

COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

Reasoned Order of 16 August 2021

In the case registered with the Registry of the Complaints Board under No **21/16**, the subject of which is an appeal lodged on 12 May 2021 by Ms ■■■■■■■■■■, legal representative of her son ■■■■■■■■■■ against the decision of the Central Enrolment Authority for the Brussels European Schools dated 30 April 2021, whereby it offered to enrol her son at the European School, Brussels II – Evere Site in the nursery cycle of the English language section for the 2021-2022 school year,

M. Paul RIETJENS, designated judge-rapporteur by the Chairman of the Complaints Board to give 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 16 August 2021.

Main facts of the dispute and arguments put forward in support of the appeal

1.

During the first enrolment phase for the 2021-2022 school year, the applicant submitted an application for the enrolment of her son [REDACTED] at the European School, Brussels I – Uccle Site, in the nursery cycle of the English language section. The applicant did not invoke a special priority criterion within the meaning of Article 8 of the 'Policy on Enrolment in the Brussels European Schools for the 2021-2022 school year' (hereinafter referred to as the 'Policy').

2.

On 30 April 2021, the Central Enrolment Authority (hereinafter referred to as the CEA) informed the applicant that, pursuant to the provisions of Articles 6.1., 6.17., 6.18.(a), 6.19.1. and 10.6.(k) of the 'Policy', with the aim of optimising the new Evere Site of the Brussels II School and in so far as the class requested is open there, it could offer [REDACTED] a place at the Brussels II School – Evere Site, in the same year group and language section.

3.

On 12 May 2021, the applicant lodged a direct contentious appeal with the Complaints Board against that CEA decision, as allowed by Article 67.2. of the General Rules of the European Schools and Article 14.1 of the 'Policy'.

She requested the Complaints Board to “*annul the decision of the CEA*”, so that her son “*can attend a school at a site we ranked more highly.*”

In support of her appeal, the applicant argues that there is discrimination between the applicants for enrolment for this 2021-2022 school year and the applicants for enrolment for the previous school years, since the list of preferences is not taken into account this year because of the priority given to the Brussels II School – Evere Site for some specific enrolments. The applicant points to the lack of clarity of the

enrolment rules and considers that she was misled when she was asked to list her priorities for schools (it was a waste of time).

According to the applicant, there is also discrimination between children to be enrolled in the nursery and primary cycles of some (widely spoken) language sections (the ones referred to the Brussels II School – Evere Site) and the others.

Finally, the applicant points out that she cannot accept the place offered because she is a single mother and the journeys from/to home and the Brussels II School – Evere Site would take her four hours every day and this would interfere with her job and working time. In her view, her son is too young and would suffer anxiety if he had to take the school buses on his own.

Findings of the designated judge-rapporteur

Legality of the disputed decision

4.

Pursuant to and in compliance with the rules laid down in the 'Policy', the 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.

There was no error in law in the award of a place for [REDACTED] at the ES, Brussels II – Evere Site, as it proceeded in accordance with the general enrolment provisions of the 'Policy'. There is no special criterion within the meaning of Article 8 of the 'Policy' for his admission to the ES, Brussels I – Uccle Site.

5.

For many years now, the Brussels European Schools have faced a recurrent overcrowding problem, which has been compounded as a result of the successive waves of EU enlargement. This overcrowding problem is accompanied by a

distribution problem, some schools and some language sections being more oversubscribed than others.

This reality is reflected in the policy on enrolment in the Brussels European Schools (hereinafter referred to as the ES), adopted annually and also adapted by the Board of Governors, according to needs and resources.

6.

Hence, the 'Policy', published on the ES' website and accessible to every applicant for enrolment, announces in its Preamble that:

“The Brussels European Schools as a whole face considerable difficulties in terms of accommodation capacity. The following points in particular illustrate these accommodation difficulties:

- On the basis of the statistics currently in the CEA's possession, the total pupil population of the four schools is constantly increasing (...)*
- The number of classrooms available on each site is a constraining factor, whilst the maximum number of classrooms has been reached (or is being reached) at EEB1 – UCC Site, EEB2 and EEB3.*

(...)

- The site of the European School, Brussels II – Evere will open its doors in September 2021 and its capacity will also be restricted to accommodating the nursery and primary teaching levels only (...)*

*The Policy's priority objective lies in building up the new Evere site's core pupil numbers, so as to lessen the overcrowding of the other schools/sites and to re-assign classes previously allocated to the nursery and primary cycles to secondary classes. Thus, for the year groups and language sections open at the EEB2-Evere Site, all enrolment applications will be referred there (**unless a priority criterion is claimed**).”* (put in bold by the Complaints Board).

7.

The explicit priority given by the ES to populating the new Evere site is highlighted in Articles 6.18.(a). and 6.19.1 of the 'Policy', worded as follows, in bold:

“ 6.18. Applications for enrolment in a multiple language section will be dealt with in the following order:

*a) Firstly, **the CEA will refer all enrolment applications to EEB2-EVE Site in the language sections and the year groups that are open there, provided that there is a place to be filled.**”*

“ 6.19. Enrolment applications will be dealt with as follows: (see Annex III).

