

COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

(1st section)

Decision of 31 August 2022

In the case registered with the Registry of the Complaints Board under No **22-09** concerning an appeal lodged on 12 May 2022 by Ms [REDACTED] and Mr [REDACTED], residing together at [REDACTED], legal representatives and parents of [REDACTED], and brought against the decision of the Central Enrolment Authority dated 6 May 2022 offering the pupil a place in the nursery cycle, Polish section, at the Brussels I European School – Uccle site for the academic year 2022-2023,

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

- Eduardo Menéndez Rexach, Chairman of the Complaints Board
- Mario Eylert, member and rapporteur
- Aindrias Ó Caoimh, member

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

having regard to the written comments submitted, on the one hand, by the applicants and, on the other hand, for the European Schools, by Mr Marc Snoeck, lawyer registered with the Brussels Bar,

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

in light of the notification of the operative part on 31 August 2022, pursuant to Article 26, paragraph 2 of the Rules of Procedure,

issued the complete decision, the grounds for and operative part of which appear below,

Main facts and arguments of the parties

1.

The applicants are Polish nationals and the parents of [REDACTED], born 27 August 2018. During the 2021-2022 school year, [REDACTED] the eldest son of their three children, was a pupil in the 2nd primary school class in the French language section at the Brussels II European School – Evere site (hereinafter: ESS BRX II).

2.

During the first enrolment phase, the applicants submitted a request to enrol their daughter [REDACTED] in the nursery cycle of the French language section at ESS II – Evere site for the 2022-2023 school year. With regard to the languages, they declared:

Language	Spoken (years)	Level of familiarity	Spoken with parent 1	Spoken with parent 2
Polish	3	3	yes	yes
French	1	2	yes	yes
Spanish	3	3	yes	yes

3.

In a letter dated 21/02/2022, ES BRX II confirmed receipt of the application for enrolment. Due to doubts concerning the dominant language of the child, the Director of ES BRX II arranged for comparative language tests in French, Polish and Spanish.

4.

██████ took the comparative language tests on 7 March 2022. These showed a preponderance of Polish (8/10) over French (5/10) and Spanish (2/10).

5.

By its decision of 6 May 2022, the Central Enrolment Authority (hereinafter CEA) offered ██████ a place in the nursery class in the Polish language section at ES BRX I – Uccle site. In its decision, the CEA indicated that the regrouping of siblings would not be possible as there is no Polish language section at ES BRX II, where ██████'s brother is enrolled.

6.

By the present application, the applicants challenge this decision of the CEA and seek a place for their daughter in the nursery class of ES BRX II – Evere site in the French language section. In support of their action, and by their reply of 13 June 2022, they essentially claim that:

a) ██████ has been in a French-speaking nursery class since September 2021. She has learned French without any difficulty. The French test accordingly shows that she has sufficient French language skills and has an excellent understanding of French. In only a few months, French will be her dominant language.

b) ██████'s brother is enrolled in the French language section at ES BRX II. It is one of the basic principles of the European Schools not to separate siblings but to regroup them in the same school. In the case of ██████, the siblings would nevertheless be enrolled in two different schools and in two different language sections.

c) The decision of the CEA violates their educational right, namely to decide how and in which language their child should be educated.

d) Finally, the ES system does not take sufficient account of the particular circumstances of staff of the national diplomatic services who must frequently change their place of residence and for whom it is therefore necessary to seek a certain degree of continuity in the school system, such as the Belgian-French system in the case at hand.

7.

The European Schools nevertheless believe that while the application may be admissible, it is unfounded and that the applicants should pay the costs and expenses of the proceedings, estimated at EUR 800.

