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# STATES OF JERSEY



## **STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT AGAINST A DECISION OF THE MINISTER FOR EDUCATION, SPORT AND CULTURE (R.102/2012) – RESPONSE OF THE MINISTER**

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**Presented to the States on 7th September 2012  
by the Privileges and Procedures Committee**

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**STATES GREFFE**

**FOREWORD**

Article 9(9) of the Administrative Decisions (Review) (Jersey) Law 1982 requires the Privileges and Procedures Committee [PPC] to present to the States the findings of every Complaints Board hearing and the response of the Minister when a Board has asked a Minister to reconsider a decision. On 13th August 2012, PPC presented to the States the findings of a Complaints Board held on 26th July 2012 to review a decision of the Minister for Education, Sport and Culture (R.102/2012). The Minister has now reconsidered the decision as required by the Board, and the Committee is therefore presenting his response to the States as required by Article 9(9).

## REPORT

I wish to place it on record that there are several points on which I disagree with the summary and findings of the Complaints Board, and I will comment on these first as these have a direct bearing on the Board's recommendations. For ease of reference, I shall address these points in the order in which they appear in the Board's summary and findings.

(1) The right to express a preference (paragraphs 4.5 and 5.8) – The Complaints Board has referred on 2 occasions to parental choice, and it states in paragraph 5.8 that *'the policy applied to the allocation of out of catchment secondary places should primarily uphold the principle of parental choice enshrined in the Education (Jersey) Law'*. This interpretation of the Education Law does not match the ESC Department's understanding of the legal position, as the relevant Article (Article 15(1)) states that *'the parent of a child aged below or of compulsory school age shall have the right to express a preference (my emphasis) as to the provided school at which the parent wishes education to be provided for his or her child'*. In other words, the parent has the right under the Law to express a preference, but this is not the same as 'the right to choose', as asserted in paragraph 4.5 of the Board's findings.

The Law Officers' Department has been asked to advise on this point, in the light of the comments of the Complaints Board, and it has supported the Department's interpretation of the legal position.

In considering applications for school places, the ESC Department will give due weight to any preferences or requests expressed by parents for a particular school, and indeed it has been noted by the Complaints Board that the majority of such requests are accepted (paragraph 4.1 of the Board's findings refers). The Department does, however, also have a legal obligation to take account of Article 15(3) of the Education Law, in which it is stated that *'the Minister shall not be required to comply with a preference if to do so would prejudice the provision of efficient education or the efficient use of resources'*. There will therefore be occasions on which the Department will not be able to accede to the parent's stated preference; as such an action might result, for example, in excessive numbers of pupils being placed at one school. This would result in additional costs, for the reasons explained in paragraph 4.5 of the Board's findings, and would also place additional demands on school facilities that have been built to cater for a certain number of pupils.

(2) The views of the headteacher and class teacher (paragraphs 4.10 and 5.3) – It is stated in the Board's findings that *'the views of the headteacher and class teacher had been disregarded'* by the Appeals Panel. The views of the headteacher and class teacher were not in fact disregarded by the Appeals Panel, but were considered in the context of the other circumstances that had been made known to the Panel. This was pointed out to the Complaints Board (paragraph 4.11 refers), and I find it surprising therefore that the Board has chosen to describe this aspect of the case in this way, and to have done so in such emotive terms (*'The Board was astonished that the views of those who dealt with (the child) on a daily basis had been disregarded ostensibly'*).

(3) The constitution of the Appeals Panel (paragraphs 4.12 and 5.6) – The Complaints Board has commented in some detail on the role of my Assistant Minister, Deputy R.G. Bryans of St. Helier, in his capacity as Chairman of the Appeals Panel, and has stated that there could be a perceived conflict of interest, given his previous role as Chair of the Board of Governors at Haute Vallée School.

