



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4215

Objector: A person

Admission authority: The Kingsdale Foundation

Date of decision: 25 July 2023

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2024 determined by the Kingsdale Foundation for the Kingsdale Foundation School, Southwark.

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 this 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 a person, (the objector), about the admission arrangements for Kingsdale Foundation School (the school) for September 2024. The school is a non-selective, co-educational academy for pupils aged 11 to 19. The school is within a single academy trust The Kingsdale Foundation (the trust).
2. The local authority (LA) for the area in which the school is located is Southwark London Borough 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 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 academy trust, which is the admission authority for the school, on that basis. The objector submitted their original objection to the determined admission arrangements in letter form on 11 May 2023. The completed form of objection was received on 23 May 2023. I am satisfied the objection has 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. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined admission arrangements for 2024;
- c. the objector's form of objection dated 23 May 2023;
- d. the school's response to the objection and supporting documents; and
- e. other correspondence from the parties.

Background

6. The school is situated in Dulwich, within the London Borough of Southwark. The school opened in 2010, replacing the predecessor school, Kingsdale Foundation School, which was rated outstanding by Ofsted in 2010. The school was last inspected by Ofsted in May 2023 when it was rated outstanding in all areas. I am informed by the school that the admission arrangements are essentially no different to the admission arrangements which were adopted by the predecessor school in 2005.

7. The oversubscription criteria for entry to Year 7 for 2024, in shortened form, are:

"The applicants who do not satisfy our scholarship criteria (see paragraph ii. below) will be placed in one of 3 ability bands according to their assessment scores, including those with an Education, Health and Care Plan (EHCP) that names the School. After places have been allocated to children with an EHCP that names the School in accordance with the Code of Practice, places within each band will be allocated in the following order of priority:

- i. Children in public care (Looked After Children) or children who were Looked After, but ceased to be so because they were adopted (or became subject to a residence or special guardianship order) i.e. Previously Looked After - PLAC or Internationally Adopted Previously Looked After Children - IAPLAC
- ii. Children who satisfy our scholarship criteria based on aptitude for music or sport i.e. 15% of admissions entry number.
- iii. Children who will have brothers or sisters attending the School at their time of entry
- iv. Children of members of staff where the member of staff has been employed permanently at the School for two or more years at the time at which the application for admission to the School is made and will still be employed by the School on the date of admission
- v. Where professional evidence indicates that there are particular psychological, medical or social needs which the School's Learning Support Faculty agrees only Kingsdale has the capability of addressing or meeting and significant difficulties would arise were the applicant to attend a different school
- vi. Random allocation within each ability band. This process will be supervised by a person not employed by or independent of the School."

8. The school is very popular. Each year it receives numbers of applications greatly in excess of its published admission number (PAN). In recent years it has admitted numbers above its PAN, as follows:

Year	PAN	Admissions in first round of offers	Admissions following successful appeals and of children with EHCPs	Total admissions
2019	300	390	16	406
2020	300	390	15	405
2021	300	390	26	416
2022	300	390	60	450
2023*	300	390	16**	406**

*Indicative for entry in September 2023

**This figure is likely to rise significantly as further EHCPs name the school

9. The table above demonstrates that the school has been admitting a high number of pupils above PAN over at least the past five years. The average number of pupils admitted over those years is 417. I also note that in an email dated 4 September 2019 from the school to the Education and Skills Funding Agency the school stated that the PAN for 2019 and 2020 would be 390. This apparent contradiction does not affect my conclusions.

Consideration of Case

The Objection

10. The issues raised in the objection are set out in the headings below, followed by my commentary.

11. **Whether there is some disadvantage to pupils living close to the school arising from the fact that the oversubscription criteria do not provide for any priority to be based on proximity of home address to the school.** Paragraph 1.9 of the Code sets out the general principle: “It is for admission authorities to formulate their admission arrangements”. This is, of course, qualified by other provisions of the Code, including paragraph 1.8 which states that “Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation”.

12. Distance from home to school is a commonly used oversubscription criterion. However, there is no provision in the Code or the law relating to admissions which obliges an admission authority to include home to school distance as an oversubscription criterion. The Academies Act 2010 requires academies to provide “education for pupils who are wholly or mainly drawn from the area in which it is situate”. I have been offered no evidence that for the school this is not the case.