In support of their submission to dismiss the action, they essentially state that:

a) The decision of the CEA displays neither a procedural irregularity nor a manifest error of assessment. In particular, there are no apparent potential irregularities in relation to the language tests.

b) The starting point is the fundamental principle of the European Schools, pursuant to Article 47e) of the General Rules of the European Schools (hereinafter GR), to enable a child to be schooled in their dominant language and then to enhance their language skills in other languages (languages 2, 3 and 4). In this respect, according to the comparative language tests, it has been established that [REDACTED]'s mother tongue/dominant language is Polish.

c) The fact that [REDACTED] has already spent one year in the French-speaking Belgian school system is, in contrast, irrelevant. Pursuant to Article 47e, such a situation is only relevant after two years of schooling in the primary or secondary cycles.

d) The fact that her brother, [REDACTED], is already enrolled at ES BRX II in the French language section therefore also has no impact on the allocation of a place in the nursery section at ES BRX I in the Polish language section. While regrouping siblings constitutes a special priority criterion, the other three conditions stipulated in Article 8.2.1 of the Policy on Enrolment in the Brussels European Schools for the

2022-2023 school year (hereinafter PoE) must also be met. As there is no Polish language section at ES BRX II, the regrouping of siblings was not taken into consideration.

e) Finally, the ES refer to the fact that the regrouping of siblings pursuant to Article 47 e) by means of a proposed transfer of their eldest son to ES BRX I in accordance with Article 9.7 b) PoE would be possible and, furthermore, that other aspects – such as the fact that the applicants no longer wanted to return to Poland – do not constitute particular circumstances pursuant to Article 50 GR and are therefore irrelevant.

Assessment of the Complaints Board.

8.

The appeal though admissible is unfounded.

On the substance of the application,

9.

There is no doubt as to the admissibility of the appeal, insofar as it seeks to annul the decision of the CEA of 6 May 2022. Insofar as the applicants seek a positive decision, namely the assignment of their daughter [REDACTED] to the nursery class in the French language section, the appeal is nevertheless inadmissible, as the Complaints Board cannot issue such an order.

10.

Insofar as the application is admissible, it is nevertheless unfounded. The decision of the CEA to offer [REDACTED] a place in the nursery class at ES BRX I in the Polish language section is lawful and does not violate the applicants' rights. The decision of the CEA is not vitiated by any error in law.

11.

Article 47 e) GR stipulates that:

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 (L1) 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.

Determination of L1 at the time of the child's enrolment is definitive in principle.

....."

12.

Pursuant to Article 50a paragraph 1 GR, "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."

13.

The principles of the established case law of the Complaints Board (see in particular decisions 14/17, 15/51, 17/13, 18/27, 19/51, 20/69 and, most recently, 21/ 28) concerning the above provisions of the GR can be summarised as follows:

- a) According to the basic principle of the ES, teaching in the mother tongue/dominant language should be considered the first language insofar as such a language section exists upon enrolment of the pupil;
- b) The mother tongue/dominant language is the language of which the child has the best command, in order to give him/her a solid foundation for a successful school career and subsequently to facilitate the gradual learning of other languages. This principle therefore reflects the best interests of the child (see in particular decision 16/20 – Point 24);
- c) The L1 is determined at the time of the pupil's enrolment. It is, in principle, final and applies for the entire time at nursery and school;
- d) The regulations of the independent GR do not give parents the right to enrol their child in the language section of their choice. This (educational) decision is the sole responsibility of the school's Director, who must determine the appropriate language section for the child in accordance with a specific procedure;
- e) The choice of language section is therefore not left to the parents. Rather it is the result of an educational assessment made by the school in the interests of the child on the basis of the information provided by the parents and, in the event of any doubt or a dispute, on the basis of the results of the comparative language tests organised by and under the control of the teaching staff;
- f) The educational assessment to be provided by the teachers and the Director cannot, in principle, be examined in detail or replaced by the Complaints Board. A judicial review is possible only exceptionally and only in the event of an obvious error of judgement or a procedural irregularity (see decisions 17/13, 19/51 (Point 8), 19/55 (Point 7), 21/28 (Point 11 et seq.);
- g) The individual schools have a certain degree of autonomy in organising the language tests. However, the requirements for comparability of the language tests

must be met. The language tests must be conducted such that an objective comparison of the results is possible (decisions 17/23 and 21/28);

h) To ensure the comparability of the language tests, the ES have established the "Regulations for the organisation of language tests in the nursery cycle and primary cycle 1", enclosed as Appendix I to the document "Establishment of a harmonised procedure for the organisation of language tests (Article 47(e) of the General Rules of the European Schools)" and approved by the Joint Board of Inspectors on 10 October 2018 (Ref.: 2018-09-D-23-de-2).

