



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4261

Objector: A parent

Admission authority: Avanti Schools Trust for Avanti Gardens School in Bristol

Date of decision: 30 April 2024

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 2025 determined by Avanti Schools Trust for Avanti Gardens School in the local authority area of Bristol City 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 a parent about the admission arrangements for Avanti Gardens School (the school) for 2025 (the arrangements). The school is an academy school for children aged four to eleven. The objection is that the information in the arrangements regarding the admission of summer born children is unclear and unlawful because the requirements of the School Admissions Code (the Code) are not met.

2. The parties to this objection are:
 - 2.1. the parent making the objection (the objector);
 - 2.2. Avanti Schools Trust which is the admission authority for the school (the trust); and
 - 2.3. Bristol City Council which is the local authority for the area in which the school is located (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 academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the trust on that basis. The objector submitted her objection to these determined arrangements on 8 March 2024. 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 Code.
5. The documents I have considered in reaching my decision include:
 - a. a copy of the minutes of the meeting of the trust at which the arrangements were determined and a copy of the determined arrangements;
 - b. the objector's form of objection and supporting documentation provided with the objection including:
 - a. the trust's policy, 'Children educated outside of chronological year group';
 - b. 'Statement for local authorities, schools and admission authorities on the admission of summer-born children to school, from Baroness Barran, Parliamentary Under-Secretary of State for the School System' dated 21 July 2022;
 - c. the Department for Education's 'Guidance on handling admission requests for summer born children' for local authorities and school admission authorities (the DfE guidance) published April 2023; and
 - d. The Department for Education's research 'Delayed school admissions for summer born children 2023'.

- e. 'Making a request for admission out of the normal age group' which is the Department for Education guidance for parents of summer born children on the process for applying for admission out of the normal age group;
- f. the trust's response to my enquiries. The trust chose not to respond to the other matters I raised (see below); and
- g. information available on the websites for the school and the Department for Education (the DfE).

6. The local authority made no response to my request for comments on the objection, the other matters I raised or the comments from the trust and the objector.

The Objection

7. The objection is to the information provided and the process to be followed regarding requests for a child who is summer born to be admitted to reception year (YR) rather than year 1 (Y1) when the parent has chosen, or is considering choosing, that the child not start school until he or she has reached compulsory school age. This relates particularly to the requirements of paragraphs 2.18 and 2.19 of the Code.

8. Children born between 1 April and 31 August reach compulsory school age at the beginning of the school term following their fifth birthday. Such children are often referred to as a 'summer born children.' Section 8 Education Act 1996 and the Education (Start of Compulsory School Age) Order 1998 set out what constitutes compulsory school age. The Code explains compulsory school age in footnote 56 of the Code which says,

"A child reaches compulsory school age on the prescribed day following his or her fifth birthday (or on his or her fifth birthday if it falls on a prescribed day). The prescribed days are 31 December, 31 March, and 31 August."

9. Footnote 57 of the Code explains the references to summer born children and says,

"The term summer born children relates to all children born from 1 April to 31 August. These children reach compulsory school age on 31 August following their fifth birthday (or on their fifth birthday if it falls on 31 August). It is likely that most requests for summer born children to be admitted out of their normal age group will come from parents of children born in the later summer months or those born prematurely."

10. In other words, for example, a summer born child could have the right to start school in September 2025 and their parent could decide that the child will start school in September 2026. It is the parent's right to decide this. The question that then arises is whether the child should join Y1 (which is the year group their age cohort will be moving into) or YR. The objector's concern is that the arrangements do not reflect the Code's requirements or follow the relevant DfE guidance in relation to the admission of children before they reach compulsory school age. In summary her objection is as follows:

- 10.1. The arrangements do not meet the requirements of paragraph 2.18 of the Code that says, “Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.”
 - 10.2. The arrangements are unclear as there are contradictory documents regarding the admission of children other than at the normal year of admission, which would be unlawful.
 - 10.3. The arrangements are contrary to the requirements of paragraph 2.19 of the Code, which says, “Admission authorities **must** make decisions on the basis of the circumstances of each case and in the best interests of the child concerned.”
 - 10.4. The arrangements do not follow the DfE Guidance for admission authorities.
11. Paragraph 14 of the Code is relevant to clarity; it says,
- “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.”

