

(1st section)

Decision of 17 January 2023

the Complaints Board of the European Schools, 1st section, with the following members:

- assisted by Ms Nathalie Peigneur, registrar, and Mr Thomas van de Werve
d'Immerseel, legal assistant,

having decided that, as permitted under Article 19 of the Rules of Procedure, the case would not be heard at a public hearing,

issued the decision on 17 January 2023, the grounds for and operative part of which appear below.

Main facts of the case and arguments of the parties

1.

The applicants are the parents of a daughter, █████ born 27 January 2016 and a son, █████ born 9 September 2017. Mr █████ is an Irish citizen and Ms █████ is an █████ citizen. Their two children have both Irish and █████ citizenship.

2.

On 28 January 2022, the applicants submitted a request to the Central Enrolment Authority (hereinafter CEA) to enrol their children in the “nursery class” of the German language section. In █████’s enrolment request, neither “Yes” nor “No” was ticked in the “Other National Languages (ONL) – Only for pupils in the English section who have Irish nationality: Irish” section. The CEA assigned both █████ and █████ a place in the nursery class of the German language section at the Brussels II European School (Evere site) (hereinafter ES BRX II).

3.

On 3 June 2022, Mr █████ contacted the ES BRX II and requested that his daughter █████ be enrolled in the Irish ONL course. The Director of the ES BRX II refused admission to this course on the grounds that only pupils with Irish citizenship enrolled in the English language section could participate in the course.

4.

By e-mail dated 5 September 2022, Mr █████ lodged an administrative appeal which was rejected by the Secretary-General of the European Schools (ES) by decision dated 6 October 2022.

5.

By means of an appeal lodged on 19 October 2022, the applicants appealed against the unfavourable decision of the ES BRX II and requested that the decision be revoked and that their daughter [REDACTED] be accepted in the Irish ONL course.

6.

In support of their appeal, they essentially claimed that:

The rules of the “Language Policy” (Article 1.6.2.) stipulated that for Irish citizens to be accepted in the Irish ONL course, they had to be enrolled in the English language section. Even in the German language section, English classes would be given. This would therefore mean that there is no practical obstacle to participation in the Irish language classes, especially as the classes are far from full and, furthermore, as the classes are held only twice a week for periods of 30 minutes, thereby minimising the organisational effort required to ensure their participation. Consequently, the rules of the “Language Policy” would indirectly discriminate against their daughter, as other pupils could conceivably attend the ONL classes despite the fact that they too are not taught in English as their first language. There is therefore no reason why [REDACTED] should be prevented from practising and learning Irish, which is her mother tongue and an official language of the EU, in the European Schools.

7.

The ES nevertheless believe that the admissible appeal is unfounded and that the applicants should therefore pay the costs and expenses of the proceedings, estimated at € 800.

In support of their motion to dismiss, the ES essentially states that the request for [REDACTED] to attend the Irish ONL classes was justifiably rejected in accordance with the rules of the “Language Policy”. According to Article 1.6.2. of this policy, only Irish citizens from the English language section could attend the ONL classes. Participation in the Irish ONL course is only possible for such Irish pupils. This is not