14.

In light of the above regulations and the principles developed by the Complaints Board, the decision of the CEA of 6 May 2022 cannot be contested from a legal standpoint. On the basis of the comparable language tests conducted without any procedural irregularities, it should be assumed that [REDACTED]'s mother tongue/dominant language is Polish pursuant to Article 47 e) GR.

15.

For the assessment of language skills, the time of the application for enrolment and the language test conducted is decisive as, according to the provisions of the GR, the ES is solely responsible for determining the language L1 at the time of enrolment (see, for example decision of the Complaints Board 21/39). Contrary to the view of the applicants, who claim that [REDACTED] learns (French) very quickly, the fact that knowledge of another language becomes dominant during the "school life" of a pupil is just as irrelevant as the other circumstances that the family lives in Belgium or that the applicants may be required to move for professional reasons and [REDACTED] would therefore be required to change to a different school system in which no teaching is provided in Polish as L1. Finally, reference to a possible violation of the educational rights of the applicants – also having regard to Article 24 paragraph 2 EU-GRC – does not apply in this respect in order to justify a different result, as the dominant language is established from an educational standpoint and therefore at the discretion of the school's Director and not of the parents (Article 47 e paragraph 5 GR). The result of the comparative language test forms the decisive basis for the

L1 language of which a child has the best command and, looking further ahead, which language offers the best conditions for the child's subsequent school career.

16.

There are no grounds for deviation pursuant to Article 47 e) paragraph 3 GR, as [REDACTED] has indisputably not spent two years in the primary or secondary cycle of a school system in a different language.

17.

Furthermore, the principle of regrouping of siblings, which is not expressly stated in the GR but is developed from the case law of the Complaints Board and adapted from the provisions of the PoE (see Article 8.2.), does not justify admission of [REDACTED] in the nursery cycle of ES BRX II in the French language section because the condition stipulated in Article 8.2.1 letter c) PoE, that the language section (or satellite class) of the pupil for whom the application is being made exists, must be met. In the case at hand, ES BRX II does not have a Polish section.

18.

Due to the lack of a Polish section, the child cannot be assigned to the French language section solely for the purposes of regrouping the siblings, with the other dominant language/mother tongue being ignored. A derogation from the statutory basic principle set out in Article 47 e) paragraph 1 GR is only possible pursuant to Article 47 e) paragraph 3 if the child has already been enrolled for a longer period of time in a different school system. The GR do not provide for other particular circumstances justifying a deviation from the basic principle of the mother tongue/dominant language. This means that a regrouping of siblings can in no event justify the pupil applying for enrolment being taught in a language other than the dominant language. Accordingly, the European Schools rightly refer to the fact that the welfare of every pupil, including his/her academic development, must be taken into consideration in that it must be ensured that he/she is educated in a language of which he/she has sufficient or the best command in order to be able to follow the

school programmes successfully. This can therefore lead to siblings being taught in different language sections because they have different language skills in different languages as a result of different circumstances at home and different educational backgrounds (also at different periods of time). The Complaints Board has therefore already determined in earlier decisions that the mere fact that a brother or sister of a pupil is taught in a different language does not constitute a particular circumstance that need be taken into account by the Director pursuant to Article 50 GR in order to deviate from the basic principle of admitting the pupil to the language section corresponding to his/her mother tongue/dominant language (cf. decision of the Complaints Board 14/15; see also decisions of the Complaints Board 22/05 and 22/20).

On the legal and other costs,

19.

Article 27 of the Rules of Procedure of the Complaints Board of the ES stipulates that the unsuccessful party shall be required to pay the costs. In view of the unsuccessful motion of the applicants, it is appropriate that they be required to pay costs totalling € 400.

ON THESE GROUNDS, the Complaints Board of the European Schools

D E C I D E S

Article 1: The contentious appeal of Ms [REDACTED] and Mr [REDACTED]
[REDACTED] registered under the number **22/09**, is rejected.

Article 2: The Applicants are required to pay to the European Schools the sum of € 400 in respect of costs and expenses of the application.

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 31 August 2022

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On behalf of the Registry,
Nathalie Peigneur