Whilst I accept that some may perceive this to be a conflict of interest, I do not believe that such a perception is justified when the full circumstances of the situation are taken into account. Firstly, it needs to be emphasized that Deputy Bryans resigned from his role as Chair of the Board of Governors prior to becoming the Chairman of the Appeals Panel. Secondly, the use of the word ‘potential’ is unhelpful in this context, as it could be argued that the majority of Panel members, and advisers to the Panel, have had some prior involvement in one or more of the Island’s schools, and could therefore be considered to have a ‘potential’ conflict of interest. For example, both of the other Panel members for the appeal had a previous involvement with the education system (Jeremy Harris as a parent governor at Le Rocquier School, and Robin Dupré as a teacher at Hautlieu School), whilst the adviser to the Panel had previously taught for many years at Grainville School. This has proved to be helpful in the conduct of appeals, as Panel members are able to draw on previous experience when considering individual cases.

(4) The alleged ‘lack of impartiality’ of the Chairman of the Appeals Panel (paragraph 5.2) – The Complaints Board has asserted in paragraph 5.2 that *‘the Chairman demonstrated a lack of impartiality through his promotion of Haute Vallée’*. As explained to the Complaints Board (paragraph 4.12), the comments attributed to Deputy Bryans were made by him in order to provide assurance to the complainants that Haute Vallée School could meet the pupil’s needs, and I firmly believe these comments were made in good faith and not because of any ‘lack of impartiality’. I would also like to place it on record that I have complete confidence in Deputy Bryans, and I believe that he has acted fairly and impartially in his capacity as Chairman of the Appeals Panel.

(5) The role of the Special Needs team (paragraph 5.3) – The Complaints Board states in paragraph 5.3 of its findings that *‘it appears that greater importance was attached to the views of Special Needs Team rather than the submissions made by the teaching professionals who knew the child best’*. I do not believe that this properly reflects the context of the school and the role of the Education Support Team (EST). As already noted, the views of the teaching professionals (i.e. the headteacher and class teacher) were not ‘disregarded’ by the Appeals Panel, but were not deemed to be of sufficient weight for the Panel to reach a different decision. In addition, the work of the Education Support Team is highly relevant to decisions regarding the allocation of school places, as the EST professionals are generally brought in at the request of teaching staff in order to provide specialist advice and support. In many cases, this will involve the designation of a pupil as having a Special Educational Need (e.g. a specific medical condition, or a child with learning difficulties), for which a child will require additional support, which may only be available at a particular school or schools, e.g. Le Rocquier provides support for pupils with moderate to severe hearing impairments. In the present case, as with others before the Appeals Panel, the pupil had not been classified as having a Special Educational Need, and this

was – in the view of the Appeals Panel – a relevant factor to take into account when reaching its decision.

(6) Resources and the interests of children (paragraph 5.3) – The Complaints Board has *‘expressed concern that the current policy, which deferred to resources as an overriding decisive factor, might not allow for proper consideration of the best interests of individual children’*. I disagree with this statement on 2 counts. Firstly, the current policy does not ‘defer to resources as an overriding factor’, but it does take this factor into account when considering applications for individual children, in accordance with its obligations under the Education Law. Secondly, the Board appears to have assumed that there is a fundamental conflict between making efficient use of resources and the interests of children, whereas I believe that these should be aligned, i.e. so that the interests of children are best served by making efficient use of resources. As with other States departments, Education, Sport and Culture has a finite budget, and it has a responsibility to deploy this budget in a way that will make best use of resources in the interests of children.

There are also 2 points in the account given by the Complaints Board on which I would like to comment –

(1) ‘j’ category status (paragraph 3.3) – It is stated in the summary of the complainants’ case that reference was made by the Appeals Panel to the ‘j’ category status of the boy’s parents, and the mother *‘claimed that one of the (Appeals) Panel had said that it therefore ‘wouldn’t matter which school (the child) went to as it would not be for the long term.’* I agree that such a comment would have been inappropriate, but none of the members of the Appeals Panel have any recollection of making a comment to this effect. As noted in paragraph 4.3 of the Board’s findings, this point has been strongly refuted by the Panel members.