the case for the daughter of the applicants, as they themselves decided to enrol ■■■ in the German language section. They could nevertheless have readily enrolled her in the English language section. The applicants were adequately informed about these options in the enrolment form. The refusal to grant participation in the Irish ONL course is neither – indirectly – discriminatory nor is the principle of equality violated. Restricting access to the ONL courses in other national languages reflects legitimate organisational goals. Access to the Irish ONL course is limited to pupils enrolled in the English language section for compelling organisational reasons. If this ONL course were to be opened to pupils in other language sections, the organisational complexity would increase exponentially. Pre-school children leave regular classes three times a week for periods of 30 minutes to participate in the ONL course; i.e. classes are interrupted for these pupils. Organising these interruptions and returns to class already requires considerable effort on the part of the teachers in the English language section. It would nevertheless be impossible for the relevant teaching staff to implement such an organisation for pupils in other language sections, for example the German language section, as the timetable and classes in these sections are not the same as in the English language section, are subject to different procedures and are not organised on the basis of compatibility with an ONL course, in particular with the Irish ONL course. The fact that ■■■ chose English as language 2 is irrelevant with regard to the organisational constraints indicated. In light of the existing rules, no pupils in the German language section at the ES BRX II would be allowed to participate in an Irish ONL course; all 21 pupils in the Irish ONL course at the ES BRX II would be enrolled in the English language section. The supposed exceptions cited by the applicants and the relevant scope thereof were not substantiated or proven by them. Furthermore, in accordance with the principle of legality, a potentially unlawful decision by the administration cannot be cited as a legal basis in other cases.

8.

In their reply, the applicants maintain their initial claims by responding to the arguments expounded by the European Schools.

Appraisal of the Complaints Board

Regarding the appeal,

9.

The admissible appeal is unfounded.

■■■■ is not entitled to participate in the Irish ONL course: there is no legal basis for this. The decision of the ES BRX II dated 30 August 2022 is not vitiated by any errors in law and does not violate the rights of the applicants.

10.

The “Language Policy of the European Schools” (2019-01-D-35-en-2) (hereinafter LP-ES), which forms the legal basis for ■■■■'s potential participation in the Irish ONL course, stipulates the following:

In article 7 (Glossary): “**ONL – Other National Language**

Irish and Maltese are the national languages of Ireland and Malta and also official languages. Swedish and Finnish are the national languages of Finland. All four languages are taught as ONLs in the European Schools system for those pupils who request these courses. Irish and Maltese are taught in the English-speaking section to Irish and Maltese Nationals. Finnish in the Swedish section is taught to Finnish nationals and Swedish is taught in the Finnish section.

In the **Annex – Organisation of the Teaching and the Use of Languages in the European Schools** – Article 1.6.2. – **Other languages** – stipulates that:

“Specific provisions are in place for the teaching of the other national language (ONL) in the case of pupils whose countries of origin have more than one national language. These pupils (of the Swedish, Finnish sections or Irish and Maltese in the English language section) may opt for learning ONL as from Nursery 1.

The Other National Language (ONL) must be taught to category I and II pupils from the nursery level (Finnish/Swedish from primary year 3) up to secondary year 7.

For those pupils who request these courses (in those schools which have a Finnish/Swedish section):

Irish/Maltese as Other National Language is available to Irish/Maltese nationals enrolled in the English language section only.

There is a specific syllabus designed particularly for ONL pupils. Contrary to the minimum numbers of groups in other subjects, Other National Language groups will be created with fewer than seven pupils. In the nursery and in primary years 1-2, the Other National Language is taught three times 30 minutes per week. In primary years 3-5, the Other National Language is taught two times 45 minutes per week. In secondary years 1-3, the Other National Language is taught two times 45 minutes per week. Starting from secondary year 4 and up to secondary year 5, the Other National Language is a 4-period option. Pupils choosing the Other National Language cannot choose Language 4. ...”

11.

It is clear from the rules of the LP-ES referred to above, that for a pupil with Irish citizenship, participation in an Irish ONL course is only possible if he/she is enrolled and taught in the English language section. Article 1.6.2. LP-ES stipulates *“Irish ... as Other National Language is available to Irish nationals **enrolled in the English language section only**”*.

12.

Contrary to the opinion of the applicants, this rule of the LP-ES does not violate any higher-ranking law; in particular, it is neither discriminatory nor contrary to the principle of equality, even indirectly, with regard to Irish-speaking pupils. While pupils with Irish citizenship cannot readily and independent of their choice of language section participate in an ONL course in their national language, participation hinges far more on another substantive requirement – enrolment exclusively in the English language section. The associated differentiation of Irish pupils with regard to participation in an Irish ONL course is justifiable in objective

terms both in light of the pupil's own choice of language section and on legitimate and compelling organisational grounds.

