



Office of
the Schools
Adjudicator

Determination

Case reference: REF3903

Referrer: Schools adjudicator

Admission authority: Kingston Maurward Studio School Limited for Dorset Studio School, Dorchester, Dorset.

Date of decision: 28 June 2022

Determination

I have considered the admission arrangements for September 2023 for Dorset Studio School, Dorset in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that the arrangements do not conform with the requirements 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 was referred to the Office of Schools Adjudicator (OSA) by a parent. This was later withdrawn. However, as the arrangements had come to my attention, I considered them in accordance with my powers to do so under section 88I(5) of the Act.
2. When I considered the arrangements it appeared to me that the following matters did not, or might not, conform with the requirements for admission arrangements.
 - Adherence to paragraph 15 of the Code which states: "All schools **must** have admission arrangements that clearly set out how children will be admitted, including the criteria that will be applied if there are more applications than places at the school. Admission arrangements are determined by admission authorities. Admission authorities **must** set ('determine') admission arrangements annually."

- The Published Admission Number (PAN) is applicable only to the ‘relevant age group’ as set out in paragraph 1.2 of the Code.
- Paragraph 1.6 requires that all children who are in receipt of an Education Health Care Plan (EHCP) which names the school are to be admitted prior to the implementation of the oversubscription criteria.
- Paragraph 1.7 of the Code requires that all admission arrangements are to contain oversubscription criteria. These are to be implemented when an intake is oversubscribed.
- Paragraph 1.7 of the Code requires that the highest priority in the oversubscription criteria must be given to looked after and previously looked after children including those who appear to have been in state care outside of England.
- Paragraph 1.14 of the Code requires catchment areas to be reasonable and clearly defined. This must apply to all catchment areas used by the school.
- Paragraphs 1.34 and 1.35 explain how random selection must be used within oversubscription criteria.

3. The parties to the case are The Kingston Maurward Studio School Limited (the trust) which is the admission authority for the school and Dorset Council in whose area the school is located.

Jurisdiction

4. The terms of the funding 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 under section 88C of the Act by the governing board of the Dorset Studio School, which is the delegated admission authority for the school on 10 June 2022 on that basis. This is after the legal deadline for the determination of arrangements for 2023 which is 28 February 2022. This late determination of the arrangements does not affect their standing or my jurisdiction to consider them.

5. When they were brought to my attention it appeared that the arrangements did not, or might not, conform with the requirements for admission arrangements. I therefore decided to use my power under section 88I(5) of the Act to consider them as a whole.

Procedure

6. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

7. The documents I have considered in reaching my decision include:

- a) copies of the minutes of the meeting of the governing board at which the arrangements were determined;
- b) a copy of the determined arrangements;
- c) comments from school on the matters raised, supporting documents, subsequent correspondence and a new draft admission policy;
- d) comments from the local authority on the matters raised, supporting documents and subsequent correspondence; and
- e) the local authority's composite prospectus for parents seeking admission to schools in the area in September 2022.

8. I have also taken account of information received during a meeting I convened on 23 May 2022 via Microsoft Teams. I attended the meeting as did the Executive Principal and the Principal of the School, the pupil places manager and the education services manager from the local authority and the OSA case manager.

Background

9. The Dorset Studio School was opened as a free school in September 2014 with an age range from 14 to 19 and with a specialism in land and environment. The age range was changed to 11 to 16 by a deed of variation to the funding agreement in 2019. The school maintains its specialism. It does not select its intake in any way. The school is situated in an area which has a three-tier system of first, middle and high schools with the middle schools age range from year 4 to year 8 and therefore children applying to the school from the local area to begin in year 7 must apply from their current middle schools at the beginning of year 6.

10. The school has become oversubscribed in the last two years, but before this all pupils who applied were able to be and were admitted. At the meeting in May it became clear that the governing body had not determined the arrangements for 2023. After the meeting the Governing Board met and determined the arrangements for 2023.

