
(1st Section)

In the case registered with the Registry of the Complaints Board under the number **24/33**, having as its object an appeal introduced the 10th of May 2024 by [REDACTED] and [REDACTED], legal representative of their daughter [REDACTED], (hereinafter ‘the pupil’), residing together at [REDACTED], the application seeking to have annulled the decision made by the Central Enrolment Authority of the European Schools, to decline the transfer request made the 12th January 2024, for their daughter, the pupil, to attend the Uccle site of the European School Brussels 1 (EEB1) for the 2024-2025 academic year, notified to the applicants by the Central Enrolments Authority (hereafter the C.E.A.) the 25th day of April, 2024. The Applicants reiterate their request that the pupil be transferred to EEB1 Uccle for the 2024-2025 academic year “to ensure compliance with the spirit and overarching objective of the regrouping of sibling’s policy”.

The Complaints Board of the European Schools, 1st Section, comprising:

- Eduardo Menéndez Rexach, President of the Complaints Board
- Pietro Mancini, member and
- Aindrias Ó Caoimh, member and rapporteur

assisted by Ms. Nathalie Peigneur, Registrar, and by Mr. Thomas van de Werve
d'Immerseel, legal assistant,

having regard to the written observations presented on the one hand by the Applicants and on the other hand by Marc Snoek, advocate at the Brussels Bar on behalf of the European Schools,

after having heard, at a public hearing of the 18th day of July, 2024 the report for the hearing of the reporting judge, the oral observations of Mr. [REDACTED] for the Applicants, and of Me Deborah Rumens and Me Mark Snoek for the European Schools, together with Mr. Andreas Beckmann, Secretary General

delivered the day of 26 August 2024 the decision the reasons for which and the operative part appear hereafter:

Facts of the case and the arguments of the parties

1.

The pupil and her older sister, both attended EEB1 at the Berkendael site for the 2023-2024 year, respectively in grades P3 and P5 and each in the English language section. Since the older sister will be shifting to EEB1 Uccle for her S1 year, the Applicants requested the pupil's transfer to the Primary section at EEB1 Uccle, so that both their daughters could be "brought together" rather than schooled 3,6 km from each other, in circumstances where these two sites are 3,6 km apart, and which the Applicants contend would pose a significant logistical challenge for their family.

2.

The Applicants' request was refused on the basis that "a transfer for [the pupil] according to the provisions of 9.10.d) is not possible, seeing as she is schooled at the same School as [her elder sister] and will continue to be enrolled at the same school as her sister".

3.

The Applicants contend that the impugned decision “appears to defy both logic and common sense” and seems inconsistent with the objectives outlined in the Policy on Enrolment in the Brussels European Schools. They add that the objective and spirit of the regrouping of siblings’ policy are to bring siblings together, thereby promoting cohesion within families and facilitating logistical convenience, as evidenced by Paragraph d) of Article B.1.9.10. of the Policy on Enrolment in the Brussels European Schools for the 2024–2025 school year, which provides that the regrouping of siblings is designed “to enable siblings to be brought together”.

4.

The Applicants submit, taking the context into account in the interpretation of the policy on the regrouping of siblings, that it becomes evident that its overarching goal is to ensure that siblings are assembled at the same educational site, regardless of administrative or organisational considerations.

5.

By e-mail of the 13th May, 2024, the Applicants sought to complete their complaint by purportedly referring to a factual element which they considered to be relevant and which they considered could be taken into account in assessment of the principle of proportionality. In this regard, the Applicants referred to the decision of the Complaints Board in Case 23/11 of the 31st August, 2023.

6.

The first Applicant pointed out that the schooling of their two daughters at different sites of the same school would be particularly problematic for the family as she works full time in Lille in France which exacerbates their logistical problems. It was submitted that in this context that the inconveniences for the family resulting from the impugned decision are disproportionate to the objective of the Enrolment Policy.

7.

In response, the European Schools request that the Applicants' complaint be ruled to be partly admissible but unfounded and they request that the Applicant be condemned to pay the costs and expenses of the proceedings which they submit should be assessed *ex aequo et bono* in the sum of €900.

8.

The European Schools contend that while the initial complaint is admissible, the e-mail of the 13th May, 2024 amounts to an inadmissible extension of the grounds sought to be relied upon by the Applicants, which the European Schools contend contravenes the provisions of Article 18 (2) of the Rules of Procedure of the Complaints Board of the European Schools. They further submit that it is out of time as it was introduced in excess of the two weeks permitted by the Article 14 (2) of the Enrolment Policy for the taking of a contentious appeal against a decision of the C.E.A. They refer to Article 15 of the said Rules of Procedure which provides that all applications should contain "a summary of the facts and of the pleas in law on which the application is based". In addition, the European Schools refer to Article 18.2 which states "No submission of a new plea in law may be introduced in the course of proceedings, unless it is based on matters of law or of fact which have come to light in the course of the procedure."

9.

The European Schools refer to the Policy on Enrolment for the year 2024-2025 adopted by the Board of Governors of the European School in December 2023 and the Guidelines for the said policy adopted at its meeting of 5, 6 and 7 December 2023 which are contained in the document 2023-12-D-16-en-3.

10.

