

Appeal 23/19

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COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

Reasoned Order of 14 June 2023

In the case registered with the Registry of the Complaints Board under No **23/19**, concerning an appeal lodged on 24 May 2023 by Ms ■■■■■■■■■■, legal representative and mother of ■■■■■■■■■■, and brought against the decision of 5 May 2023 by which the Central Enrolment Authority offered a place to her daughter in the nursery cycle of the LV language section at the European School, Brussels I – Berkendael Site,

Mr Mark RONAYNE, judge rapporteur designated by the Chairman of the Complaints Board to rule by means of a 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 14 June 2023, the grounds for and operative part of which appear below,

Main facts of the case and arguments of the appeal

1.

The applicant submitted an enrolment application for her daughter [REDACTED] [REDACTED] for the Nursery cycle of the FR section at the European School, Brussels I – Berkendael Site for the 2023-2024 school year.

2.

The Director of the School had doubts as to the pupil's mother tongue / dominant language and asked for comparative language tests to be organised.

[REDACTED] therefore sat a FR language test on 22 March 2023 at 09:10 and a LV (Latvian) language test on the same date at 10:00.

3.

On 23 March 2023, the School Management informed the applicant that it believed, on the basis of the enrolment application and the results of the comparative tests, that [REDACTED] should be enrolled in the LV language section.

Consequently, by decision of 5 March 2023, the Central Enrolment Authority (hereafter “CEA”) offered the applicant a place at the European School, Brussels I, in the LV language section (same cycle and same level as requested) in accordance with Articles 6.1., 6.5., 6.7., 8.2.1. and 10.4.b) of the Enrolment Policy.

4.

The applicant lodged a direct contentious appeal to the Complaints Board on 24 May 2023 requesting that the Complaints Board annul the decision of the CEA and grant her a place for [REDACTED] in the FR language section instead of the LV language section.

In support of her appeal, she submits, in essence, that her daughter spends most of the day in a French environment, playing at the *garderie*, with her sister at home and also reading books in French.

She also considers that the FR test report is internally inconsistent and reflects her child's emotional state at the time of the test rather than her true linguistic abilities.

5.

As regards to the appeal being lodged only on the 24 May 2023, the applicant explains that she attempted to send the email with the appeal on 12 May 2023 but that owing to connection problems it remained blocked in her outbox, unknown to her.

Assessment of the designated judge rapporteur

Regarding the admissibility of the appeal

6.

By virtue of Article 67.2 of the General Rules of the European Schools “a contentious appeal may be lodged directly with the Complaints Board against the decisions of the Central Enrolment Authority for the Brussels European Schools”.

It follows from Article 67.4 of these Rules that the contentious appeal must be lodged with the Complaints Board within two weeks of notification or publication of the disputed decision or will otherwise be declared inadmissible.

Similarly, Article 14.2 of the Policy on Enrolment for the 2023-2024 school year (hereafter “PE 2023-24”) provides that “a direct contentious appeal seeking annulment of decisions of the CEA may be lodged with the Complaints Board of the European Schools within two weeks of notification of the individual decision contested, according to the forms and provisions of the General Rules of the European Schools”.

7.

The appeal is inadmissible because it was not brought before the Complaints Board within the time limit for lodging an appeal under Article 14.2 PE 2023-24 and Article 67.4 of the General Rules of the European Schools.

The rules governing the admissibility of appeals, as laid down by the texts in force, and in particular those pertaining to the periods allowed for appeals by the

General Rules of the European Schools, in accordance with the general principle of legal certainty, are a matter of public policy and are mandatory : the administrative and judicial authorities are required to dismiss any appeal which fails to abide by them (see in this respect decisions on appeals 09/31, 15/37, 16/57, 18/54 and 19/40).

8.

In this instance, the disputed CEA decision was taken on 5 May 2023 and notified on the same day; the deadline for lodging an appeal was therefore 19 May 2023.

This appeal, submitted on 24 May 2023, is therefore manifestly late and must be dismissed as inadmissible.

The IT connection difficulties invoked by the applicant are not of such a nature as to allow the Complaints Board to overlook this mandatory deadline the strict respect of which is a matter of public policy ("ordre public").

9.

The appeal can therefore only be dismissed as inadmissible.

ON THESE GROUNDS, the designated judge rapporteur

D E C I D E S

Article 1: The appeal of Ms [REDACTED], registered under No **23/19**, is dismissed.

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

M. Ronayne

Brussels, on 14 June 2023

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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."