



COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

(1st section)

Decision of 26 August 2024

In the case registered at the Registry of the Complaints Board under No 24/08, concerning an action brought on 28 April 2024 by Ms [REDACTED] and Mr [REDACTED] seeking annulment of the decision of the Central Enrolment Authority offering their youngest son [REDACTED] a place in Primary 4 of the English section of the Brussels I European School in so far as that offer was for the Berkendael and not the Uccle site.

The Complaints Board of the European Schools, 1st section, comprising:

- Eduardo Menéndez Rexach, President of the Complaints Board,
- Paul Rietjens, member,
- Mark Ronayne, member and rapporteur,

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

having regard to the written observations presented by the applicants as well as by Me Muriel Gillet, advocate at the Brussels Bar, on behalf of the European Schools,

having heard, at the public hearing of 19 July 2024, Mr Ronayne's report as well as the oral arguments of the applicants and Me Gillet and M.Beckmann, Secretary general of the European Schools,

delivered on 26 August 2024 the decision in respect of which the reasons and grounds and the operative part thereof appear as follows.

The facts

1.

On 28 January 2024, during the first phase of the 2024–2025 enrolment campaign, the applicants, both members of staff of a European Institution, submitted enrolment applications for the English language section of the Brussels European Schools for their sons ██████, in Secondary 1, and ██████, in Primary 4.

They requested that Other National Language classes be granted for both sons in Maltese.

By decisions of 25 April 2024, they were informed that the applications had been dealt with jointly, so as to offer each son a place in the same school, and that ██████ had been offered a place at the Uccle site and ██████ at the Berkendael site of European School Brussels I.

They submitted this appeal by electronic mail on 28 April 2024 against the decision to offer ██████ a place at the Berkendael site.

The forms of order sought

2.

The applicants ask the Complaints Board “*to consider that Maltese students are a particular case and to remedy this unfair situation and offer ██████ a place on the Uccle site together with his brother ██████ so that they can both be guaranteed Maltese lessons and further their studies in the spirit of the European schools*”.

The Schools ask the Complaints Board:

“To find the appeal admissible but unfounded;

To order the applicants to pay the defense costs of the European Schools at an amount fixed ex aequo et bono at €800.00”.

The parties’ pleas and arguments

3.

The applicants put forward, first, arguments related to the teaching of the Maltese language at the Berkendael site; they mention that the School was, in fact, unable to deliver the requisite number of teaching hours in Maltese during the 2023/2024 school year at the Berkendael site and that, as the pool of Maltese students is bigger on the Uccle site, ██████ would get a wider cultural exposure and have access to regular Maltese lessons if he were offered a place on the Uccle site.

Pointing out that ██████ would, in fact, be the only pupil in his Maltese language class at the Berkendael site, they argue that the decision to offer him a place there does not contribute to any of the aims of the Central Enrolment Authority’s *Policy on Enrolment in the Brussels European Schools for the 2024–2025 school year* (2023-12-D-16-en-3, hereafter « the Enrolment Policy”) but, on the contrary, increases the administrative burden and staff costs in moving a teacher to give two lessons a week to only one student, creates a new “*parallel situation*” of having one Maltese ONL student in P4 on the Berkendael site while the P4 EN/ONL MT class on the Uccle site continues to exist and goes against the European Schools general policy of keeping siblings together on the same site.

As regards sibling grouping, the applicants argue that the overarching principle and goal should be to keep all siblings in the same school and site and that this is the rationale of Article 8.2.1. of the Enrolment Policy. They point out that the Uccle and Berkendael sites are more than 3km apart, that their 8 and 10-year-old children would have to take different buses, with different bus stops and timetables, and that

this would be particularly challenging for a family with two working parents who, moreover, have to travel for their jobs.

Finally, they argue that, under Article 8.2.1 of the Enrolment policy, ██████ would have been awarded a place on the Uccle site if his brother had been already attending that site.

They feel that the overall aim of reducing overcrowding in the EEB 1, while commendable, cannot be resolved to the predicament of the MT ONL students. The number of Maltese pupils is so small that a case-by-case and more pragmatic approach should be adopted each year to find the best solution for them.

4.

The Schools argue that it is inaccurate to claim, as the applicants do, that the teaching of Maltese at the Berkendael site is not guaranteed. They maintain that the Brussels I European School is perfectly able to organise Maltese lessons at both sites, in accordance with the Language Policy and that since ██████ would receive the same ONL teaching at the Berkendael site as at the Uccle site, the legality of the CEA's decision cannot be challenged on this ground.