13.

The starting point for potential participation in an Irish ONL course is the choice of the English language section. The task of choosing and requesting enrolment in the language section falls to the voluntary decision of the parents, in this case the applicants, insofar as a language section corresponding to the child's mother tongue or dominant language was chosen. By choosing the German language section, it should have been clear to them that participation in an ONL course in the Irish language was no longer possible due to the connection with the English language section and the “proximity” with the English language. If, however, the applicants were free to choose a language section within the framework of the ES BRX II offer, they themselves “set the course” for the future organisation of their daughter's schooling, with all the accompanying consequences. The Complaints Board does not, therefore, see any evidence of (indirect) discrimination or unequal treatment.

14.

Furthermore, the organisational framework and organisational discretion of the ES BRX II, which cannot, in principle, be revised by the Complaints Board, relating to language sections and the teaching languages offered, enables the Schools to determine certain organisational framework conditions independently with a view to organising a multi-cultural and multi-lingual school environment appropriately. A one-off language education desired by the parents and tailored to specific needs must, in contrast, take second place. Accordingly, on organisational grounds, it appears appropriate to the Board only to offer Irish pupils the possibility of participating in a thirty-minute – Irish – ONL course three times a week, during which time the other pupils – of the English language section – continue being taught in English. Against the backdrop of a temporary “withdrawal” from English class in accordance with the presentation of the ES, this differentiation – Irish pupils in the English language section can participate and Irish pupils in another section cannot – appears entirely possible from an organisational standpoint if the language

teaching (English and Irish) run parallel to one another during this period. With a different language combination, this is therefore not guaranteed, because parallel language classes and coordinated curricular content would have to be ensured which would not readily be the case in relation to the German or French language sections, for example. Accordingly, due to these significant organisational differences and the existing organisational discretion of the ES with regard to the teaching offer and the structure of the classes in the individual sections, there is an objective reason underpinning the differentiated regulation adopted in the LP-ES with no further legal considerations.

15.

The additional objection, submitted by the applicants and disputed by the ES, that the principle of equality has been violated because other pupils could participate in an Irish ONL course despite not being enrolled in the English language section, is not relevant. First, the applicants have not submitted any tangible, transparent facts that can be verified by the collection of evidence. Second, there is no entitlement to equal treatment contrary to the applicable rules as such participation in an Irish ONL course by pupils in language sections other than the English language section would violate the rules of the LP-ES.

16.

It therefore follows that the applicants' appeal is unfounded for the reasons presented above.

Regarding the legal and other costs,

17.

Article 27 of the Rules of Procedure states: *"The unsuccessful party shall be ordered to pay the legal and other costs of the case if they have been applied for by the other party. However, if the particular circumstances of the case so warrant, the Complaints Board may order the latter party to pay the legal and other costs, or may*

order that they be shared between the parties ... If costs are not claimed, the parties shall bear their own costs."

The applicants, who are unsuccessful in these proceedings, should be ordered to pay the legal and other costs.

In the particular circumstances of this case, characterised by the fact that the Complaints Board has not determined the existence of any special case, a fair assessment shall be made of the amount of these legal and other costs by fixing them *ex aequo et bono* at the total of € 300.

ON THESE GROUNDS, the Complaints Board of the European Schools

D E C I D E S

Article 1: The appeal of Mr [REDACTED] and Ms [REDACTED], registered under No **22/60**, is dismissed.

Article 2: The applicants shall pay the costs of the proceedings totalling € 300.

Article 3: This decision shall be notified in accordance with the conditions under Articles 26 and 28 of the Rules of Procedure.

E. Menéndez Rexach

M. Eylert

A. Ó Caoimh

Brussels, on 17 January 2023

Original version: DE

On behalf of the Registry,
Nathalie Peigneur