

## **DETERMINATION**

**Case reference:** ADA/002232

**Admission Authority:** The Governing Body of Burpham Primary School

**Date of decision:** 10 October 2011

### **Determination**

**In accordance with section 88H(4) and 88I(5) of the School Standards and Framework Act 1998, I have considered the referral about the admission arrangements for September 2011 and the objection to the admission arrangements for September 2012 of Burpham Primary School. I partially uphold the objection.**

### **The Referral and Objection**

1. The admission arrangements (the arrangements) of Burpham Primary School (the School), a foundation primary school, for September 2011 have been brought to the attention of the Schools Adjudicator in a letter from two parents. The parents making the referral also confirmed that as eligible parents they object to the arrangements for admissions in September 2012.
2. The referral and objection are to oversubscription criterion 3 concerning the conditions attached to the admission of siblings and to the School's failure to consult in accordance with the School Admissions Code (the Code).

### **Jurisdiction**

3. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the governing body which is the admission authority for the School.
4. Under section 88H(4), the adjudicator must decide whether, and (if so) to what extent, the objection should be upheld.
5. Under section 88I(5), the Adjudicator has the power to consider admission arrangements which come to his attention by any means, other than by way of referral by the Secretary of State or local authority report under section 88P or by way of an objection under section 88H.
6. I am satisfied that I have the power to consider these arrangements and it is within my jurisdiction under section 88J(2)(a) and 88J(2)(b) to make any necessary changes.

## **Procedure**

7. In coming to my conclusions, I have had full regard to the Code, relevant legislation and guidance.
8. The documents I have considered in reaching my decision include:
  - a. the letter of referral and objection, supporting documentation and subsequent correspondence;
  - b. the School's response to the objection and referral, supporting documentation including its admission arrangements for September 2011 and September 2012, and information from its website; and
  - c. Surrey County Council, the local authority's (LA) response to the referral and objection and its website booklet for parents for those seeking admission to schools in the area in September 2012.

## **Key Issue**

9. The referral and objection by the parents followed the refusal of a place for their daughter and the decision of the appeals panel to uphold the School's decision. The objection is to the third criterion which is the same in the arrangements for admissions in 2011 and 2012 which states:

“3. Siblings of children on the school's roll at the time of admission providing the family remains at the same address or for whom Burpham Primary School remains the nearest appropriate school.”
10. This criterion is said to be breaking the Code. “Specifically, the family are not at the heart of its admissions criteria (a mandatory provision of the Code)”. The parents also contend that the School's arrangements are in effect operating a catchment area, but it has not published a map showing which houses keep sibling rights if the family moves house.
11. Also, the School is said not to have consulted on its arrangements as required by paragraph 1.26 of the Code since the policy went out to consultation in 2005.

## **Background and Consideration of Factors**

12. The School is a one form of entry school that is oversubscribed. The arrangements for 2012 have the same oversubscription criterion concerning siblings as the one for admissions in 2011 and the parents, as eligible parents, have confirmed that they object to this aspect of the arrangements.

13. The School confirms that it consulted on and changed its policy in 2005 with respect to the priority for siblings in its oversubscription criteria. The wording is clear and the School says it has made its position clear through its policy and accompanying notes and always does so when prospective parents visit the School. There is no dispute about the terms of the policy being known. The School also adopted the LA's measurement "as the crow flies" between an applicant's address and the School. The School regards this measurement as clearer than the previous "walking route" distance.
14. The objectors refer to the arrangements not meeting the Code with respect to the family being at the heart of the Code. The Code at paragraph 2.25 under "Siblings at Primary Schools" begins the second sentence with, "Families must be at the heart of the admissions system and the Government expects the admission authorities for primary schools to take the needs of parents with young children into account when deciding which oversubscription criteria will be used."
15. As presented in the Code, the "must" in the quotation is not shown in red and therefore is not in the format in which mandatory requirements are presented as is described in the introduction to the Code. Rather it is a general statement about the admission arrangements at primary schools. If indeed it were to be taken as a mandatory requirement then it has to be considered alongside the other mandatory requirements including, as described below, the requirement in paragraph 2.24.
16. There is no requirement in the Code for an admission authority to give priority to siblings. Paragraphs 2.21 to 2.24 refer to the advantages of siblings attending the same school and include three mandatory requirements. Paragraph 2.22 says, "Admission authorities **must** clearly explain in their admission arrangements how priority to younger siblings will be given and on what basis,....."; paragraph 2.23 concerns withdrawal of a place; and paragraph 2.24 says, "As with other oversubscription criteria in giving priority to siblings, admission authorities **must** ensure that their admission arrangements as a whole do not unfairly disadvantage other families."
17. One of the dilemmas for parents of not securing a place for a younger child at the same school as an older child is the logistics of having to ensure both children arrive at different schools for the start of the school day.
18. The dilemma for the School is that it has just 30 places and is oversubscribed. It needs to ensure that its arrangements are as fair as they possibly can be for families.
19. The School argues that if it allocated priority to siblings irrespective of where the family lives at the time of admission of younger siblings then places taken by the younger siblings of families who have moved further from the School may result in new families living nearer the School being unable to secure a place at their nearest local school.