Consideration of Case

Meeting the requirements of paragraph 2.18 of the Code

12. The arrangements were available on the school’s website and were provided by the trust to me in response to my enquiries. These arrangements state “The procedure for asking for admission of a child to a year group other than the child’s normal year group is by letter to the school giving details of all relevant circumstances and attaching any relevant supporting evidence.” I asked the trust for:

“Clarification of the process that the trust expects a parent to follow when the parent is considering delaying the admission of their summer born child until the child reaches compulsory school age and requesting that the trust will consider an application to admit the child to reception year when the child reaches compulsory school age. The response should include:

what form the application should take;

to what body or person the application should be made;

what body or person makes the decision; and

how a parent knows what steps to follow.”

13. The trust responded by providing a link to a paper on the school's website titled "Children educated outside of chronological year group". This is a trust policy document which applies to all schools in the trust. It states and explains the reasons why the trust "believes that students should be educated in the year group appropriate to their chronological age." The policy includes information on the application process and says,

"Parents or carers seeking to have their child admitted outside of their chronological age should complete the application form in Annexe 1 and return to the school by December 1 in the year before the planned year of admission. The school will then consider the submission and respond before December 31 in the year before the planned year of admission."

14. The objector had brought the trust's policy to my attention with her objection; I would not have found it on the school's website otherwise. I looked for it on the school's website starting with the admissions section. I did not find it there. As I knew it existed, I searched the website and, under the heading 'Our school', found a subheading, 'policies'. Under this heading is a link that can take the reader to the policy, 'Children educated outside of the Chronological Year group' (the policy). The policy includes, as described above, the form the policy requires applicants to use when applying for admission outside the normal age group. This is a different process to that described elsewhere in the section of the school's website about admissions.

15. The trust provided me with the policy as if it were part of the arrangements even though the policy was determined separately from the rest of the admission arrangements. In fact, the policy is part of the admission arrangements because it falls within the Code's definition of admission arrangements which is given at footnote 5 to the Code read together with paragraph 18 of the Code. Footnote 5 provides:

"Admission arrangements means the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is offered."

Paragraph 2.18 of the Code provides so far as is relevant here:

"Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group."

16. For the purposes of clarity in this determination, however, I will refer to the admission arrangements when considering the information published on the admissions page as the admission arrangements and, when referring to the "Children educated outside of chronological year group" policy, I will refer to 'the policy' but both are part of the whole admission arrangements.

17. As the admission arrangements published on the relevant section of the school's website make no reference to the policy or the form the trust requires applicants to use, the arrangements are not clear in this regard. The trust has therefore not met the requirement

of paragraph 2.18, “Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.” I uphold this part of the objection.

The arrangements are inconsistent

18. In addition, the policy and the admission arrangements are not consistent; the admission arrangements say that a letter should be sent, while the policy requires that a form is completed. The arrangements provided on the admissions page and provided to me as the arrangements by the trust, by being inaccurate, are therefore unclear. The policy is not easily found, particularly as there is no indication in the arrangements that it exists. The arrangements do not meet the requirement of paragraph 14 to be clear. I uphold this part of the objection as the arrangements do not comply with paragraphs 14 and 2.18 of the Code.

19. I pause to note at this point that the objector said,

“In our case after writing a request by email, we were then emailed this form for completion separately. In our case, a data breach then occurred whereby a new member of staff made what they thought was a blank copy of the form I had submitted and accidentally emailed personal information and medical information about my child to another applicant in error.”

20. This is a data breach containing special category data (the child’s medical information). The trust will need to ensure that this is not repeated.

