

Appeal 22/02

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THE COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

Reasoned order of 22 February 2022

In the case registered with the Registry of the Complaints Board under No **22/02**, regarding an appeal submitted on 20 January 2022 by Mrs ■■■■■■■■■■ and Mr ■■■■■■■■■■, residing at ■■■■■■■■■■ ■■■■■■■■■■, and directed against the decision of the Central Enrolment Authority of 7 January, according to which they were denied a transfer from the European School of Brussels II – Evere Site to the European School of Brussels I – Berkendael Site,

Mr Andreas KALOGEROPOULOS, Chairman of the second section of the Complaints Board and Judge-Rapporteur appointed by the Chairman to rule by 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 22 February 2022, the reasons for and operative part of which are set out below.

Facts of the case and arguments of the appeal

1.

On 14 December 2021, during the 2021–2022 school year, the applicants submitted a request for their son [REDACTED], a P1 pupil in the German section, to be transferred from the European school of Brussels II – Evere Site to the European school of Brussels I – Berkendael Site.

According to them, this transfer was justified by the speech difficulties that their child was experiencing due to the fact – or aggravated by the fact – that his main teacher is not a native German speaker. The applicants attached a certificate from speech therapist [REDACTED] dated 3 July 2021 with their transfer request.

2.

By decision of 7 January 2022, the Central Enrolment Authority (hereinafter the CEA) made it known to the applicants that the transfer request could not be accepted, since all of the teachers at the European schools have the qualifications required to teach. It adds that the circumstances invoked do not constitute particular circumstances within the meaning of Article 8.4 of the 2021–2022 Enrolment Policy since they do not distinguish between the situation of their son and that of the other pupils. Finally, the CEA adds that the certificate produced does not indicate that the refusal of the transfer would have unacceptable consequences for the child.

It is against this decision that the present appeal is brought, submitted on 20 January 2022, with which the applicants ask that the Complaints Board grant the transfer of their child as they have requested.

3.

In support of their appeal, the applicants essentially submit that:

- Their child's main teacher is not a native German speaker; she teaches errors and corrects their son's spelling incorrectly. They feel that the teacher makes written errors, in her emails for example (grammar, vocabulary and spelling), meaning that she certainly also has difficulty in formulating correct sentences orally in front of her class;
- According to the speech therapist, whose new certificate dating from 28 January 2022 is attached with the appeal, it is essential that their son should be able to have a teacher who is a German native speaker and who uses the language correctly and gives correct examples.

Assessment of the designated judge-rapporteur

Regarding the jurisdiction rationae materiae of the Complaints Board,

4.

It should be mentioned first of all that the argument made by the applicants to the effect that the transfer request was necessary due to linguistic errors committed by their son [REDACTED]'s main teacher, who is not a German native speaker, cannot be the subject of assessment by the Complaints Board.

The Complaints Board effectively does not have jurisdiction to assess the pedagogical competences of a teacher, as such assessment is the sole responsibility of the Management of each School. Recruiting and evaluating teachers is the sole responsibility of the Management of each School.

The Complaints Board can neither order investigative measures to try to identify any failings nor sanction shortcomings in the management of a school.

5.

It should also be remembered that the jurisdiction of the Complaints Board can only be exercised, in accordance with Article 27.2 of the Convention defining the Statute of the European Schools, under the conditions and according to the procedures determined by the General Rules of the European Schools.

Under the terms of Article 27.2 of this convention: "*The Complaints Board shall have sole jurisdiction in the first and final instance, once all administrative channels have been exhausted, in any dispute concerning the application of this Convention to all persons covered by it with the exception of administrative and ancillary staff, and regarding the legality of any act based on the Convention or rules made under it, adversely affecting such persons on the part of the board of Governors of the Administrative Board of a school in the exercise of their powers as specified by this Convention. When such disputes are of a financial character, the Complaints Board shall have unlimited jurisdiction. The conditions and the detailed rules relative to these proceedings shall be laid down, as appropriate, (...) or by the General Rules of the Schools.*"

6.

The following principles should be retained from these provisions: although the mission of the Complaints Board consists in checking the legality of an administrative action causing a grievance, that has been taken by one of the decision-making bodies, this competence can however only be exercised under the conditions and according to the procedures determined by the implementing texts to which said Convention refers, as the Complaints Board

only has the competence attributed to it by said Convention, which is strictly limited to the disputes that it mentions (in this regard, see in particular the decisions of the Complaints Board of 05/04, 13/10 and 18/54).

7.

To these considerations, it should also be added that Article 28 of the General Rules of the European Schools provides that *"By applying for a pupil's enrolment to the Director or to the Central Enrolment Authority for the Brussels Schools, the pupil and his/her legal representatives shall undertake to abide by the rules and regulations adopted pursuant to the Convention defining the Statute of the European Schools. A copy of those rules and regulations shall be available to them in the school secretariat or on the European Schools' website (www.eursec.eu)."*, which the case-law of the Board affirmed by deciding *"that it was not competent to pronounce on the legality of decisions that are purely pedagogical in nature, taken by the School management in terms of the choice of methods, the implementation and/or pupil evaluation procedures"* (in this regard, see reasoned Order 19/57, point 13), and that *"(...) by enrolling in school, the pupil – and their parents – undertake to follow all courses organised by this school and to accept the choice of teachers and the apprenticeship methodology established by the competent education authorities"* (in this regard, see decisions 12/60 and 19/02, point 8).