Thus the School places restrictions on the admission of siblings so that priority is given only if the family remain at the same address as when the older sibling joined the School or, if the family has moved, the School is still the nearest school.

20. I have concluded that the School's arrangements do not contravene the Code as they do explain clearly, in accordance with paragraph 2.22, how priority for younger siblings will be given and they do ensure in accordance with paragraph 2.24 that they do not unfairly disadvantage other families as, for example, a family without an older sibling at the School has a fair chance of securing a place at its nearest school.
21. It is not surprising that a family who moves a short distance as the family grows and is then a little further away from the School but now nearer to another school finds the application of the oversubscription criterion to be harsh as it tries to decide how to take young children to different schools. However, as the arrangements do not contravene the Code I do not uphold the objection to the third oversubscription criterion.
22. In relation to the assertion that the School's siblings admissions policy means that, in effect, it is operating a catchment area, the School seems to me not to be using a catchment area in the usual meaning of the term, but is trying to be fair to the greatest number of families and discourage unfair practice in gaining a place. Nevertheless, I feel some concern that in using the "as the crow flies" distance, while easy and clear to measure, it fails to take into account the geography of the area and what is realistic in terms of encouraging walking to school. The School ought to keep its arrangements under review to ensure that it achieves maximum fairness for families in its locality which may not necessarily be those nearest by a straight line distance unless there are no obstacles to walking such as would be imposed by having to use a particular bridge to cross a river or railway line.
23. Furthermore, as the sibling criterion continues to give priority for a place if the School remains the nearest school for a family that moves home, the School really ought to have a way of confirming to parents whether it remains their nearest school or not.
24. The objectors do not consider the arrangements have been consulted on in accordance with paragraph 1.26 of the Code. In their view the School consulted in 2005 and since then there has been limited consultation restricted to providing a copy for the Council and leaving a copy for prospective parents in the School's reception area.

25. The School has acknowledged that it has not carried out a full and formal consultation since the one undertaken for the September 2006 Admissions Policy. It says it understands there is no requirement to consult as widely as it did in 2005, but it has sent a copy to the LA and has sent it to other schools about every two years. It says that its Admissions Committee considers its policy, however briefly, on an annual basis. It also refers to making minor alterations to the notes that accompany the policy. It says it looks to the LA for guidance regarding the lawfulness of the policy and has based minor alterations on their advice in the past.
26. By its own statement about consultation the School confirms that it has not met the terms of paragraph 1.26 of the Code. I have seen correspondence from the LA to the School confirming that the School did send its arrangements for September 2012 to the LA, but that it did not do so in accordance with the timescale set out in the Code. The LA told the School that its failure to comply with the timescale could be challenged and result in a referral to the Schools Adjudicator. The LA went on to point out several ways in which the arrangements should be amended to comply with the Code.
27. Where a school is its own admission authority, it has the responsibility to ensure it considers its arrangements against the requirements of the Code and complies with the Code in all aspects. It is not acceptable for the School to say that it relies on the LA regarding checking the lawfulness of its arrangements. I agree with the objectors that the School has contravened the Code with respect to consulting on its arrangements and uphold this part of the objection. The School will need to ensure that it meets fully the requirements for consultation when considering and before determining its arrangements for September 2013.

## **Conclusion**

28. I have concluded for the reasons given above that the oversubscription criterion concerning the priority afforded to siblings and the conditions attached to gaining that priority do not contravene the Code and therefore do not uphold that part of the objection.
29. The School contravened the Code by not consulting on its arrangements as required by the Code and thus I uphold that part of the objection.
30. I am not making any changes to the arrangements for admissions in September 2012.

## **Determination**

31. In accordance with sections 88H(4) and 88I(5) of the School Standards and Framework Act 1998, I have considered the referral about the admission arrangements for September 2011 and objection to the admission arrangements for September 2012 of Burpham Primary School. I partially uphold the objection.

Dated: 10 October 2011

Signed:

Schools Adjudicator: Dr Elizabeth Passmore