

Appeal 20-13

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COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

Reasoned Order of 25 June 2020

In the case registered with the Registry of the Complaints Board under No 20-13, the subject of which is a direct appeal lodged on 13 May 2020 by Mr ■■■■■ ■■■■■ and Ms ■■■■■ ■■■■■ residing at ■■■■■ ■■■■■, against the decision of the Central Enrolment Authority (hereinafter referred to as the CEA) of 30 April 2020, whereby the said authority offered, for their daughter ■■■■■, a place in primary year 1 of the Greek (EL) language section at the European School, Brussels I – Berkendael Site, instead of at the Brussels III and Brussels II European Schools, their first and second preference schools respectively.

Mr Eduardo Menéndez Rexach, Chairman of the Complaints Board, acting by way of a reasoned order in accordance with the conditions laid down in Article 32 of the Rules of Procedure, which states: *"Where the Complaints Board is manifestly lacking in jurisdiction to hear a complaint or where a complaint is manifestly inadmissible or manifestly unfounded in law, a ruling may be given, without continuing the proceedings, by way of a reasoned order made by the Chairman or by the rapporteur designated by him",*

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

handed down the following order, the grounds for and the operative part of which appear below, on 25 June 2020.

Facts of the dispute and arguments of the applicants

1.

During the first phase of enrolments in the Brussels European Schools, the applicants submitted an application to the European School, Brussels III for the enrolment of their daughter [REDACTED] in primary year 1 (P1) of the Greek (EL) language section.

2.

By its decision of 30 April 2020, the CEA informed the applicants that a place was offered to them in the EL section of the European School, Brussels I – Berkendael, pursuant to Articles 6.1., 6.18., 6.19., 6.20.(b) and 10.6.(i) of the 2020-2021 Enrolment Policy (hereinafter referred to as the EP), pointing out that the EL section is not open in their second choice school, namely the European School, Brussels II.

It is against that decision that this direct contentious appeal, lodged on 13 May 2020, is directed, as allowed by Article 67.2 of the General Rules of the European Schools and Article 14.1 of the EP.

3.

The applicants request the Complaints Board to annul the CEA's decision and consequently seek to obtain:

- a place in their first choice School;

- the carrying out of comparative language tests;
- a clear justification regarding the award of the place by the CEA and why it was not possible for them to be awarded a place in their first choice School.

4.

In support of their appeal, the applicants put forward, in substance, the following arguments:

- the school bus for the Brussels I School – Berkendael Site leaves at 6.55 and arrives at the school at around 8.00, i.e. 2 hours of travel per day;
- the risk of being infected by COVID-19 increases when long journeys are undertaken daily and it will not be possible for the recommended hygiene measures to be taken properly by the bus drivers and the supervisors, exposing children who travel long distances to a greater extent than those who only spend 30 minutes on the school bus; a five-and-a-half-year old child cannot be expected to respect the hygiene rules on a bus for 65 minutes: she will be bound to touch the seat, the belt, the windows, etc.; however, Ms [REDACTED], [REDACTED]'s aunt, lives with them (*"living under the same household"*) and is an at-risk person. The applicants attach a medical certificate indicating a diagnosis of Fabry's disease. This aunt is therefore a person vulnerable to COVID-19 and they claim that the first choice School is thus an essential measure to safeguard her health as the risk of infection on long journeys is higher;
- a mistake was made by the European School, Brussels III in the sense that [REDACTED] was not invited to take a languages test, even though she went to a crèche and a nursery school in French; the applicants also argue that the

Greek spoken at home (a Cypriot dialect) is very different from that taught in the European Schools, in terms of both grammar and vocabulary. They claim that they ought to have been offered a place in the Francophone section.

Findings on the Chairman of the Complaints Board

On the appeal's admissibility

5.

It follows from Article 27 of the Convention defining the Statute of the European Schools that the Complaints Board can only annul administrative acts adopted by the European Schools, except where the disputed administrative act is of a financial character, in which case it has sole jurisdiction in the first and final instance allowing it to substitute its decision for that of the European Schools or to issue injunctions to them.

As this appeal is not of a financial character in any way, it is admissible only to the strict extent that it seeks annulment of the decision delivered by the CEA on 30 April 2020.

On the substance

6.

The applicants' first argument is based on the length and the duration of the journeys between the place of residence (home) and the school assigned.