11. In 2021 there were 86 first preference applications for the school and in 2022 this number was 96.

12. The 2023 admission arrangements, which are the arrangements for which I have jurisdiction, state that the PAN for all year groups is 75 and that the 'application criteria' are as follows:

- 40% of the PAN to be allocated to applications within the THS catchment area;
- 60% of the PAN will be allocated to applications from the County of Dorset;

- If the number of applications for admission is less than the published admission number, applications will be considered from outside the County of Dorset.

Oversubscription will be allocated by random selection.

The new draft policy suggests the following oversubscription criteria:

- 1) Looked after and previously looked after children.
- 2) Siblings.
- 3) Children of members of staff.
- 4) Catchment area.
- 5) Other children.
- 6) Children of multiple births.

The draft policy suggests that random selection will be used for criterion 5 only.

13. I should emphasise again that my jurisdiction is for the determined arrangements only and also that the draft policy has no formal status. It follows from this that I also have no jurisdiction to approve or not approve the draft policy. That said, I will make clear in this determination what is and is not permitted by way of making changes to determined arrangements.

Consideration of Case

14. At the meeting in May, the school advised that the governing board has been considering a new draft admission policy. This was forwarded to me along with the minutes of the meeting which had determined the arrangements. I am grateful to the school for this information. Some elements of the draft policy do remedy some of the deficiencies in the determined arrangements. However, some elements use wording which would still not meet the requirements of the Code. Moreover, the draft policy contains a number of provisions which go beyond making changes necessary to revise the existing arrangements to bring them into line with the Code. These include new oversubscription criteria which would give priority for siblings and children of members of staff. It is not for me to tell the admission authority how to revise its arrangements in order to conform with the Code, but to determine whether the existing arrangements do or do not conform and whether they must or must not be changed and, if they must be changed, the deadline for this to happen. However, it is self-evident in this case that the new criteria set out in the draft admission policy go beyond what would be necessary to comply with my determination. They accordingly also go beyond what the admission authority is permitted to do by paragraph 3.6 of the Code in response to my determination.

15. The current arrangements state that the PAN is 75 for each year group. The PAN is applicable only to the 'relevant age group' as set out in paragraph 1.2 of the Code and, in this school, this is year 7 (Y7). This does not therefore conform with the Code. The draft policy explains that the PAN is 75 for Y7 although it uses the term 'Planned admission number' rather than 'published' admission number.

16. The current arrangements do not include children with an EHCP. Paragraph 1.6 requires that all children who are in receipt of an EHCP which names the school are to be admitted prior to the implementation of the oversubscription criteria. The draft policy states that the admission of these children is covered by sections of the Education Act 1996. This is not sufficient to conform with the Code and is contrary to paragraph 14 of the Code which states that "in drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated". The arrangements must be amended but I note that the wording of the draft policy would also not meet the requirements of the Code in this regard.

17. Paragraph 1.7 of the Code requires that the highest priority in the oversubscription criteria must be given to looked after and previously looked after children including those who appear to have been in state care outside of England. The current arrangements do not contain this criterion. The draft policy includes a criterion for this priority but refers to the 2012 Code rather than the 2021 Code. In addition, if the definition of a looked after or previously looked after child is to be contained within the arrangements then it would be clearer if it were exactly the same as the definition in the Code.

18. Paragraph 1.7 of the Code requires all admission arrangements to contain oversubscription criteria. These are to be applied when an intake is oversubscribed. The current policy fails to set out a clear set of oversubscription criteria. To put it another way, I could not look at the arrangements and establish how applicants would be ranked if more than 75 children sought a place. For example, the arrangements provide that 40 per cent of the PAN (which is 30 places) is to be allocated to children in the THS catchment area and 60 per cent of the PAN (which is 45 places) to children living in Dorset. It is not clear what would happen if there were only 15 applications from children in the THS area but, say, 80 from children in Dorset. Children who live in the THS area will also live in Dorset, so if there were more than 30 places sought from children in the THS area would they also be eligible to be considered under the Dorset category? The arrangements are, in consequence, not clear. The draft policy appears to seek to deal with this lack of clarity by introducing an entirely different set of criteria, rather than by making the existing criteria clear.

