

## DETERMINATION

**Case reference:** ADA2306

**Objector:** Hertfordshire County Council

**Admission Authority:** The governing body of The Hertfordshire & Essex High School and Science College, Hertfordshire

**Date of decision:** 6 August 2012

### **Determination**

**In accordance with section 88H (4) of the School Standards and Framework Act 1998, I uphold the objection to the arrangements determined by the governing body of The Hertfordshire & Essex High School and Science College for admissions in September 2013.**

**On the basis of the evidence available to me, I am not satisfied that the governing body gave due consideration at their earliest opportunity to the requirement for earlier aptitude testing in order to comply with Code.**

**I have also considered the arrangements in accordance with section 88I (5) of the Act. There are other aspects which appear not comply with the School Admissions Code in the ways set out in paragraph 17 of this adjudication.**

**By virtue of section 88K (2) of the Act the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to make the remaining revisions to its admission arrangements as quickly as possible.**

### **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 Hertfordshire County Council (the Council) about the 2013 admission arrangements (the arrangements) for The Hertfordshire & Essex High School and Science College (the School), a foundation school. The objection relates to the published dates for testing which would not allow parents to receive the outcome of the sporting and musical aptitude tests before the closing date for secondary transfer applications.

### **Jurisdiction**

2. These arrangements were determined under section 88C of the Act by the governing body which is the admission authority for the School. The Council submitted an objection to these determined arrangements on 25 June 2012. 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.

### **Procedure**

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

The documents I have considered in reaching my decision include:

- a. the Council's objection form dated 25 June 2012 and further email correspondence;
- b. the School's written response to the objection dated 9 July 2012, further correspondence and supporting documents;
- c. the Council's composite prospectus for parents seeking admission to schools in the area for September 2012, as downloaded from the Council's website,
- d. a map of local secondary schools supplied by the Council;
- e. minutes of a meeting of the Hertfordshire County Admissions Forum dated 23rd February 2012;
- f. the determined admissions arrangements for 2013 as supplied by the School;
- g. the 2013 admissions arrangements as downloaded from the School's website on 12 July 2012 and 2 August 2012;
- h. the supplementary application form (SIF) as supplied by the Council and as downloaded from the School's website on 12 July 2012 and 2 August 2012;
- i. the minutes of governing body meetings dated 20 March and 30 May 2012; and
- k. the determinations of 1999, 2003, and 2006.

4. I held a meeting (the meeting) at The Bishop's Stortford High School on 17 July 2012 with representatives of the School, the Council, and the two other schools in the consortium subject to the same objection, namely The Bishop's Stortford High School and The Leventhorpe School. I have taken account of the views expressed and information received during that meeting and subsequent correspondence from the School and the Council related to points discussed at the meeting.

### **The Objection**

5. The objection relates to the published dates for testing which would not allow parents to receive the outcomes of the sporting and musical aptitude tests before the closing date for secondary transfer applications. The date published for the musical aptitude test is 24 November 2012 and for sporting aptitude is 10 November 2012, and both dates are contrary to the mandatory requirement of the Code at paragraph 1.32 (c) that "admissions authorities **must** ....take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on 31

October so as to allow parents time to make an informed choice of school.”

### **Other Matters**

6. In reviewing the 2013 arrangements I drew the attention of the School to other aspects of the arrangements that appeared to contravene the requirement of the Code at paragraph 1.8 that oversubscription criteria must be reasonable, clear, objective, and procedurally fair.

### **Background**

7. The Hertfordshire & Essex High School and Science College is an all ability foundation school which is single sex for girls aged 11 to 16 years of age, and co-educational in the sixth form. The School operates pre-existing partially selective admissions for children demonstrating sporting or musical aptitude, permitted by section 100 of the Act.

8. The School prioritises for aptitude at oversubscription criterion 5, with up to 5 per cent of places (8 places) allocated to pupils with a proven aptitude in sport and up to another 5 per cent of places (8 places) to pupils with a proven aptitude in music. The School reports it uses aptitude tests devised to be taken by children whether or not they have had experience of, or formal training in, either music or sport.

9. The School is part of a consortium with two other local secondary schools, which together operate combined testing arrangements. Each of the consortium schools selects 10 per cent of their annual intake by aptitude.

### **Consideration of Factors**

10. The admissions arrangements for 2013 were determined at the governing body meeting of 20 March 2012. The minutes of that meeting confirm that the School had received a letter from the local authority in response to the submitted proposed admission arrangements for 2013/14. Although some amendments were made, it is clear that the governing body chose not to adjust their testing arrangements to comply with the Code which had been published some seven weeks earlier, and despite the concerns raised by the local authority.