It should be pointed out, however, that whilst certain particular circumstances can allow applicants for enrolment to obtain a priority criterion with a view to a pupil's enrolment in their first choice school, Article 8.4.2. of the 2020-2021 EP expressly includes amongst those that are not relevant for that purpose the location of the place of residence (home) of the child or of his or her legal representatives, the location or the constraints of an occupational nature of the legal representatives' activities or constraints of a practical nature on organisation of travel.

In accordance with the Complaints Board settled and consistent case law (see its decision on appeal 11-23, for example), whilst it follows clearly from the objectives of the Convention defining the Statute of the European Schools that the children of the staff of the European institutions have a right of access to the education provided in those Schools, such a right does not necessarily imply that it must be exercised in the school of their choice, the sole consideration being the location of their home or of their place of work, the organisation of travel and occupational or practical constraints on the organisation of family life.

Whatever the consequences, even cumulative, of such constraints may be, they cannot in themselves constitute a special priority criterion allowing people who invoke it to obtain their child's enrolment at the school of their choice.

The reason is that the European School system is not comparable with national education systems, having only a limited number of schools located in cities which are the seats of European institutions or bodies, with the agreement of the national authorities, and not a network allowing all the pupils concerned within these cities, whatever the location of their home, to be allocated a place in a neighbourhood school, according to criteria specific to applicants for enrolment.

It should be observed, moreover, that in cities where there is only one European School, the distances between it and pupils' homes may, depending on the case, be as great as those in question in this appeal, although the question does not arise, simply because there is only one school.

When there are several schools in the same city, as is the case in Brussels, the geographical location of each of them cannot, on account of the freedom of the persons concerned to choose their place of residence, be the sole criterion for exercise of the right of access to the education provided in the said schools (decisions of principle of 30 July 2007 (appeal 07/14) and of 5 May 2010 (appeal 10/07)).

It is for all those reasons that Article 8.4.2 of the 2020-2021 Enrolment Policy lays down that the location of the place of residence (home) cannot be regarded as a relevant particular circumstance to grant a priority criterion for admission to the first choice school.

Since the Complaints Board can only review the legality of decisions contested before it and as the regulatory framework in which the disputed decision was taken very clearly excludes the location of the place of residence (home), the Board cannot but reject the applicants' arguments based on too great a distance between the place of residence (home) and the school assigned,

including the consequences of such a distance.

7.

The applicants argue in the case in point that there is an increased risk of being infected by the Covid-19 virus because of the length of the journeys between the home and the school assigned and of the presence under their roof of a member of the family described as "vulnerable".

It should be noted first of all that the applicants do not say that if their daughter were to attend the Brussels III School, she would not take the school bus.

Secondly, it should be pointed out that the risk of being infected by the Covid-19 virus now exists for everyone: whatever the length and/or duration of journeys, there is a risk as soon as a child goes to / will go to school and as a school bus is / will be taken.

Everyone is exposed to this risk and everyone must therefore observe the preventive health rules adopted in each country by the authorities to protect citizens' health; at its April 2020 meetings, the Board of Governors of the European Schools also decided on the measures to be taken to adapt to the consequences of the Covid-19 pandemic.

There is no proof that the risk of infection might increase on account solely of the amount of time spent travelling.

The Schools will ensure compliance with the hygiene measures that everyone needs to follow, as this risk exists/will exist for everyone in future: the situation of the applicants and of their daughter is no different in that respect from that of all the other parents and pupils, who from now on need to / will need to adapt

to this new reality.

Now Article 8.4.1 clearly states that *"The priority criterion will be accepted only when it is invoked on submission of the application and where, having regard to the precise circumstances **characterising a case and differentiating it from other cases**, a given situation requires appropriate treatment to mitigate the unacceptable consequences which the rules of this Policy would otherwise have had."*

8.

Finally, what remains to be considered is whether the state of health of the female applicant's sister must be taken into account in assessing the unacceptable consequences that strict application of the rules of the Enrolment Policy might have.

In answer to that question, it should be pointed out that in accordance with Article 8.4.3 of the 2020-2021 EP, *"Any medical complaints from which the child, **or one of the people involved in his/her care on a daily basis**, might suffer will be taken into consideration only in so far as evidence is provided that the child's attendance at the school/site designated is an **essential measure for the treatment of the condition** from which the person concerned suffers."*

However, not only has it not been established that the aunt is the person involved in caring for the child on a daily basis but in addition, the medical certificate produced does not demonstrate why the pupil's attendance at the Brussels III School might be an essential measure for treatment of the condition: in the medical certificate produced, which dates back to June 2019, the illness is mentioned under 'History' and the recommendation is "Re-

evaluation in 12 months or in case of symptoms."