Meeting the requirements of paragraph 2.19 of the Code

21. I turn now to the third part of the objection which is that the arrangements are unlawful as they do not meet the requirements of paragraph 2.19 of the Code which says,

“Admission authorities **must** make decisions on the basis of the circumstances of each case and in the best interests of the child concerned. This will include taking account of the parent’s views; information about the child’s academic, social, and emotional development; where relevant, their medical history and the views of a medical professional; whether they have previously been educated out of their normal age group; and whether they may naturally have fallen into a lower age group if it were not for being born prematurely. They **must** also take into account the views of the head teacher of the school concerned. When informing a parent of their decision on the year group the child should be admitted to, the admission authority **must** set out clearly the reasons for their decision.”

22. I have set out above the right of parents to decide whether their summer born child will or will not start school before he or she reaches compulsory school age. If a parent decides that the child will not start until the point he or she reaches compulsory school age, then the parent can ask the admission authority to admit their child to YR, rather than Y1 with the cohort the child would have otherwise joined if their admission were not delayed. If the parent asks that their child is admitted to YR (rather than Y1), it is then the admission

authority's decision whether to accept the request or not, as explained in paragraph 2.19 of the Code as provided above, based on the best interests of the child.

23. This part of the objection mainly concerns whether the trust, "make[s] decisions on the basis of the circumstances of each case and in the best interests of the child concerned" as required by paragraph 2.19 of the Code. The application of admission arrangements to individual children is not within my jurisdiction. However, it is within my jurisdiction to decide whether those arrangements properly reflect legal requirements. If they do not, then they will not meet the Code's requirements. As it happens, there is no duty imposed by the Code for the admission arrangements to include details of how the admission authority will consider applications for admission outside their normal age group (as distinct from the process for such applications to be made). However, the trust has chosen to publish details of its approach and I must therefore consider whether these details do or do not make the arrangements compliant with requirements.

24. The objector said the,

"policy states that "Avanti Schools Trust believes that students should be educated in the year group appropriate to their chronological age, for the following reasons:" It then lists eight reasons. These reasons are then quoted to parents such as myself who make requests (see attached). The policy is being used by individual staff to make decisions about children's requests, without involving the Trust Board. This is contrary to their admissions policy which states the Trust Board will make the decision. It is not lawful to use general lists of reasons why a child cannot be admitted outside of their year group, or for an individual alone to make that decision."

25. I note here that the objector believes that individual staff are making decisions on the admission of individual children which would be contrary to paragraph 2.7 of the Code. Neither the arrangements nor the policy state that this is the case and so I have not pursued this matter further as it is not within my jurisdiction to do so.

26. The policy states, "Avanti Schools Trust believes that students should be educated in the year group appropriate to their chronological age" and then gives the reasons for its belief as:

- "We are concerned with the development of the whole child. This includes physical and emotional maturity, the development of social and interactional skills and the pupil's ability to respond to a curriculum which is age-appropriate, as well as suited to his/her abilities.
- We promote and provide inclusive teaching. Teachers are expected to match the students' learning objectives and the learning activities planned to the abilities, aptitudes, and individual needs of students.
- The Early Years Foundation Stage Curriculum and the Programmes of Study in the National Curriculum incorporate flexibility within, and between, each key stage in order to support a diverse range of students' needs. Where a

student's abilities are significantly out of step with other students of his/her age, then individual provision should be planned. This could include addressing any special educational needs. In almost all cases, such individual provision will be made within the pupil's own year group.