11. The minutes of the governing body meeting of 30 May 2012 record that “the local authority had approached the school in response to the previous highlighted actions on testing results, stating that reasonable steps should be taken to ensure that parents are informed of the results of tests (currently taken in November) prior to having to make their final choice of schools (in October)”. The minutes report the School’s concern that the schedule was already tight and that it would be very difficult to make any changes as other schools in the area follow the same procedure and so the testing is carried out for a number of schools on the same day. By the unanimous agreement of the governing body, the arrangements were ratified unchanged and the School would therefore continue with the current schedule with regard to testing, in line with other schools in the area.

12. In the written response to the objection of 9 July 2012, the School reported that the admission arrangements had been determined in good faith by governors, believing that it was not possible to take “reasonable steps” to put the tests in place in time to make results available to parents in advance of their need to make a decision about school preference. There is no doubt that the School knew the Code required that all reasonable steps be taken to inform parents of the test outcome before the closing date for applications. However, at the meeting of 17 July, the School explained that governors had felt the wording of the Code at paragraph 1.32 was ambiguous, and so were unsure what steps would be considered reasonable, and what would be unreasonable.

13. In reaching the decision not to bring the test dates forward, the School explained that the following points had been taken into consideration:

- As schools in the consortium lie on a county boundary, it would be important to try to ensure that all families would have access to the same information, irrespective of the county in which they live, and that this was made more difficult across a county border, however closely together the local authorities might work;
- The Open Evening, scheduled by most secondary schools for the end of September/beginning of October, is an important part of the process by which applicants and their families decide on the school for which they wish to apply. The School offered the opinion that it seems unreasonable to be asking those families to apply to be tested for admission before they have decided whether or not they want to be considered for admission to a school which tests on the basis of aptitude. The School maintained that as the local authority refers to the admissions process starting in the September of any given year, it should not then be the case that parents need to be advised that the process would actually start earlier.
- It was understood that colleagues who had sought informal advice from the Department for Education (DfE) had been told that the intention of paragraph 1.32 of the Code was to deter parents from applying to wholly selective (grammar) schools and then not being allocated any of their preferred schools because their child had not met the required ability level. As all applicants are considered under the distance criterion for the School, in addition to being considered for the one of the 16 places available under the music and sports aptitude tests, the effect on parental preference would therefore be much less significant.
- Discussions with local authority representatives during which the School had made it clear that it was too late to change the 2013 arrangements, but that governors would reconsider matters for admissions in 2014, although issues around the principle of early testing may remain, even where administrative and communication problems might then be solved.

14. The written response of 9 July 2012 also revealed that the School had developed views that:

- the number of applicants who would benefit from knowing the outcome of tests in advance of making an application, would be balanced by those

applicants for whom this knowledge would make the listing of preferences more complex;

- to test applicants before the formal launch of the secondary transfer process in September would not be in the best interests of applicants and their families as they would not be expecting to have to engage with the process at that time;
- families moving to the area would be unaware of the early testing process, so the period of time by which families would need to anticipate movement of schools at secondary transfer would be extended, which seems unhelpful;
- were the tests to be held earlier, many families would be unaware of the testing arrangements and so to be seen to be acting reasonably, the school would have to arrange to repeat the tests, possibly several times;
- were the school to decide not to repeat the tests, this could be challenged at appeal as it could be deemed unreasonable not to have run the tests again for applicants who were unaware of the early testing arrangements and had applied late, and therefore failing to comply with paragraph 2.9 of the Code.

15. During the meeting on 17 July 2012 the School repeated the concern expressed in the written response of 9 July, that a representative of the local authority had given the School the reassurance that appeal panels would not uphold admission appeals based on a school's failure to offer repeat tests. However, the Council representatives replied that they believed the message had been that appeals panels would not look at appeals based on the school arrangements meeting the mandatory requirements of the Code.

16. From the evidence available to me, it is clear that before submitting its objection, the Council had communicated with the School, met with the Headteacher and Admissions Officer and also sought advice from the Department for Education (DfE), so as to support the School to be compliant with the Code. In a letter dated 25 January 2012, the Council advised the School that in order to comply with the Code, the arrangements should explain the School will be holding its aptitude tests earlier, to ensure that parents can be informed of the outcome of the test before the closing date for application. The Council reports that it offered assistance to all Hertfordshire schools in communicating arrangements for new testing timescales, including providing information to primary schools through the schools bulletin and, where relevant, circulating information to neighbouring local authorities. Although 16 schools in Hertfordshire include aptitude and / or academic testing as part of their admission arrangements, only the three schools in this consortium have not altered their testing arrangements to adhere to the new Code.

