



COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

Reasoned Order of 3rd day of June 2021

In the case registered under No 21/09, the subject of which is an appeal lodged on the 7th day of May, 2021 by Mr [REDACTED] and Ms [REDACTED], legal representatives of their son [REDACTED] against the decision of the Central Enrolment Authority for the Brussels European Schools (hereinafter referred to as the CEA) whereby it offered to enrol him in the primary class 1 cycle of the Hungarian language section at the European School, Brussels I Uccle site, for the 2021-2022 school year,

Mr Aindrias Ó Caoimh, designated judge-rapporteur by the Chairman of the Complaints Board, acting in accordance with Article 32 of the 'Rules of Procedure for the Complaints Board of the European Schools' (hereinafter referred to as the RP), 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,

made the following order, the grounds for and the operative part of which appear below, on 3rd day of June 2021.

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

1.

The parents of █████ submitted, during the first enrolment phase, an application for the enrolment of their son at the European School, Brussels III in the primary cycle of the French language section for the 2021-2022 school year. It is indicated that this was to ensure his optimal integration. On the application form, they referred to their child's multilingual and multi-ethnic familial environment.

The child has a Russian mother and Hungarian father and it is indicated by the applicants that the family language is mainly Russian with some instances of bilateral communication between the parents in English or French, as it is indicated that the mother has very little understanding of Hungarian.

Bilateral communication between father and son is Hungarian. The father who emigrated to Italy as a child speaks fluent Italian. The family arrived in Belgium in 2017 and █████ was enrolled in a French language kindergarten. It is indicated by the applicants that █████ speaks good Hungarian but it is indicated that he spends more time with his mother and as a result it is claimed that he is more proficient in Russian.

2.

Pursuant to Article 47(e) of the General Rules of the European Schools (hereinafter referred to as the GRES), following pedagogical analysis of █████ file, comparative language tests in French and Hungarian were organised on 5 March, 2021.

The assessment reports on those tests produced the following conclusive results: Similar results were obtained in oral comprehension and expression with superior vocabulary and grammar in Hungarian with a conclusion that the management of the School decided that the application of the child's enrolment could solely be

accepted in the Hungarian language section, which is solely available at the Brussels I – Uccle site school and the applicants were informed accordingly.

3.

By decision of which notification was given on 30 April, 2021, pursuant to the provisions of Articles 6.1., 6.4, 6.5. and 10.6.d. of the Enrolment Policy in the Brussels European Schools for the 2021-2022 school year (hereinafter referred to as the 2021-2022 EP), the CEA offered the child a place in the primary cycle of the Hungarian language section at the European School, Brussels I Uccle site.

4.

On the 7th May, 2021, the child's parents lodged a direct contentious appeal against the CEA's decision with the Complaints Board, as allowed by Article 67.2 of the GRES.

5.

In support of their appeal, they put forward the fact that both parents have some knowledge of French, varying between B1 and B2 levels, the father having studied it at school in Italy and the mother having commenced French lessons since her arrival in Belgium.

The applicants contend that to meet their request would be in the best interest of the child as:

- Firstly, it would represent continuity in the language that he has in kindergarten;
- Secondly, they believe that as the tests reveal he would not have difficulty integrating into a school with French as a first language;
- In addition, they mention that French would enable the child to better integrate in Belgium;

- If he has French as L1 it would enable him to have English as his L2, as it is stated that he has expressed an interest in learning English.

and they therefore urge the Complaints Board to reconsider the application for their child's enrolment.

Findings of the designated judge-rapporteur

On the admissibility,

6.

As emerges from Article 27 of the Convention defining the Statute of the European Schools, the Complaints Board has sole jurisdiction in the first and final instance to rule on all disputes regarding the legality of any act referred to it and has unlimited jurisdiction allowing it not only to annul an administrative decision but also to change it, to censure the administration that took it or to issue an order against it solely when the dispute is of a financial character, which is not the case here.