13. There may be drawbacks to using distance from home address to school in oversubscription criteria. For example, an advantage can be gained by purchasing a property close to the school, which is only an option for those with the means to do so. Or some parents may seek to claim a home address close to the school which is not, in fact, the home address.

14. Random allocation gives to every applicant an equal chance of success, in this case within their allocated band. A child from a disadvantaged background has the same chance of being offered a place as a child from a more advantaged background.

15. Because distance is not at issue applicants who live further from the school, but nevertheless wish to attend, may decide to apply. The result is that applications are likely to come from a wider area and those more distant applications will have as much chance of getting a place as an applicant who lives nearer the school. It is true that if the school used distance in its oversubscription criteria then those living closer to the school would have a greater chance of admission than under criteria using random allocation. However, there is no legal requirement to favour applicants living closer to the school.

16. Other local schools are undersubscribed and it is likely that any applicant living closer to the school who is displaced by a more distant applicant under these arrangements will be able to gain a place in another local school. I do not find that having random allocation rather than distance is unfair and I find that it is compliant with the Code. The objection is not upheld on this point.

17. Whether, as the objector states **“The current admissions policy also has the effect of skewing the intake of pupils such that the school has a far lower proportion of disadvantaged pupils and pupils eligible for free school meals than other local state-funded schools”**.

18. The school acknowledge that “the percentage of children who secure places at the school who are from disadvantaged backgrounds is lower than many other local secondary schools”. By disadvantaged I mean, in this determination, children eligible for pupil premium. This is a measure of economic disadvantage or low income and widely used as a proxy measure also for social disadvantage.

19. Anyone may apply for admission to the school. Anyone who does wish to apply may sit the banding test. All applicants who sit the banding test will be allocated to one of the three bands. Then, within each band, random allocation will be applied. Consequently, all applicants stand an equal chance of being offered a place. There is nothing in the oversubscription criteria to discourage applications by the parents of disadvantaged children. As such, any difference between the proportion of disadvantaged children applying for a place and the proportion of such children in the surrounding population cannot be attributed to the admissions arrangements. In turn, the proportion of disadvantaged children gaining a place at the school will tend to reflect the proportion of disadvantaged children amongst all applicants to the school. I do not find any unfairness in this position.

20. I note one caveat to this position. The admission arrangements do not state the process for sitting the banding test, which should be clearly stated (see below under other matters for my findings on this point). It seems that applicants must contact the school of their own initiative. The available dates for the test are given, being a Wednesday after normal school hours and a Saturday. The requirement to contact the school and the requirement to be at a certain place at a certain time in order to sit the test will be a barrier to some applicants, particularly those from families unused to taking such initiatives and lacking the organisation needed to do so. A greater number of such families will tend to fall into a disadvantaged category and so a greater proportion of disadvantaged families will tend to fail to meet the banding test requirement. However, this is not a consequence of the admission arrangements themselves but rather of wider socio-economic factors. I do not find that this point renders the use of banding unfair.

21. In light of the above I will consider why other schools have a higher proportion of disadvantaged children. The school is heavily oversubscribed with applications from pupils of a wide range of abilities. Conversely, many other local secondary schools are undersubscribed. Groups who are not disadvantaged may not wish to apply to those

schools. As all applicants to an undersubscribed school will be admitted it is inevitable that where a low proportion of non-disadvantaged pupils apply to an undersubscribed school that school will admit a higher proportion of disadvantaged pupils.

22. The school is situated in a generally wealthy area. There are some areas of relative deprivation close to the school, for example the Kingswood estate. However, I find it unlikely that the use of distance in the oversubscription criteria would result in a greater proportion of disadvantaged children being admitted to the school.

23. Overall, I find that the disparate proportions of disadvantaged children admitted to the school, relative to the proportions admitted to other local schools, is due to the different pattern of parental preference for those schools, rather than as a consequence of the oversubscription criteria themselves.

24. **An increase to the school's PAN.** This is out of my jurisdiction for the reasons explained below. I have set out why I cannot consider it as it is the increase in the school's PAN, and the assertion that this impacts adversely on other local schools, which is the main issue in the objection. I make no findings on this point and merely set out below the legal position. The Code (paragraph 3.3 b) reflects the statutory provisions, stating simply:

“The following types of objections cannot be brought:

...

b) objections about own authority admission's (sic) decision to increase or keep the same PAN;”

25. **The introduction of feeder schools.** Although the possible introduction of feeder schools is raised in the consultation carried out by the school from 16 December 2022 to 31 January 2023 there is no priority given to any feeder school in the determined admission arrangements for 2024. Consequently, I make no finding on this aspect of the objection.