17. As it appeared to me that there were other aspects that did not comply with the requirements relating to admission arrangements, I used my powers under s88I of the Act to review the arrangements as a whole for full compliance with the Code. At the meeting I therefore raised with the School several points which appeared to me to contravene the Code, as these points could be amended immediately by the School as a permitted variation under

paragraph 3.6 of the Code. The points that require revision are as follows:

- a. In addition to the common application form, the School expects parents to complete the supplementary information form (SIF) no later than 31, but ideally by 26 October 2012, and states that forms received after this date will be considered only **after** all other applications. To avoid the possibility that completion of the SIF is a condition, which would be in breach of the Code, the School has agreed to use an alternative form of wording suggested by the Council.
- b. The requirement within the SIF to enclose up to three stamped, addressed envelopes for acknowledgement of application and test details is contrary to the Code at paragraph 1.9 (n). Since the meeting, this requirement has been removed from the SIF.
- c. The SIF requires the parent / guardian to sign an undertaking to support their daughter in maintaining the ethos of the School. As this is in breach of paragraph 2.4 (d) of the Code, the SIF should be amended so that the parent's / guardian's signature confirms only that the information given in connection with the application is correct. The hope that the parent / guardian will support the ethos of the School may instead be included as a statement in the introductory paragraphs.
- d. Paragraph 2.4 of the Code makes clear that admission authorities **must** only use the SIF to request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability, and **must not** ask, or use supplementary forms that ask, for any of the information prohibited by paragraphs 1.9 or 2.4. I have not investigated fully why the School believes that all parents must complete the SIF given that all parents will already have had to complete the Council's common application form, particularly as the School selects only 10 per cent of its annual intake by aptitude. As a range of issues regarding the SIF need to be addressed, the School would be advised to review the SIF to ensure that it does not ask for information prohibited by the Code.
- e. To comply with paragraph 1.7 of the Code, the definition of children who have been looked after, in oversubscription criterion 1, needs to be extended from children who have ceased to be so because they were adopted, to include those who became subject to a residence or special guardianship order. Since the meeting, criterion 1 has been amended to comply with the Code.
- f. Oversubscription criterion 4 identifies three subgroups related to attendance at primary school. Group (c) which allocates "13 per cent of places to students attending any other school not listed" should be removed as it does not comply with paragraph 1.9 (b) of the Code which clearly states that admission authorities **must not** ... "take into account any previous schools attended, unless it is a named feeder school". I have not investigated fully why the School names so many feeder schools, but when determining its arrangements for 2014, the School will need to look carefully at the number of, and reasons for including, primary schools as

named feeder schools.

g. For oversubscription criterion 5, to be able to decide whether to opt into the aptitude tests for sport or music, parents need to understand what is entailed in the assessment process. Insufficient detail about the tests had been published in the admissions section on the School's website, but this has been addressed and complies with paragraph 1.17 of the Code.

## **Conclusion**

18. It is clear that the governing body at the meeting of 20 March 2012 decided not to comply with the mandatory requirement of the Code at paragraph 1.32 to inform parents about the outcome of aptitude tests before the closing date for secondary transfer applications, and against the advice of the local authority. At the meeting of 30 May 2012, the governing body decided it was then too late to bring forward the test dates within the School's existing tight schedule, and also be too difficult to change because the testing arrangements are linked to other schools in the area. In its written response of 9 July 2012, and confirmed at the meeting on 17 July 2012, the School has provided a rationale for its decision not to arrange earlier dates for testing. However, it is not clear whether the rationale informed the decision-making process or seeks to justify retrospectively choices that had already been taken. Had the governors agreed to comply with the Code at their earlier meeting of 20 March 2012, it is likely there would have been sufficient time to adjust the testing schedule. The governing body have failed to take all reasonable steps to comply with paragraph 1.32 (c) of the School Admissions Code and I am not satisfied that the matter of changing the timing of the aptitude assessments and issuing the results has been given due consideration by the School at its earliest opportunity.

19. Other Hertfordshire schools did appear to have had enough time to bring forward their testing procedures in compliance with the Code. It is clear that paragraph 1.32 of the Code is mandatory for all schools, and the School needs to ensure that it has lawful admission arrangements.

20. The other aspects which appeared not comply with the Code are set out in paragraph 17 of this adjudication. The Code requires an admission authority to make revisions to its admission arrangements as quickly as possible in order to comply with the Code.

## **Determination**

21. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I uphold the objection to the arrangements determined by the governing body of The Hertfordshire & Essex High School and Science College for admissions in September 2013.

22. On the basis of the evidence available to me, I am not satisfied that the governing body gave due consideration at their earliest opportunity to the requirement for earlier aptitude testing in order to comply with Code.

23. I have also considered the arrangements in accordance with section

88I (5) of the Act. There are other aspects which appear not comply with the School Admissions Code in the ways set out in paragraph 17 of this adjudication.

24. By virtue of section 88K (2) of the Act the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to make the remaining revisions to its admission arrangements as quickly as possible.

Dated: 6 August 2012

Signed:

Schools Adjudicator Cecilia Galloway