This appeal is only, therefore, admissible *ratione materiae* provided that it seeks annulment of the CEA's decision. In this particular case, the Complaints Board can only indeed rule on the legality of the contested act and possibly annul it, but it does not have jurisdiction to consider a new application for enrolment from the applicants or to give an order to the CEA to that effect (see on this subject also, amongst others, decisions 13/43 of 30 September 2013, 14/42 of 29 September 2014 and, more recently, 19/02 of 12 April 2019). In fact, the appeal does not expressly seek to annul the decision of the CEA but asks the Complaints Board to review the decision of the CEA.

On the merits,

7.

Pursuant to the rules of the 2021-2022 EP, the appeal is manifestly unfounded in law within the meaning of the aforementioned provisions of Article 32 of the Rules of procedure.

8.

Determination of the language section is governed by **Article 47(e)** of the GRES, worded as follows:

“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.
(...)

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.
(...)"*.

9.

In accordance with the settled and consistent case law of the Complaints Board, it clearly follows from those provisions that the choice of language section is not a matter for the parents alone but must result from a pedagogical assessment made by the school in the child's best interests, in the light of the information provided by his or her parents and of the opinion of experts (see, amongst others, decisions 14/17 of 28 July 2014, 16/19 of 29 August 2016, 18/27 of 20 August 2018 and, more recently, reasoned order 19/02 of 15 March 2019).

The pedagogical assessment in question is a matter for the teachers, whom neither the CEA nor the Complaints Board can supersede, unless there has been a manifest error of assessment or infringement of the procedural rules established for the administration of tests.

10.

In the case in point, the documents in the file show that:

- the applicants requested that their son be enrolled in the French language section;
- on the basis of the information provided by the applicants in the enrolment application, the school's management had doubts about [REDACTED] dominant language and decided to test the child in French and Hungarian, pursuant to the aforementioned Article 47(e); the results of those tests showed that the child would be capable of being integrated into either language section, and it was finally decided that the enrolment could be accepted solely in the Hungarian language section ; this resulted from the findings that in

Hungarian the child received a mark of 9 ("*Distinctly above average*") on his Listening Skills, Speaking Skills, Vocabulary and Grammar which mark was that attributed in the conclusion of the Hungarian test, while with regard to the French language test he achieved similar marks with regard to Oral Comprehension (Listening Skills) and Speaking Skills, he achieved inferior marks of 8 in Vocabulary and Grammar and the overall conclusion was a mark of 8 in French as opposed to 9 in Hungarian.

- on the basis of the said results, the management decided, in the child's interest, to offer him a place in the Hungarian language section, which suits him best;
- neither of the applicants made any complaint about the regularity of the said tests or about their conformity with the procedural rules established for their administration, nor did they allege that the comparative tests were flawed; it was only on sight of the results, which were contrary to their wishes, that the applicants, without contesting the circumstances in which the tests were conducted, seek a review of the decision of the school management;
- nor do the applicants base their case on any legal or regulatory provision, requiring the European Schools to repeat the test or not to take account of the results.

11.

The designated judge-rapporteur cannot therefore discern in the arguments put forward by the applicants any ground allowing the tests to be regarded as irregular, invalid or flawed.

Finally, the applicants' different interpretation of the test results cannot constitute a reason to invalidate them either, since, as the Complaints Board has emphasised in its settled and consistent case law (and most recently in its decisions 17/13 of 8 August 2017 and 18/12 of 11 July 2018), pedagogical assessment is a matter for

teachers, whom neither the CEA nor the Board nor the parents either can supersede.

12.

The designated judge-rapporteur can thus find no ground on which to annul the contested decision.

It follows from the above that there is no alternative but to dismiss this appeal on the ground that it is manifestly unfounded in law.

ON THESE GROUNDS, the designated judge-rapporteur

HAS DECIDED AS FOLLOWS

Article 1: The appeal lodged by Mr [REDACTED] and Ms [REDACTED] registered under No 21/09, 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.

A. Ó Caoimh

Brussels, the 3rd day of June, 2021

Original version: EN

pp. The Registry,
Nathalie Peigneur

Pursuant to Article 40a of the Rules of Procedure, that 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.*".