(2) Other appeals involving Les Quennevais School (paragraph 4.2) – The Complaints Board noted that one of the 8 appeals for admission to Les Quennevais School had been successful following the presentation of compelling medical evidence. The Board’s summary goes on to state that *‘the Board questioned why this had not been highlighted by the Educational Support Team and was advised that the team had not been involved with the child’*. I should like to point out that the Education Support Team had in fact been involved with the child at an earlier stage, and that this support had ceased once it was no longer required. The child in question has a physical disability which can be catered for at Les Quennevais School, which has been designated as the Island’s secondary school for pupils in this category.

Turning now to the recommendations of the Complaints Board, it is recommended in paragraph 5.6 that ‘in future full and impartial minutes of the meetings should be provided’. It is difficult to estimate at this stage exactly how long would be needed for the preparation of full minutes of meetings, but the Assistant Greffier of the States has advised that it took her one day to produce the minutes of the Complaints Boards hearing. Presumably the ESC Department would not need a full day to prepare a minute of each case that comes before an Appeals Panel, but 2 hours per appeals case would seem to be a reasonable time in which to prepare a full and detailed minute, i.e. to record the details of those attending, describe the circumstances of the case,

summarise the main arguments submitted in support of the appeal, detail the Panel's decision, and list the reasons for that decision. In 2012 the Department organised approximately 110 appeals against decisions on the allocation of school places, and if a similar number of appeals were received in 2013 onwards, this would involve an extra 220 hours' work. This would equate to 6 weeks' work per year, and would need to be carried out by a relatively senior member of staff in the Department.

As an alternative to minutes, consideration was given at one stage to the recording of the proceedings, but this option has been discounted as it is felt this could have an adverse effect on the proceedings, i.e. as it could discourage some parents from going through the appeals process. The majority of appeals will involve some discussion of the parents' circumstances: these may often be of a sensitive nature, and the use of recording machinery would not be helpful in these circumstances.

It is recognised, nonetheless, that an additional record of the proceedings may be helpful in future, and I have therefore decided that a record should be maintained in the meeting notes of the reasons for the decisions taken by the Appeals Panel.

Finally, and most importantly, the Complaints Board has asked me to 'reconsider the complainants' application'. I have therefore given careful consideration to the evidence submitted to the Appeals Panel, and to the individual circumstances surrounding the child's arrival in Jersey and progress through primary school. In so doing, I have taken particular note of the following factors –

- The child's family moved to Jersey in October 2008, and the father has stated that this proved stressful to his child;
- It initially proved difficult for the child to settle at La Moye School, and this needed careful management and support from the school;
- The child's mother advised the Complaints Board (paragraph 4.9) that it took almost 18 months for the child to settle into La Moye School, and the family did not wish to risk repeating this stressful period;
- The child's parents have expressed concern about the potential negative impact on the child if he were to move to Haute Vallée School, as he would then be separated from the friends he has made at La Moye School;
- In the event that the child should find it difficult to settle at Haute Vallée School, this could have a detrimental effect on the education of other children at the school; and
- The child was offered a place at Les Quennevais School and this offer was subsequently withdrawn, i.e. because it came to light that the family had moved house to an address that was outside the catchment area.

In addition, the Department would normally expect representations with respect to secondary school admissions to be made directly by the primary school in advance of the allocation of school places. However, in this exceptional case, due to the fact that the family's change of address had not been communicated to La Moye or Les Quennevais schools, the primary school was under the impression that a place was likely to be allocated at Les Quennevais School (i.e. on the basis of the family's

previous place of residence), and had therefore not submitted any representations in advance of the place being allocated.

In view of this exceptional circumstance, I have decided to grant the application for the child to transfer to Les Quennevais School, as I consider this to be in his best interests, and can be accommodated by the school.

In making this decision, I wish to emphasize that I believe the Appeals Panel to have acted fairly and impartially, but that I have taken a different view of the position in view of the exceptional circumstance. I have accordingly asked my Department to contact the child's parents to make the necessary arrangements for their son to start at Les Quennevais School in September 2012.

**Minister for Education, Sport and Culture**