19. The current arrangements refer to two catchment areas, one equivalent to a local school's catchment area with the school's initials (THS) because it was felt, at the time of the school opening, that local children from this area should be prioritised and secondly the whole county of Dorset. Paragraph 1.14 of the Code requires catchment areas to be reasonable and clearly defined. The local catchment area is unclear because parents will

not understand the initials or have access to the map which shows the area. The draft policy has a clear map of the defined local catchment area. A scrutiny of the intake over the last two years shows that all local applicants have been offered a place and that many of the other places have been allocated to children who live much further away including many from neighbouring counties. The draft policy has only one catchment area (the clearly defined local one) and this is much clearer for parents to understand.

20. The current policy states that random selection will be used for each of the priorities. Paragraphs 1.34 and 1.35 explain how random selection must be used within oversubscription criteria. The draft policy only mentions random selection for oversubscription number 5. How priority for oversubscription within the other criteria is determined is required to make it clear for parents. If random selection is to be used within each of the oversubscription criteria, then the arrangements must be clear how this is to be done. The draft policy states that 'lots will be drawn by an independent (of the governors) person to determine the final place(s). This process will be maintained by the Dorset Schools Admissions Team'. This is not clear and requires amendment. The Code requires that any random selection is supervised by some-one independent of the school, not only the governing board. It is unclear what 'the process is maintained' actually means.

21. The original, withdrawn, objection covered the issue of multiple births and the school has added an oversubscription criterion at number 6 into the draft arrangements. It states: "where parents/guardians are submitting applications for children of multiple births, the admission authority will, as part of the above process (point 5) consider the application as a single entity." This is unclear and does not conform with paragraph 14 of the Code. If a priority is set at number 6 then it follows that applicants will only be considered if they have not fulfilled criterion 5. The governors may well wish to allow multiple births into school together but this should be in the notes section of the arrangements rather than in the oversubscription criteria. In this way acceptance of multiple birth applications would apply to all the criteria.

22. The local authority was supportive of the suggested changes to the arrangements proposed by the school during the meeting and, in administering the admission process over the last two years, have provided priority for children with EHCPs which name the school and looked after and previously looked after children. In 2021, eight children with EHCPs and three looked after or previously looked after children were admitted and in 2022 three children with ECHPs and two children who are looked after or previously looked after have been offered a place.

Summary of Findings

23. I am grateful to the school for allowing me sight of the draft admission arrangements and I can confirm that in terms of the priority given to looked after and previously looked after children and the oversubscription criterion relating to the catchment area (criterion 4) these now conform with the law and the Code.

24. Amendments are required for the following areas:

- Children with an EHCP which names the school.
- Details of how oversubscription within each criterion will be administered.
- Details of the random selection process.
- The place of the criterion for children of multiple births.

25. Paragraph 3.6 of the Code states that: “once admission arrangements have been determined for a particular year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admission law, a determination of the Schools Adjudicator or any misprint in the admission arrangements.” This means that the amendments identified in paragraph 24 above) can be made immediately.

26. I do not have jurisdiction to consider the proposed new oversubscription criteria concerning siblings and children of members of staff. These are two entirely new areas within the admission arrangements and will need to be the subject of appropriate consultation as laid out in paragraphs 1.45 to 1.48 of the Code. The soonest that this consultation can take place will be 1 October 2022. Any changes made by the governing board as a result of any such consultation can be implemented at the earliest for the admission of pupils in September 2024.

Determination

27. I have considered the admission arrangements for September 2023 for Dorset Studio School, Dorset in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that the arrangements do not conform with the requirements in the ways set out in this determination.

28. 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: 28 June 2022

Signed:

Schools Adjudicator: Ann Talboys