*6.19.1. **Firstly, with the aim of optimising the new site's accommodation capacity, all applications for enrolment in the nursery and primary cycles of the DE, EN, FI, FR, IT, LT, NL, PT and SV sections will be referred to EEB2 – EVE Site.**”*

It is thus clearly announced that for the year groups and language sections open at the European School, Brussels II – Evere Site, all enrolment applications will be referred there as a matter of priority – **unless a priority criterion is claimed** – without taking account of the preferences expressed by applicants for enrolment.

In adopting the aforementioned rules of the 'Policy', the Board of Governors pursued a legitimate, proportionate and reasonable goal.

There is no legal argument discernible as to why the Board of Governors, as the body stipulating the rules, acting autonomously, might not adopt, and indeed was allowed to adopt, for organisational reasons, such prioritisation of award of places at the new site on account of the sharply rising pupil numbers in recent years (see in this connection the decisions of the Complaints Board of 31 July 2007 on appeal 07/22 and of 30 July 2012 on appeal 12/30, in the case of other organisational decisions).

With the said rules of the 'Policy', it is guaranteed that – in accordance with Article 6.1. thereof – all entitled pupils can be awarded **an** appropriate school or nursery place at the ES in Brussels, because fundamentally, entitled pupils have no claim to a place in a specific ES in Brussels but **only to a place in one of the ES** in Brussels (see decisions of the Complaints Board of 29 August 2019 on appeal 19/46 and, most recently, of 19 July 2021 on appeal 21/15)

8.

By offering the applicant's son a place in the nursery cycle of the English section at the Brussels II School – Evere Site, the CEA thus applied the 'Policy' properly.

9.

Furthermore, the argument based on discrimination must be regarded as unfounded.

Firstly, because, as stated above, the Enrolment Policies are different for every school year and can be changed if required. Consequently, they can only be successfully invoked for enrolment in schools in existence or planned in the year in question. As a result, no pupil or parent can claim to have a right to continuation of the enrolment conditions from year to year (see decision of the Complaints Board of 29 July 2016 on appeal 16/30).

Applicants for this 2021-2022 school year enrolment session and applicants for previous school years' enrolment sessions are not in the same situation. In that case, there could not be an infringement of the principle of equal treatment.

The Complaints Board has already decided on these grounds, as follows: “12. *For the same reason, since no pupil or parent of a pupil can claim to have a right to maintain the conditions of enrolment or transfer from one year to the next, the applicants are not entitled to maintain that they are victims of discrimination in relation to parents who benefited from other conditions for the school years subsequent to that of their son's first enrolment [...]. The principle of equal treatment*

can, in fact, be invoked only in respect of persons who are in a comparable situation and, in particular, as regards the enrolment of pupils of the European Schools of Brussels, in respect of those subject to the requirements laid down by the same enrolment policy applicable in the year in question” (decision of 20 July 2011 on appeal 11/24).

Secondly, because all new enrolment applications without a priority criterion, for the language sections and year groups open on the Evere site, were or are being referred there as a matter of priority.

All applicants for enrolment for those language sections and year groups were therefore treated in the same way, without it being possible to see in this an infringement of the principle of equal treatment and of non-discrimination, which implies that people placed in the same circumstances are treated in the same way and that people placed in different situations can be treated differently.

The applicant provides no evidence that would prove the opposite.

10.

As regards the applicant's argument 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 'Policy' 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 and / or the constraints of an occupational nature of the legal representatives' activities or practical constraints on organisation of travel or of family life.

In accordance with the Complaints Board settled and consistent case law (see its decision of 15 June 2011 on appeal 11-23, for example), whilst it follows clearly from the objectives of the Convention defining the Statute of the ES 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 location of the place of residence (home) of the child and/or his/her parents and practical constraints on organisation of travel are circumstances which are expressly excluded by Article 8.4.2. of the 'Policy'. This exclusion covers all 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 or transfer to the school of their choice.

The reason is that the ES system is not comparable with national education systems, having only a limited number of schools located in cities which are the seats of EU 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 ES, 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 on appeal 07/14 and of 5 May 2010 on appeal 10/07).

The enrolment and transfer rules are necessary, in view of the overcrowding in the ES and of the accommodation capacity (objective and reasonable grounds), and applicable to all applicants for enrolment or transfer, without regard to the location

of the place of residence (home), which, as said, cannot be a priority criterion, in so far as it is dependent on the free choice of parents and over which the CEA has no power.

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) and organisational constraints on family and/or occupational life, the Board cannot but dismiss the applicant's arguments based on too great a distance between the place of residence (home) and the school assigned, including the consequences of such a distance, such as those invoked by the applicant, including her son's alleged anxiety when taking the school buses on his own. [REDACTED] situation is no different from that of other young children who need to take the school bus and, with reference to Article 8.1 of the 'Policy', this situation does not require appropriate treatment as it is not characterised by circumstances differentiating it from other cases.

11.

It follows from the above that there is no alternative but to dismiss this appeal.

ON THESE GROUNDS, the designated judge-rapporteur

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] registered under No **21/16**, 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.

P. RIETJENS

Brussels, 16 August 2021

Original version: EN

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."*