They stress that the CEA has not committed any breach of the regulatory standards in complying with the text and the spirit of the Enrolment Policy. The contested decision granting ██████ a place at the Berkendael site was adopted in compliance with Article 5.4 of the Enrolment Policy which was adopted by the Central Enrolment Authority to give effect to a policy objective, decided by the Board of Governors, of progressively consolidating and migrating the nursery and primary cycles of European School Brussels I at the Berkendael Site.

They further argue that the relaxation of the principle of sibling grouping resulting from this provision, which remains to some extent guaranteed by the enrolment of siblings in the same school, if not necessarily at the same site, is proportionate to this resource rationalization objective.

They also stress that the applicants raised no particular circumstances at the enrolment phase, that they cannot do so now for the first time before the Complaints Board, and that, in any event, Article 8.5.3 of the Enrolment Policy clearly excludes the location of the home and the constraints of the organisation of familial or professional life from the list of particular circumstances which can be invoked.

Finally, as regards the applicants' argument that if only ██████'s place had been accepted and they had waited until the following year to enroll ██████, the latter would have been accommodated at the Uccle site, in accordance with the principle of regrouping of siblings under Article 8.2.1 of the Enrolment Policy, the Schools contest this reading of the Enrolment Policy and also argue that the policies on enrolment are annual and it is therefore impossible to make suppositions about the outcome of enrolment applications for subsequent school years.

Findings of the Complaints Board

5.

The Complaints Boards observes that the contested decision granting ██████ a place at the Berkendael site was adopted on the basis of Article 5.4 of the Enrolment Policy which reads:

« By way of derogation from Article 5.3., when the CEA awards places at EEB1 in the EN²⁴ and IT language sections for joint applications, including at least one of which concerns a pupil in the secondary cycle and at least one concerns a pupil in the nursery or primary cycle, the first will be referred to EEB1 – UCC Site and the second will be referred to EEB1 – BRK Site, provided that there is a place available or to be filled. »

(Footnote 24 reads “Including Maltese pupils. »)

This provision was enacted by the Central Enrolment Authority to give effect to a policy objective, decided by the Board of Governors, of progressively consolidating the nursery and primary cycles of certain language sections of European School Brussels I at the Berkendael Site. This policy specifically recognizes that “*new joint*

enrolments at the Brussels I European School ... involve enrolling siblings at the same school but not necessarily at the same site, if they are enrolled in different cycles for nursery and primary, on the one hand, and secondary on the other” (Guidelines for the 2024-2025 Policy on Enrolment in the Brussels European Schools (2023-12-D-13-en-1) (page 5).

6.

The principle of sibling grouping has been an important feature of the rules governing the enrolment of pupils in the different Brussels European Schools since the creation of the Central Enrolment Authority in 2006.

However, on several occasions over the last decade, its scope has been limited. As explained in the relevant Guidelines, adopted annually by the Board of Governors, these changes were each time deemed necessary in view of the growing overcrowding of the European Schools in Brussels.

The Complaints Board’s case-law makes clear that it is open to the Central Enrolments Authority, which introduced the principle of sibling grouping into its rules, to limit the scope of application of this principle in certain situations provided that these limits are established in a proportionate manner, and under precise conditions, bearing in mind the balance which must be sought between the interests of the pupils and their families, on the one hand, and the interest of the organisation and management of the schools, on the other (see, for example, decision 23/11 of the 31st of August 2023, points 9 and 13).

7.

It is in the light of these considerations that the Complaints Board must examine the arguments put forward by the applicants in this case.

They mention first the difficulties encountered by the School in providing the requisite number of ONL Maltese teaching hours at the Berkendael site during the 2023-2024 school year. In this regard, the Complaints Board notes the Schools’

undertaking that, for the 2024-2025 school year, the necessary practical solutions will be found to ensure that the Brussels I European School will be able to organize Maltese lessons for pupils at both sites, in accordance with the Language Policy.

The applicants also refer to the fact that [REDACTED] will be the only pupil in his P4 ONL Maltese lesson in Berkendael (whereas he would have a small number of classmates in the parallel P4 lesson at the Uccle site) and that this will incur additional costs and administrative burden for the School and deprive [REDACTED] of the cultural benefits of participating in his ONL class with classmates.

The fact that [REDACTED] may be the only pupil in his Maltese ONL class does not affect the legality of the decision to assign him to the Berkendael site. The very small number of Maltese pupils means that there is an inherent risk of one of them being the only pupil in his or her ONL language class and this is not a ground for exempting them from the general rule contained in Article 5.4 of the Enrolment Policy. The important point is that the requisite ONL Maltese teaching hours be provided in accordance with the Language Policy.

