

Appeal No. 20/78

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COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

Reasoned Order of 15 October 2020

In the case registered with the Registry of the Complaints Board under No. **20/78**, the subject of which is an appeal lodged on 22 September 2020 by Mr. ■■■■■ and Ms ■■■■■, living at Avenue Moliere 86/12 - 1190 - Forest, against the decision of the Central Enrolment Authority for the Brussels European Schools (hereinafter CEA) dated 08 September 2020 (hereinafter referred to as the CEA) whereby it offered a place in the nursery cycle of the IT language section at the European School of Brussels I – Berkendael Site, for their son, ■■■■■,

M. Eduardo MENÉNDEZ REXACH, Chairman of the Complaints Board giving a ruling 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 15 October 2020.

Main facts and arguments put forward in support of the appeal

1.

During the first enrolment phase, the applicants submitted an application for the enrolment of their son, [REDACTED], at the European School of Brussels I – Berkendael Site in the nursery cycle of the EN language section for the 2020-2021 school year.

2.

On 30 April 2020, the Central Enrolment Authority for the Brussels European Schools (hereinafter referred to as the CEA) offered a place to their son at the European School of Brussels I – Berkendael Site in the English language section but it conditioned to the results of comparative language tests in English and Italian organized by the European Schools.

3.

Those tests took place on 02 September 2020 and the Management of the European School of Brussels I informed on 07 September 2020 that according to the results of such tests the application could only be accepted for the Italian language section.

4.

On 08 September 2020, according to the decision of the Management the CEA sent a new notification cancelling and replacing the decision it notified on 30 April 2020 to offer a place to [REDACTED] a place in the Italian language section of the same European School.

5.

It is against this decision that the applicants lodge their direct appeal to the Complaints Board of the European schools to request a place in the English section.

6. To contest the decision their main arguments are:

- [REDACTED] has been in nursery school in a bilingual French/English section in the school year 2018-2019; He then moved to Amman (Jordan) with his mother, where he stayed for 4 months in a fulltime English teaching nursery and also with an English speaking babysitter. Back to Belgium, he started again in his bilingual nursery – Tutti Frutti and moved again to Dubai with his mother in January 2020;
- Due to the COVID situation, his mother returned to Belgium and asked for his enrolment in the English section;
- The results of the comparative tests indicated that [REDACTED] scored 69/100 but the overall mark assigned has been a 6;
- As soon as possible the mother will return to Dubai and that is why the applicants understand that [REDACTED] has to be enrolled in the English

language section, otherwise he there will be a gap between him and the other children of his age.

Findings of the Chairman of the Complaints Board

Legality of the contested decision

7.

It should be pointed out first of all, as the Complaints Board has stated several times (decision of 30 July 2007, appeal 07/14), that whilst it follows clearly from the objectives of the Convention defining the Statute of the European Schools that 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 or section of their choice alone.

8.

In accordance with Article 46(1) of the General Rules of the European Schools, for the European Schools located in Brussels, it is the Central Enrolment Authority which decides on a pupil's enrolment taking account of the enrolment policy and of the instructions issued by the Board of Governors.

9.

Determination of pupils' language section is governed by the rules laid down by Article 47(e) of the General Rules. That provision is conceived as follows:

“e) 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.

*In schools where the section corresponding to a pupil's mother tongue/dominant language does not exist, he/she will generally be enrolled in one of the vehicular language sections. He/She will attend the classes in his/her mother tongue/ dominant language organised for so-called **SWALS** (Students **W**ithout **A** Language **S**ection) as L1.*

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.

(...)"

10.

In the case in point, the applicants question the results of the comparative tests, although they do not contest the fact that they were organised in accordance with the provisions of the aforementioned Article 47(e). Now the results of those tests allowed the conclusion to be reached that English is not the child's dominant language and that he is more at ease in Italian, which is his mother's language. That finding is not invalidated by the applicants' assertion that their son speaks three languages (Italian, French and English for education).

11.

The CEA therefore had valid reasons to enrol the child in the Italian language section, corresponding to his mother tongue.

12.

The exception to the principle of teaching of mother tongue/dominant language as first language (L1), provided for in the aforementioned Article 47(e), 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, cannot be considered to be discriminatory solely because it does not cover the nursery cycle. The reason is that education in a nursery school cannot be regarded as equivalent to that provided at primary or secondary level.

13.

As regards the plea based on infringement of the child's best interests, it should be pointed out that Article 47(e) of the General Rules of the European Schools lays down the fundamental principle of the European Schools which establishes the teaching of mother tongue/dominant language as first language. That principle must clearly be considered to be laid down in the child's best interests.

14.

It has even been mentioned by the applicants in their appeal that they "understand and respect" the decision taken by the CEA but they challenge it for "compelling pedagogical reasons" which clearly have no grounds as per what has been explained here above.

15.

In that connection, the applicants' considerations concerning the career prospect of the mother and her foreseeable post transfers cannot suffice to compromise the application of such a principle.

16.

It should be noted, moreover, children who have English as L1 (main language) are obliged to choose between French and German as their second language. This means that if the applicants' son were enrolled in the English section, he would be obliged to have French or German as second language, in a situation where he already speaks Italian with his parents.

17.

As for the applicants' arguments challenging their son's performance on the English language test, considering that their son's performance is to be considered better, it should be noted that these arguments are against the aforementioned principle that exclusive jurisdiction in this matter lies solely with the teachers and not with the parents or the Complaints Board.

However, it would be different if there were a manifest error, a breach of procedure or a new fact.

However, the applicants do not invoke a breach of procedure or a manifest error that would have marred the conduct and the result of such test.

18.

The Complaints Board has neither a power of control over the Schools' assessments made pursuant to Article 47 e) of the General Rules in order to carry out a comparative evaluation of the test results to which the applicants' son was subjected, nor a power of injunction with regard to the administration of the European Schools on this matter.

Secondly, assuming that such a request is admissible, quod non, this request by the applicants implies that it must be admitted that the language tests at issue in the present appeal are affected by a manifest error or breach of procedure which, as has just been noted, the applicants neither invoke nor demonstrate.

19.

As the plea based on the child's best interests and the English test results cannot, therefore, be upheld, it follows that the appeal must be dismissed.

ON THESE GROUNDS, the Chairman of the Complaints Board

HAS DECIDED AS FOLLOWS:

Article 1: The appeal lodged by Mr. [REDACTED] and Ms [REDACTED], registered under No. 20/78, 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, 15 October 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."