

Appeal 23/13

■■■■■

COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

Reasoned Order of 8 June 2023

In the case registered with the Registry of the Complaints Board under No **23/13**, concerning an appeal lodged on 17 May 2023 by Ms ■■■■■ and M. ■■■■■, legal representatives and parents of ■■■■■, domiciled at ■■■■■, and brought against the decision of the Central Enrolment Authority dated 5 May 2023,

Mr Aindrias Ó Caoimh, judge rapporteur designated by the Chairman of the Complaints Board to rule by means of a reasoned order under the conditions laid down in Article 32 of the Rules of Procedure, according to which: *"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 the rapporteur designated by him"*,

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

issued the reasoned order on 8 June 2023, the grounds for and operative part of which appear below,

Main facts of the case and arguments of the appeal

1.

During the first enrolment phase, the applicants submitted an enrolment application for their son [REDACTED] for the nursery cycle of the Greek language (EL) section at the European School, Brussels III for the 2023-2024 school year.

The parents indicated the following order of Schools 's preferences: Brussels III (Ixelles), II – Evere, II – Woluwe and I – Berkendael.

They did not invoke any particular circumstances to justify a priority criterion within the meaning of Article 8.4. of the Policy on Enrolment for the 2023-2024 school year (hereinafter the PE).

2.

With its decision dated 5 May 2023, the Central Enrolment Authority (hereinafter the CEA) offered the applicants, in accordance with Articles 6.1., 6.18., 6.19., 6.20.g) and 10.4.h) of the PE 2023-2024, a place in the nursery cycle of the Greek language (EL) section at the European School, Brussels I - Berkendael site.

3.

The current contentious appeal is brought against this decision, as permitted by Article 67, paragraph 2 of the General Rules of the European Schools (hereinafter the GRES) and Article 14.2 of the PE 2023-2024.

The applicants request:

- the annulment of the CEA 's decision;
- a place in the French section for pedagogical and linguistic reasons;
- the possibility for their son to have comparative language tests;
- a place in the nursery cycle of the Ixelles site/Brussels III;

In support of their appeal, the applicants submit, in essence, that [REDACTED]'s dominant language is French (*"due to misunderstanding, Greek was ticked instead of French"* in the enrolment's application) and he must be enrolled at the closest school from home *"for health and well-being reasons"*.

Assessment of the designated judge rapporteur

Regarding the admissibility of the appeal,

4.

The admissibility of the current appeal is not discussed.

Regarding the merits,

5.

Pursuant to **Article 50a.1 of the GRES**, *'The only case in which an appeal may be lodged by the pupil's legal representatives against decisions taken on an application for enrolment shall be when it has been demonstrated that there has been a **procedural irregularity** or when a **new and relevant fact** needs to be*

taken into consideration'. (Emphasis added).

The current appeal is manifestly unfounded in law under the provisions of Article 32 of the Rules of Procedure for the Complaints Board mentioned above: the applicants have not proven the existence of a procedural irregularity affecting the legality of the disputed decision, or that a new and relevant fact needs to be taken into consideration, or the existence of a manifest error of assessment.

6.

Concerning the requested change of linguistic section,

The Complaints Board has already ruled, on numerous occasions, on the nature, extent and limits of Article 47 e) of the GRES governing the determination of the language section at the time of enrolment (on this matter, see decisions 14/17, 15/51, 17/13, 18/27, 19/51, 20/69 and 21/19).

According to the established case-law of the Complaints Board on this matter, it should be recalled that:

a) The GRES does not grant parents the right to have their child admitted to the language section of their choice, since this decision is the responsibility of the school's Director, who must determine the appropriate language section for the child through the established procedure (on this matter, see decisions 13/37 and 14/17).

b) The parents are therefore not free to choose the language section; it must be chosen on the basis of a pedagogical assessment performed by the school, in the interest of the child, in light of the information provided by the child's

parents and, where there is any doubt or a dispute, on the basis of the comparative language tests organised and marked by the teaching team. This decision is a pedagogical decision over which the Complaints Board has no jurisdiction, except in the case of a manifest error of assessment or a procedural irregularity.

7.

In this instance, the Complaints Board notes that:

- the applicants, of French and Greek nationalities, applied for their son to be enrolled in the Greek language (EL) section;
- in their enrolment application, they stated that their son is bilingual (equal competence in Greek and French);
- their choice of the Greek language (EL) section does not appear to be illogical since it is the mother tongue of the child;
- in the absence of doubt about the child's mother tongue / dominant language, there was no need to decide that comparative tests were necessary.