- The SEN Code of Practice outlines a 'graduated response' of special provision, assessments and review within schools which does not normally require students to be educated out of their correct year group.
- Students have an entitlement to the Early Years Foundation Stage curriculum and the Programmes of Study of the National Curriculum, designed for their age 4 group. The MAT and all schools within it have a legal duty to make sure this is available.
- When a request is being considered, a long term view should be taken of the student's educational needs. The MAT wishes to avoid the adverse consequences which frequently arise if students are educated out of their year group, including the possibility of a difficult transition back into their correct year group at a later date, if this is deemed appropriate. Additionally, students taught in a younger year group may be of an age to leave school before they have had the opportunity to acquire external qualifications. They may, in this way, become educationally disadvantaged.
- Teaching an older pupil in a younger year group may well extend the time which he/she spends at school. This will have significant financial implications for the use of public and/or designated funds. The MAT has a public duty to resource education equitably and fairly.
- Educational research has not demonstrated that accelerating more able students into older age-groups is in their best interests. Such acceleration inevitably brings emotional and social pressures which are not conducive to the well-being of the young person concerned. The advantages of accelerating the normal academic milestones, from developments in early years through to public examinations, have not been shown to outweigh the personal and social costs which can be involved."

27. The policy in short amounts to a list of reasons why children should be educated with their chronological cohort. What the policy does not do is make clear that the trust will comply with its duty to make decisions on the basis of "the circumstances of each case and in the best interests of the child of the child concerned." There is nothing in the policy that refers to the individual child or takes account of the particular circumstances as required by paragraph 2.19 of the Code. Therefore, the admission arrangements are at odds with the requirements of paragraph 2.19 of the Code and I uphold this part of the objection.

Following the DfE guidance for admission authorities

28. The last part of the objection is that the arrangements do not follow the DfE guidance. There is considerable DfE guidance on this area as I have described above. There is, however, a distinction to be drawn between mandatory requirements such as those laid down in the legislation and the Code, and the provisions of guidance. The former, where they relate to admissions, must be adhered to for admission arrangements to be lawful. There is no absolute requirement to 'follow' or 'adhere' to guidance. I asked the trust for its view of the guidance and whether it had decided not to follow the guidance in any regard and, if so, what those reasons were. The trust said, "Our view is that our policy as indicated above is in line with the published guidance."

29. One part of the DfE guidance for admission authorities says,

"For primary school admissions, we recommend that the process:

- expects parents to make an application for a school place in their child's normal age group at the usual time
- enables parents to submit a request for admission outside the normal age group at the same time
- ensures parents receive the response to their request before primary national offer day".

30. The policy follows this as it asks that the form is completed and returned to the school by 1 December for the school to respond by 31 December. However, the arrangements say, "The procedure for asking for admission of a child to a year group other than the child's normal year group is by letter to the school giving details of all relevant circumstances and attaching any relevant supporting evidence." There is therefore inconsistency between the policy and the arrangements; in addition the arrangements are not clear when an application should be made and so do not follow the guidance.

31. The DfE guidance says with regards to requests for a child to join YR rather than Y1, "The admission authority of each school must make a decision based on the circumstances of the case and in the child's best interests. It should be rare for an authority to refuse a parent's request." The first of these two sentences reflects a Code requirement which the admission authority must comply with and I have already found that its arrangements are not clear because they suggest it will not do this. The second sentence is not to be found in the Code. However, the wording of the policy suggests that it will not be rare for the trust to refuse such requests and so the trust's policy is not in line with the DfE guidance.

Other Matters

32. I brought to the trust's attention other matters in the arrangements which I thought may not comply with the Code. The trust has not taken the opportunity offered to comment on these matters. My reading and understanding of the arrangements were hampered by

what may be various typographical errors. I could guess, for example, that there are missing words as well as other errors which can make the arrangements unclear. I have considered examples of these and other matters below.

33. The fourth oversubscription criterion is, “All other children. Children who do not fall into any of the categories above will be allocated places under this category by reference to the child’s home address (as defined in this policy) to the school.” I could infer that this means that the fourth criterion gives priority based on the distance of the home to the school with those closest receiving the highest priority, but I could be wrong. The criterion is not clear and so does not meet the requirements of paragraph 14 for arrangements to be clear and paragraph 1.8 of the Code which requires oversubscription criteria to be clear.

