph 1.2 of the Code says “*As part of determining their admission arrangements, all admission authorities **must** set an admission number for each ‘relevant age group’.*” The relevant age group is the age group at which pupils are normally admitted to the school, in this case Year R. The Code clearly only allows for a

single PAN for relevant age groups in paragraph 1.2, the only time a second PAN is permitted is in paragraph 1.40 for boarding schools.

17. The arrangements do not state a single PAN for the school. They state the number of places available on each site as 90. When I raised this matter with the school it said *“Hillyfield is one school with two self-contained all-through sites, approximately a mile apart, each operating as an individual school. Waltham Forest council has to identify with the parents which school (site) they want their child to attend. If admissions is set as a whole school, it may result in children being placed in a school (site) where the parent may not want them to go.”*

18. The copy of the local authority’s composite prospectus for 2021 sent to me by the school also lists the sites as if they were separate schools. The arrangements say *“Applications to Hillyfield should be made with great care, to ensure that the correct site is chosen.”* From this I conclude that parents are invited to express a preference on the common application form for one, or both, of the school’s sites alongside preferences for other schools. It is not for the local authority to identify which school site of a split-site school a parent would prefer their child to attend; the local authority’s role is co-ordinate the normal round of admissions so that parents receive a single offer of a school place. Placing children on particular sites and classrooms is a matter for the headteacher and governing board after places have been allocated at the school.

19. Throughout the Code and the underlying legislation, it is clear that parents express preferences for schools, not individual school sites. Once offered a place at the school, then the school can consult parents as to which site they would prefer their children to be educated on. Naturally, the school would need to act in a reasonable manner as they do in any decision they make, but that is not a matter for me. The matter for me is that the school can have only one PAN.

20. I am also concerned that the consultation on the reduction of the PAN in 2021 contained the following wording: *“We wish to inform you of the intention for Hillyfield Primary Academy Park Site (Site 2), applying to reduce their PAN, from 120 to 90 for September 2021. This would apply to the Reception new intake, Year 1 and Year 2 in September 2021 onwards.”* Notwithstanding my comments about the PAN being for the whole school and not a school site, PANs apply to the relevant year group and no other. The PAN for 2021 applies to Year R from September 2021 to August 2022. It will not apply to that year group when it becomes Year 1, or to any other year group in the school.

21. I find it disappointing that the local authority has failed to identify and address these issues with the school.

22. I find that the school has not determined a PAN for 2021 as required by paragraph 1.2 of the Code.

Matters of clarity and omission

23. There were a number of terms used in the arrangements which were not defined well enough to meet the requirement set out in paragraph 14 and elsewhere in the Code for admission arrangements to be clear. These are:

- Looked after and previously looked after children were not defined either within the first oversubscription criterion or elsewhere in the arrangements.
- Medical and social reasons and “*Children ‘At Risk’*” were not defined either within the second criterion or elsewhere in the arrangements. No details were given about the supporting evidence needed for a child to be placed in this category as is required by paragraph 1.16 of the Code.
- The limited circumstances in which priority for admission may be given to children of members of staff are set out in paragraph 1.39 of the Code. The arrangements did not include these within the fourth oversubscription criterion or elsewhere in the arrangements.
- The fifth oversubscription criterion simply said “*Distance*”. It does not say how distance is used to give children priority for a place at the school, or how distance is measured as required by paragraph 1.13 of the Code.
- Paragraph 1.8 of the Code requires that arrangements include a clear, fair and objective tie-breaker to decide between two applicants that cannot otherwise be separated. The arrangements did not include one.
- There was no reference in the arrangements to waiting lists. Paragraph 2.14 of the Code requires admission authorities to include information about waiting lists in arrangements.
- Paragraph 2.17 of the Code requires admission authorities to make clear in their arrangements the process of requesting admission outside of the normal age group. The arrangements did not do so.

24. When I raised these matters with the school, it said that “*we follow the Waltham Forest Admissions arrangements*”. However, it recognised that it should include more detail in its arrangements and put forward some wording taken from the local authority’s arrangements in order to address these issues.

25. The school is an academy and the governing board is responsible for determining admission arrangements every year which must be clear and meet the requirements of the Code. While an academy may adopt the same criteria and definitions as the local authority, they must be included in the arrangements seen and determined by the governing board. Parents looking at a set of arrangements should not be required to look at another document, on another website to fully understand them. There is also the possibility that the governing board may determine its arrangements on one date assuming the local authority will make no changes, and find that when the local authority determines its arrangements at a later date, it makes changes which are not acceptable to the governing board.