There is no manifest error of assessment nor a procedural irregularity in the pedagogical decision of the Director of the school when he did not organise comparative language tests.

These tests are not compulsory, unless there is a doubt or a dispute at the time of determining the linguistic section in which the child has to be enrolled (at the time of the decision of *admission*, which is prior to the decision of *enrolment* (Article 2.32 PE). In this case, the “dispute” is created *a posteriori*, for the purposes of the appeal.

8.

It must also be pointed out that the child has not been educated for a minimum of *two years at primary or secondary level*; hence, the presumption outlined in the second paragraph of Article 47(e) of the GRES (*‘a minimum of two years at primary or secondary level’*), which would have permitted the rule regarding teaching in the mother tongue / dominant language to be waived, cannot be applied in this instance and must not be taken into account, contrary to what the applicants claim.

9.

It should also be noted that [REDACTED] will receive teaching in French as his second language and will have the opportunity to use this language with his father and during his extracurricular activities. He will be then perfectly bilingual Greek (Language I) and French.

The change of Language I as requested by the applicants may only be considered after a time of schooling (observations period of 3 weeks to 6 months) and with an appreciation from the Class Council underlining *“compelling pedagogical reasons”*.

10.

Concerning the request for a place in the closest school from home,

The applicants seek a place in the French section at the European School, Brussels III - the closest school from home - *“for health and well-being reasons”*.

11.

Firstly, it should be noted that the alleged particular circumstance was not invoked as a priority criterion on submission of the enrolment application (Article 8.4.2. PE) with supporting documents (Articles 8.4.5. and 8.4.7. PE).

However, these provisions require that the particular circumstances be invoked, and supporting documents be provided, at the time of submitting the enrolment application. The provisions reflect the general principle that the legality of an administrative decision is assessed when the decision is made, according to the elements that the administrative authority knows or should know at that point in time (see decisions 16/24 (point 7), 16/33 (point 14), 19/21, 19/36, 21/21 and 22/33).

12.

Secondly, though certain particular circumstances allow the applicants for enrolment in the European Schools of Brussels to obtain a priority criterion with a view to the enrolment of a pupil at the school of first preference, Article 8.4.3. of the PE 2023-2024 expressly identifies those which are not relevant for this purpose, notably the location of the home or place of residence of the child and/or his/her legal representatives, constraints due to the professional activities of the legal representatives and practical constraints on the organisation of travel.

In this regard, it is important to recall that, in accordance with the established case law of the Complaints Board, though it is clear from the objectives of the Convention defining the Statute of the European Schools that the children of employees of European institutions have a right to access the education

provided by these Schools, such a right does not necessarily imply that it be exercised in the school of their choice, based solely on the location of their home or their place of work, the organisation of travel and professional or practical constraints for the organisation of familial life (see decisions 16/23, 18/10, 19/46, 20/26, 21/06, 21/14, 21/15, 21/16, 22/13 and 22/44).

Whatever the consequences, even cumulative, that such constraints may have, these cannot constitute in and of themselves a particular priority criterion allowing those who invoke them to obtain the enrolment of their child in the school of their choice.

The enrolment rules are necessary in view of the overcrowding in the European Schools and the accommodation capacities (reasonable and objective grounds) and apply to all applicants for enrolment or transfer, regardless of the location of the home, which cannot be a priority criterion as it depends upon the free choice of the parents, and over which the CEA has no power (see decision of principle 07-14, point 35: *'While it can be readily accepted that an excessive distance between the school and the home may be particularly detrimental to a child of nursery or primary school age, it must be stated that the Board of Governors of European Schools has no control over the location of said Schools, which requires the agreement of the host Member State, or over the location of the pupils' homes, which depends exclusively on their parents'*). Therefore, where there are several schools in the same city, as is the case in Brussels, the geographic location of each of them cannot, on the grounds that the parties concerned are free to choose the location of their home, constitute the exclusive criterion for the exercise of their right to access the education provided by these schools.

The European School system, which cannot be compared to national educational systems, has a limited number of establishments located in cities with European institutions or bodies as agreed with the national authorities and not a network within these cities allowing for all pupils concerned, no matter the location of their home, to be provided with education in their vicinity, according to the criteria provided by the applicants for enrolment or transfer.