26. **The impact of a further expansion of Kingsdale on other local secondary schools.** The point being made is that the increasing number of pupils being admitted to Kingsdale means that fewer pupils are being admitted to other local secondary schools. In essence this is an objection to the increase in PAN which cannot be the subject of an objection for the reasons I have set out above.

27. The Adjudicator's jurisdiction is to consider whether the admission arrangements for a school are fair and reasonable in respect of how places are allocated to those children who may potentially apply for admission to a particular school.

28. There is nothing in the Code or admissions law requiring an admission authority to consider the effect of a school's admission arrangements on other local schools. Consequently, I do not uphold this aspect of the objection.

29. **The consultation.** The objection does not raise any issues with the conduct of the consultation in itself and consequently I have not made any findings in relation to the consultation.

Other Matters

Having considered the arrangements as a whole I find that the following matters do not conform with the provisions of the Code. I have accordingly decided to exercise my powers under section 88I of the Act to consider the arrangements as a whole and whether they conform with the requirements relating to admissions.

1. Paragraph 2.1 (vi) “Random allocation within each ability band. This process will be supervised by a person not employed by or independent of the School”. This appears to be an inadvertent error. The wording as it stands suggests that the supervising person is not independent of the school, whereas the Code (paragraph 1.35) requires that person to be independent. The admission authority have agreed to change the wording to make it clear that the supervising person will be independent of the School.
2. Paragraph 8.3 states:

“There is no automatic passage from Key Stage 4 to post-16 provision at Kingsdale Foundation School as internal candidates must meet the academic entry criteria. All applications for admission to post-16 provision at Kingsdale Foundation School will be considered by the Admissions Committee. Its decision will be based on the application of the specific conditions for entry published annually in the Post-16 Prospectus & Application Pack including where applicable Sixth Form oversubscription criteria for external candidates; Education, Health and Care Plans (EHCP) that name the School (see Note 6) and waiting list information”.

Note 5 states:

“Please note that at post 16 such children [with an EHCP] must also meet the academic requirements for their chosen course”.

These provisions imply that a student with an EHCP which names the school must meet some academic requirement in order to be admitted. Although it is for the school to decide which course is suitable for a given 6th Form student, it should be clear that the school must admit a student whose EHCP names the school, whether any particular academic requirements are met or not.

30. The admission authority have proposed adding the following statement, which is already included in its sixth form admission documents:

“Please be advised that admission to the Sixth Form does not provide an automatic right to follow a particular programme of study or specific course without meeting our published minimum academic requirements for each subject in the Sixth Form Study Programme and Course Booklet. All Sixth Form entrants will be encouraged to

follow a suitable and prescribed 16-19 study programme after information, advice and guidance meetings.”

31. The admission authority also sets out its “Oversubscription Criteria for September 2024 Year 12 Entry” which state that those oversubscription criteria will be applied “after the admission of students with special educational needs where the school/academy is named on the statement or education health and care plan”.

32. The admission authority also quotes Note 5 in full “Applications for children with an EHCP follow a separate admissions process. The law requires the School to admit children with an Education, Health and Care Plan where a Local Authority has specifically named Kingsdale Foundation School as the most appropriate placement. Please note that at post 16 such children must also meet the academic requirements for their chosen course”.

33. I remain of the view that this wording may lead some parents of a child with an Education, Health and Care Plan naming the school to believe that their child’s admission is dependent on some academic standard being met. Consequently, I find that the wording does not meet the requirements of the Code set out in paragraph 14.

34. In considering changes to the wording in order to achieve the required clarity the school may wish briefly to set out how it will decide which courses a child with an Education, Health and Care Plan naming the school will follow, depending on that child’s academic achievement.

35. The banding test. As noted above the admission arrangements do not set out the process for registering to take the banding test. This does not comply with paragraph 1.27 of the Code which states that “The admission authority **must** publish...the process for such banding”.

Determination

36. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2024 determined by the Kingsdale Foundation for the Kingsdale Foundation School, Southwark.

37. 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.

38. 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 this determination.

Dated: 25 July 2023

Signed:

Schools Adjudicator: Tom Brooke