34. Paragraph 1.13 of the Code says,

“Admission authorities **must** clearly set out how distance from home to the school and/or any nodal points used in the arrangements will be measured. This **must** include making clear how the ‘home’ address will be determined and the point(s) in the school or nodal points from which all distances will be measured. This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent.”

35. The arrangements say in one place, “In this policy, a “parent” is defined as including a natural or adoptive parent of a child (irrespective of with whom the child lives, or whether the parent has contact with or parental responsibility for the child), as well as non-parents who have care of, or parental responsibility for, the child.” There is no information here on the home address of the child will be determined as it appears that the parent does not have to live with the child.

36. In another place the arrangements say, “Distance will be measured from the centre point of the child’s home address to the centre point of the School’s site in a straight line using the Local Authority’s specialist software and in accordance to the Child’s Home Address paragraph section in the policy.” This establishes from which points the distance from the home address to the school will be measured. It does not make clear how the home address will be determined.

37. In a third place the arrangements say, “For the purpose of this policy, the child’s home address is determined as defined in Local Authority’s Admissions Arrangements.” The trust is the admission authority and thus **must** say in its arrangements how the home address will be determined. It can use the same approach as the local authority, but it is not sufficient to refer to another admission authority’s arrangements.

38. In addition, there is no “provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent” as required by paragraph 1.13 of the Code. These matters make the arrangements unclear. The arrangements do not comply with paragraphs 14 and 1.13 of the Code in these regards.

39. As described above, several possible typographical errors in the arrangements makes them unclear. Examples are:

39.1. Under the heading, 'Waiting Lists' the arrangements say, "The School operates a waiting list for the duration of the school year. The names of all children who do not achieve a place in Reception will be placed on the waiting list automatically, and for the duration of the school year in which they would otherwise have been omitted." The use of the word omitted (underlined for emphasis) may be instead of 'admitted' but the meaning is not clear; and

39.2. the paragraph continues, "After that date, all names will be removed by the Local Authority unless the childs' [sic] parents notify the Local Authority naming the school on the waiting list." In this sentence, it is not clear which body, the school or the local authority, is holding the waiting list.

39.3. There are two sections in the arrangements headed, 'False and/or Intentionally Misleading information'. The first provides information relating to waiting lists which is confusing and thus unclear with no information as indicated by the heading. A later paragraph is also headed 'False and/or Intentionally Misleading information' does hold information matching the heading.

39.4. Other paragraphs appear to be duplications of information already provided.

40. These apparent mistakes make the arrangements unclear and thus not meet the requirements of paragraph 14 of the Code.

Summary of Findings

41. The information on admission of children outside their normal age group in the arrangements is inconsistent between the two documents in which it is provided. This makes the arrangements unclear. In addition, the policy document which provides the process which the trust has told me is the process for applying, is not published in a place that parents are likely to find it. If a parent cannot find the information required, then the trust has not made "clear in their admission arrangements the process for requesting admission out of the normal age group" as required by paragraph 2.18 of the Code.

42. The policy states that "students should be educated in the year group appropriate to their chronological age". The arrangements do not accurately reflect the requirement of paragraph 2.19 of the Code which is, "Admission authorities **must** make decisions on the basis of the circumstances of each case and in the best interests of the child concerned." The DfE guidance for admission authorities supports the requirement of paragraph 2.19 of the Code. The trust's policy does not follow that guidance.

43. The arrangements do not meet the requirements of the Code in the other ways set out above. Paragraph 3.6 of the Code permits changes to determined admission arrangements where, "such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Schools Adjudicator or any misprint in

the admission arrangements.” The trust therefore can and must amend its arrangements so that they comply with the Code as explained in this determination.

Determination

44. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2025 determined by Avanti Schools Trust for Avanti Gardens School in the local authority area of Bristol City Council.

45. 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.

46. 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: 30 April 2024

Signed:

Schools Adjudicator: Deborah Pritchard