Concerning the existence of particular circumstances associated with speech difficulties and the medical certificates produced by the applicants,

8.

The only issue that the Complaints Board can examine is that of knowing whether the applicants can demonstrate, to the requisite legal standard, that the requested transfer to and education of their son at the Brussels I school – Berkendael Site, constitutes an "*essential measure for the treatment of the condition* ", according to the terms set out in Article 8.4.3 of the 2021–2022 Enrolment Policy.

9.

The certificate of speech therapist [REDACTED] of 3 July 2021 attached with the transfer request, establishes in substance that: "*The therapy was interrupted because the family moved to Belgium. [REDACTED] can with effort form the sounds /s/, /z/ and /sch/ in a set way, including spontaneously directed speech. /ch nu/ is partially possible at the expected level.*" (Free translation)

The Complaints Board first of all notes that this certificate from the speech therapist does not recommend any treatment in respect of which the transfer requested by the applicants would be an essential measure.

In fact, according to well established case-law of the Complaints Board (see decisions 14/08 and 19/02, point 10), medical certificates must state that the requested measure is essential by describing the consequences of attending the school (or original school) and outlining why the measure is essential with regard to the treatment received and the precise implications of the contrary measure on the child's state of health. It is thus reiterated in appeal ruling

16/36, point 41:

"41. It is established case-law of the Complaints Board that the necessity for a requested transfer should be established under the ethical, scientific and legal responsibility of the doctor or practitioner. "It is this party who declares, by means of medical certificates, that the requested transfer is an essential measure for the treatment of the condition of the child concerned, for the reason that either the prescribed medical treatment could not otherwise be administered or could not be properly administered, or the distance that must be travelled between the home and the school of the child undergoing treatment, involved in taking a specific route due his/her to schooling, has, in itself, a definite impact on his/her health status."

Furthermore, there is nothing to indicate that the European School of Brussels I – Berkendael Site would offer [REDACTED] teaching more suited to his learning difficulties than the European School of Brussels II – Evere Site that he is currently attending.

Finally, this first certificate clearly indicates that *"the therapy was interrupted because the family moved to Belgium"*, which shows that the alleged language difficulties already existed *before* the child was educated in the European schools, in the class of the teacher called into question. It therefore seems evident that these difficulties are not due solely to the teaching of this teacher.

Based on this first certificate, the CEA could thus legitimately conclude that the applicants were not demonstrating that the transfer requested, and the education of their son in the designated school, constitutes an essential measure for the treatment of the alleged language problems.

10.

The new certificate, dated 28 January 2022 and attached to the appeal, was produced late and can therefore not be taken into account, due to the stipulations of Article 8.4.6 of the 2021-2022 Enrolment Policy.

In any case, it has to be noted that this certificate only repeats the affirmations of the previous certificate (description of the child's difficulties and cessation of the therapy on 2 July 2021 due to the family moving house), and adds that *"education in the mother tongue would make it possible to achieve the therapeutic goal. Acquisition of the written language in his mother tongue would permit ██████ to understand the difference between the different sounds when reading. Apart from the therapy, this would help ██████ to acquire pronunciation appropriate to his age"*.

The speech therapist therefore recommends *"teaching in the child's mother tongue"*, which is indeed the case as he is enrolled for education in the German section.

The speech therapist does not, as the applicants claim, affirm that *the teacher* of their child should be a German *native speaker*.

This certificate explains only that the oral difficulties (pronunciation of sounds) would gradually disappear with the acquisition of reading.

Finally, this certificate does not explain how transferring to the Berkendael site might be essential to the child's needs. And in reality this is fairly logical, since the child is already being educated in his mother tongue as this second certificate recommends. The requested transfer will not change the teaching that he already receives in German.

In conclusion, the Complaints Board can only find that the CEA has legitimately considered that the applicants have not demonstrated, to the requisite legal standard, that the transfer of their son constitutes an "*essential measure*" vis-à-vis the language problems that he suffers.

11.

The CEA has made a fair assessment of the circumstances invoked by the applicants and their transfer request has rightly been rejected, in accordance with the provisions of the 2021–2022 Enrolment Policy and the established case-law of the Complaints Board in this matter.

12.

This appeal is manifestly groundless in law within the meaning of the aforementioned provisions of Article 32 of the Complaints Board Rules of procedure, since the applicants have not demonstrated the existence of any defect in the legality of the challenged decision or any manifest error of assessment on the part of the administrative authority.

The appeal can therefore only be dismissed as unfounded.

FOR THESE REASONS, the appointed judge-rapporteur

D E C I D E S

Article 1: The appeal of Mrs [REDACTED] and Mr [REDACTED], registered under No **22/02**, is rejected.

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

A. Kalogeropoulos

Brussels, 22 February 2022

Original version: FR

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."