26. There is also the danger that by simply lifting wording from a local authority document, the governing board may attribute responsibility for some action to the wrong body or adopt wording which is not clear in the context of the ownership of the arrangements, which is the governing board's. This is illustrated in the proposed changes to the arrangements put forward by the school.

27. As an example of the above danger, I have looked at the proposed addition to the arrangements concerning medical or social reasons. Much of this wording is set out in general terms, referring to "*preferred*" or "*specified*" school. In the context of a local authority with several schools coming under its arrangements, that is understandable. These arrangements, however, only apply to the one school. The bullet point "*Any acute or chronic condition that would make it difficult for a child to attend any school other than the school closest to the child's address*" is unclear in the context of a single school, particularly one on two sites, as are the next two bullet points, all of which could be worded in a far simpler way to focus on this school.

28. In the same section, there is reference to "*a panel of officers*" taking decisions on these matters and then says "*Own Admission Authorities, for example Academies, Trusts, faith Schools, are responsible for making this decision.*" Including this paragraph is unnecessary and makes it unclear who has responsibility for these decisions (it is the governing board) at this school and how those decisions are taken. I could quote other examples from other suggested amendments, for example, why does the school require a letter from itself confirming that someone is employed by them? It is not, however, for me to say how the governing should revise these arrangements, only to reiterate the need for clarity.

29. I find that the arrangements do not meet the requirements of the Code to be clear, and do not include everything that is required by the Code in the seven ways set out above.

Possible discrimination

30. Under the heading of "*Admissions for Pupils with Additional Needs*" the arrangements say "*If your child has an identified Special Educational Need or Disability and you would like to apply for a place at Hillyfield, please contact the school for an informal discussion in the first instance. Following this an application through admission should take place; please include all information and any relevant documents within your application. The school will then be consulted by the Waltham Forest admissions team and we will respond according to their policy.*" Paragraph 1.9h of the Code says that admissions authorities "**must not ... discriminate against or disadvantage disabled children, those with special educational needs ...**".

31. Some children have additional needs which require them to have an Education, Health and Care Plan (EHCP). For some of these children their EHCP will name the school they are to attend, in which case, these children must be admitted to the school. Then the oversubscription criteria are applied to other children, including those with an EHCP that

does not name the school, or who have other additional needs. This needs to be clear in the arrangements, but it is not.

32. To say in the arrangements that before applying for a place for children with additional needs parents must undertake additional steps and provide additional information is not necessary and is discriminatory. When I raised this matter with the school, it said it would replace the statement above with another paragraph which did not require parents of children with additional needs to do anything different to other parents. However, the proposed revision referred to statements of special educational need. Statements of special educational need were replaced by EHCPs some years ago.

Summary of Findings

33. These arrangements show a lack of understanding on the part of the admission authority about the requirements for admission arrangements which are set out in the Code and also its roles and responsibilities.

34. Where the admission authority accepted that the arrangements did not conform with the Code, the revisions it outlined appear to be sections lifted from the local authority's arrangements without consideration of whether the text was clear in the context of the school.

35. I find that the arrangements do not conform with the Code in the following ways:

- A single PAN has not been set for the school as a whole as required by paragraph 1.2 of the Code.
- Looked after and previously looked after children are not defined as set out in paragraph 1.7 of the Code and its footnotes.
- Medical and social reasons and "*Children 'At Risk'*" were not defined, and no details were given about the supporting evidence needed for a child to be placed in this category as is required by paragraph 1.13 of the Code.
- The limited circumstances in which priority for admission may be given to children of members of staff are set out in paragraph 1.39 of the Code. The arrangements do not include these.
- The fifth oversubscription criterion does not say how distance is used to give children priority for a place at the school, or how distance is measured as required by paragraph 1.13 of the Code.
- Paragraph 1.8 of the Code requires that arrangements include a clear, fair and objective tie-breaker to decide between two applicants that cannot otherwise be separated. The arrangements do not include one.

- There is no reference in the arrangements to waiting lists. Paragraph 2.14 of the Code requires admission authorities to include information about waiting lists in arrangements.
- Paragraph 2.17 of the Code requires admission authorities to make clear in their arrangements the process of requesting admission outside of the normal age group. The arrangements do not do so.
- The arrangements discriminate against children with additional needs.

Determination

36. I have considered the admission arrangements for September 2020 for Hillyfield Primary Academy, Waltham Forest in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the matters set out above the arrangements do not conform with the requirements.

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 admission arrangements within two months of the date of the determination.

Dated: 21 July 2020

Signed:

Schools Adjudicator: Phil Whiffing