This medical certificate is not relevant in relation to the provision recalled above, since it does not indicate any treatment to be undergone (nature, frequency, place of treatment) and does not allow it to be concluded that without granting the priority requested, the treatment or care cannot be administered, or that it can be administered but in conditions that impose excessive, unacceptable or disproportionate constraints *on the parents and the child* (see in this connection decision of the Complaints Board, appeal 16/36, points 41 and 42).

As has been said, as soon as [REDACTED] goes to school (wherever the school is situated) and takes the school bus, there will be a risk of infection, as there will, moreover, as soon as the lockdown measures start to be lifted, which will mean strengthening the most appropriate protection measures within the family.

The applicants' first argument must therefore be rejected as unfounded.

9.

The applicants' second argument concerns the failure to invite the child to take comparative language tests (French / Greek).

The principles of Article 47(e) of the General Rules of the European Schools should first be reiterated:

"A fundamental principle of the European Schools is the teaching of mother tongue/dominant language as first language (L1). This principle implies the pupil's enrolment in the section of his/her mother tongue/ dominant language

where such a section exists.

*This principle may be waived only where the child has been educated in a language other than his/her mother tongue/dominant language for a minimum of two years **at primary or secondary level**. The European Schools will presume in that case that the child will be capable of continuing his/her schooling in the language in question.*

(...)

Parents will not be free to choose their child's first language (L1), its determination being the responsibility of the school's Director. L1 must correspond to the child's mother tongue or dominant language, in the case of multilingual children, the dominant language being the one of which they have the best command.

Should there be any dispute about the pupil's L1, it will be the Director's responsibility to determine which language it is, on the basis of the information provided by the pupils' legal representatives on the enrolment form and by requiring the pupil to take comparative language tests, organised and under the control of the school's teachers. The tests will be organised whatever the pupil's age and teaching level, i.e. including the nursery cycle.

(...)."

It is indisputable that the applicants applied for their daughter's enrolment in the Greek (EL) section, stating that the language spoken with the father is: "Greek" and with the mother: "Greek and French". They also consider that their daughter is at ease in the two languages, judging her proficiency level to be "excellent / 5" in the two languages.

In the absence of doubts about the pupil's mother tongue / dominant language, the Director could consider, on the basis of the information provided by the parents in the application file alone, that ██████'s enrolment in the Greek

section was appropriate, without there being any need for comparative language tests to be conducted.

The fact that she went to a Francophone crèche and nursery school is immaterial, since only education *in the primary or secondary cycle* for a minimum of 2 years might possibly be taken into consideration.

The Complaints Board also notes that the applicants did indeed apply for their daughter's enrolment in the Greek section, without the differences now alleged between the Greek language and the Cypriot dialect spoken at home having been an obstacle to her enrolment in that section.

The applicants' second argument must, therefore, also be rejected as unfounded.

10.

Finally, the applicants request the Complaints Board to ensure that they are given explanations regarding the award of the place and why they could not be awarded a place in their first choice School.

The CEA, which is the sole authority competent to give that type of information, responded to that request in detail in emails of 11 and 13 May 2020 sent direct to the applicants (and copied to the Complaints Board).

The Complaints Board therefore considers that request to have become moot.

11.

It follows from all the above that this appeal is manifestly unfounded in law within the meaning of the aforementioned provisions of Article 32 of the Rules of Procedure of the Complaints Board.

In the case in point, the provisions of the 2020-2021 Enrolment Policy and of the General Rules of the European Schools (Article 47(e)) were properly applied.

There is therefore no alternative but to dismiss this appeal as unfounded.

ON THESE GROUNDS, the Chairman of the Complaints Board

H A S D E C I D E D A S F O L L O W S :

Article 1: The appeal lodged by Ms [REDACTED] and Mr [REDACTED] registered under No 20-13, is hereby dismissed.

Article 2: Notification of this decision will be given as provided for in Articles 26 and 28 of the Rules of Procedure.

E. Menéndez Rexach

Brussels, 25 June 2020

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pp. The Registry

Nathalie Peigneur

Pursuant to Article 40a of the Rules of Procedure, this order *"may exceptionally be referred to a section composed of three members at the express request of a party based on a particularly serious ground and made within one month after notification of the decision given."*