Similarly, the additional costs and administrative burden resulting from the provision of teaching for one pupil at the Berkendael site are not matters that affect the legality of the contested decision and must, in any event, be set against the expected overall benefits of consolidating and migrating the nursery and primary cycles of European School Brussels I at the Berkendael Site.

8.

As regards the principle of sibling grouping, the Complaints Board finds that the limitation of the principle in this case resulting from the application of the measure contained in Article 5.4 of the Enrolment Policy reflects a fair balance between the interests of the pupils and their families, on the one hand, and those of the organisation and management of the School, on the other and, consequently, cannot be considered to be disproportionate. It is always regrettable when siblings cannot be assigned to the same site of a School but it has to be recognized that the above measure is indeed necessary to achieve an important policy objective

designed to alleviate the overcrowding problem at the Brussels schools, namely the consolidation of the nursery and primary cycles of some language sections of European School Brussels I at the Berkendael site.

The Complaints Board notes that the applicants did not invoke any particular circumstances in their enrolment application, in accordance with Article 8.5 of the Enrolment Policy, in order to obtain a derogation from the general rule set out at Article 5.4 of this document, and considers that the practical difficulties which they do mention in these proceedings (*“... our 8 and 10 year old children will have to go on two different buses, with different bus stops and different timings, which is particularly challenging for a family with two working parents. Moreover, since we work for the European Parliament, one of us always need to travel to Strasbourg for one week per month”*) would, in any event, have had to have been excluded under Article 8.5.3 of the Enrolment Policy.

9.

Finally, the applicants’ argument according to which [REDACTED] would have had to have been awarded a place at the Uccle site if [REDACTED] was already there, in accordance with Article 8.2.1 of the Enrolment Policy, is based on a hypothetical factual situation which did not occur and is therefore not relevant to the legality of the contested decision.

In any event, the Complaints Board considers that the policy objective expressed by the Board of Governors in its *Guidelines for the 2024-2025 Policy on Enrolment in the Brussels European Schools*, that the *“younger brothers and sisters of children already enrolled at the Uccle site in the secondary cycle, who are to be educated in the nursery or primary cycles, will be accommodated at the Berkendael Site”* (page 5), as well as the wording of Article 8.2.2 of the Enrolment Policy (*“When the CEA awards a place at EEB1 in the EN and IT language sections in the context of regrouping of siblings, including at least one of whom concerns a pupil in the secondary cycle and at least one of whom concerns a pupil in the nursery or primary cycle, the newly enrolled sibling will be referred to EEB1 – UCC site if they are to be schooled in the secondary cycle and to EEB1 – BRK site if they are to be*

schooled in the nursery or primary cycle, provided that there is a place to be filled.”) support the Schools reading that ██████ would, in fact, have been awarded a place in the Berkendael site even if ██████ had already been enrolled in the Uccle site.

10.

In conclusion, the Complaints Board finds that the Central Enrolment Authority acted in accordance with the applicable rules in assigning ██████ to the Berkendael site and that the examination of the arguments put forward in this case does not disclose an illegality affecting the relaxation of the principle of sibling grouping contained in Article 5.4 of the Enrolment Policy.

As mentioned above, at point 7, the Complaints Board notes the Schools’ undertaking that, for the 2024-2025 school year, the necessary practical solutions will be found to ensure that the Brussels I European School will be able to organize Maltese lessons for the pupils of both sites, in accordance with the Language Policy, and also recalls the undertaking given at the hearing to favour efficient and proportionate solutions in examining the different possibilities open to it.

For these reasons, the application must be dismissed.

On the legal and other costs,

11.

Article 27 of the Rules of Procedure of the Complaints Board provides: *“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. Where the parties have come to an agreement on costs, the decision as to costs shall be in accordance with that agreement. If costs are not claimed, the parties shall bear their own costs.”.*

In this case, the applicants raised important questions regarding the teaching of Maltese at the Berkendael site. In view of the difficulties encountered by the School in providing the requisite number of teaching hours there in the 2023-2024 school year, they were entitled to be concerned and to consider it necessary to bring this case.

In these circumstances, it is appropriate that each party bear their own costs.

FOR THESE REASONS, the Complaints Board of the European Schools

DECIDES

Article 1: The appeal of Ms [REDACTED] and Mr [REDACTED], registered under case number 24/08, is dismissed.

Article 2: Each party shall pay their own costs.

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

E. Menéndez Rexach

P. Rietjens

M. Ronayne

Brussels, 26 August 2024

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For the Registry,
Nathalie Peigneur