It is for all of these reasons that Article 8.4.3. of PE 2023-2024 provides that the location of the home or the professional or practical constraints for the organisation of familial life cannot be considered a relevant particular circumstance for granting a priority criterion, no more so than the difficulties in organising transport between the home and the school.

Because the Complaints Board can only assess the legality of the decisions contested before it, and because the regulatory framework within which the disputed decision was taken clearly excludes the location of the home and the constraints of the organisation of familial or professional life, the Board must reject the applicants' argument that the distance between the home and the assigned school is too great, including the related consequences : the school bus timetables, the duration and distance of travel, the pupil's quality of life, a more demanding school schedule to the detriment of homework, extracurricular activities or sleep, as well as ecological and environmental considerations (pollution, energy waste and difficulty of using green transport options (walking or cycling)).

It follows that the applicants' arguments, essentially based on the location of the School in relation to their home and the consequences thereof direct and indirect, cannot be accepted as well-founded.

13.

The location of the home or the constraints of professional and familial organisation cannot, where applicable, be taken into account in the evaluation of unacceptable consequences that could result from the strict application of the rules of the PE, it being specified in particular that, in accordance with Article 8.4.4. of the PE 2023-2024, *'any medical complaints from which the child, or one of the people involved in his/her care on a daily basis, might suffer from 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, in this case, the applicants do not provide any evidence of a medical condition requiring a treatment for which the choice of school would be an essential measure.

14.

Firstly, it should be noted that the medical problem – known to the parents at the time of the enrolment application - was not invoked as a priority criterion on submission of the enrolment application (Article 8.4.1. PE) with supporting documents (Articles 8.4.5. and 8.4.7. PE).

15.

Secondly, the two medical reports dated 16 and 17 May 2023 do not clearly indicate the nature, frequency and location of the treatment required, for which the choice of the school would be an *essential measure*, within the meaning of

Article 8.4.4 PI 2023-2024.

It is not demonstrated that, without granting the requested priority (Brussels III), the treatment or care cannot be provided, or can be provided but under conditions which impose excessive, unacceptable or disproportionate burdens on the parents and the child (see decisions 18/33, point 5 and 19/18).

According to established case law of the Complaints Board (see decisions 14-08 and 19-02, point 10), it has been consistently held that medical certificates must state that the measure is essential by describing the consequences of attending the assigned school (or original school, in the case of transfers) and outlining why the measure is essential with regard to the treatment received and the precise implications of the opposing measure on the child's health status (decision 16/36, which relates to a transfer, and confirmed by decisions 18/33, point 5 ; 19/02, point 10; 21/05, point 9, and 22/32, point 8, which relate to enrolments).

Evidence must be provided of a condition that requires treatment for which the place of schooling is an essential measure.

The two medical reports - provided after the disputed CEA' decision - do not refer to any treatment other than the priority sought by the applicants and only *recommend* that the child attend a school close to home, to avoid experiencing excessive fatigue, having to get up early etc., on the grounds of the child's well-being.

Nevertheless, it must be acknowledged that needing sleep is not a *condition* requiring *treatment* for which the place of schooling is an *essential measure*: all

children need to be rested to be in top form. [REDACTED]'s situation is no different from that of other children of the same age.

Therefore, this sleep requirement cannot be accepted as a particular circumstance that characterises [the child]'s situation and differentiates it from any other case which *'requires appropriate treatment to mitigate the unacceptable consequences which the rules of this Policy would otherwise have had'* (Article 8.4.2. PE 2023-2024).

16.

In conclusion, the CEA did not fail to comply with the provisions of the PE 2023-2024. The Complaints Board has not identified the existence of a procedural irregularity affecting the legality of the disputed decision, nor that a new and relevant fact needs to be taken into consideration, nor the existence of a manifest error of assessment.

The appeal can therefore only be dismissed as unfounded.

ON THESE GROUNDS, the designated judge rapporteur

D E C I D E S

Article 1: The appeal of Ms [REDACTED] and M. [REDACTED], registered under No **23/13**, is dismissed.

Article 2: This reasoned order shall be notified in accordance with the conditions under Articles 26 and 28 of the Rules of Procedure.

A. Ó Caoimh

Brussels, on 8 June 2023

Original version: EN

On behalf of the Registry,
Nathalie Peigneur

Under 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."