The European Schools refer to Article 9.2 second paragraph of the Enrolment Policy which reads "This automatic transition to the S1 'shift' of EEB1 – UCC Site

does not involve the other members of these pupils' group of siblings" such that while the older sister of the pupil was automatically transferred to the Uccle site from the Berkendael site for the S1 class for the year 2024-2025, this transfer does not extend to the pupil herself.

11.

The European Schools contend that the interpretation of the rules proposed by the Applicants does not amount to an extensive interpretation of the existing rules but proceeds from a violation of the clear conditions imposed by the Enrolment Policy in perfect coherence with the objectives pursued by the Board of Governors and expressed in the guidelines.

12.

The Board of Governors approved the proposed gradual approach for an optimal use of the Berkendael and Evere sites as of the 2023/24 school year which aims to address the situation of overcrowding and the efficient use of teaching resources by avoiding parallel structures in the same school. To do so, a two-step approach was adopted in which the initial step was as follows:

- *Step 1: As of the 2023/24 school year, gradual consolidation of the Nursery and Primary cycle of language sections with parallel structures in ESB1 (exception FR and ES language sections) and ESB2 (exception FI, LT, NL, PT, SV language sections).*

The Board of Governors approved the amendment of the concept of protection of siblings by limiting it in principle to the protection of siblings in the same cycle at the same school. (2022-12-D-7-en-2) (2022-10-D-17-en-3).

13.

It was further agreed at the time that the final decisions of the Board of Governors would be reflected in the Guidelines for Enrolment for the 2023/24 school year which were also approved by the Board of Governors at its meeting in December 2022.

14.

The Schools refer to the Guidelines for Enrolment for the 2024/25 school year which provide, *inter alia*, as follows:

“The buildings at the Berkendael and Evere Sites are only suited to accommodate pupils in the nursery and primary cycles. Their availability therefore reduces pressure on these teaching cycles, but not on the secondary cycle. This means that it is necessary to split the distribution of new enrolments in the lower cycles between these two schools to optimise the accommodation capacities of these two sites. There is also a need to gradually phase out classes in the nursery and primary cycles at the other schools, where possible, to enable them to accommodate more of the European pupil population in the secondary cycle.”

The Board of Governors invited the Central Enrolment Authority to gradually adapt the enrolment policies with a view to achieving the following objectives:

- *- For the Brussels I and II European Schools, which now definitively have two sites: not to maintain the nursery and primary cycles of an existing language section at two sites, thereby putting an end to parallel structures, and to progressively consolidate and migrate these cycles to the Berkendael and Evere Sites respectively.*
- *Only at the Brussels I and II European Schools, flexibility concerning the protection of siblings by cycle - nursery and primary cycles on the one hand and secondary cycles on Site to, correlatively, free up the necessary space at the main Sites of Uccle and Woluwe in order to be able to accommodate more secondary pupils.*

15.

The European Schools point out that these directive principles constitute the principal objectives of the Enrolment Policies since the 2023/2024 school year and the context in which the regulatory provisions have been adopted.

16.

They point out that efforts have been implemented with a view to concentrate the nursery and primary classes of the linguistic sections concerned in one site – in the case of the English language section at the Brussels I European School, at the Berkendael site – in such a manner to avoid the opening or the maintenance of parallel classes in the same school on two sites separated by only a few kilometres

– Uccle and Berkendael – so as to augment the capacity of sites principally consecrated for the secondary level – in the instant case, Uccle.

17.

In this regard, the voluntary transfers are enumerated in a limited manner in page 11 of the guidelines, in particular to ensure the regrouping of siblings “to permit the schooling of brothers and sisters in one school (but not necessarily on the one site)”.

18.

The Schools submit that without distorting the clear text of article 9.10.d) of the enrolment policy the regrouping of siblings does not apply unless brothers and sisters are schooled in different schools for the 2023-2024 school year, which is not the case of the children in the instant case, such that the two children are regrouped in the one school but not necessarily one the one site.

19.

They add that the provision clearly does not permit the transfer of two children schooled at the same school and site such that in the following year, the elder child who is automatically transferred to the site corresponding to that of the secondary cycle of the same school will be re-joined by the younger child. They submit that this is expressly excluded by Article 9.2 second paragraph of the Enrolment Policy.

20.

They add that the thesis supported by the Applicants does not amount to an extensive interpretation of the current rules but proceeds from a violation of the clear conditions imposed by the Enrolment Policy in perfect harmony with the objectives pursued by the Board of Governors and expressed in the guidelines.

Alleged breach of the Principle of Proportionality,

21.

Having regard to the plea of the alleged breach of the principle of proportionality, the European Schools address the substance of the plea without prejudice to their claim that the plea, having been introduced on the 13th May, 2024, is inadmissible.

22.

They contend that any particular circumstance warranting derogation from the general rules should have been invoked by the Applicants at the stage of their transfer request, which is not the case here, and it is submitted that they cannot introduce such circumstances for the first time at the stage of the contentious application to the Complaints Board. In this regard, the Schools refer to Article 8.5.7 of the Enrolment Policy which provides as follows:

*“Except in duly substantiated cases of force majeure, **items of information and documents communicated after submission of the application for enrolment will automatically be disregarded in considering the application**, even though they might relate to a situation occurring prior to the submission of the enrolment application or to its handling by the CEA.”*

23.

In addition, it is contended that the circumstances invoked cannot be considered to be ‘particular circumstances’ in the context of Article 8.5.3 of the Enrolment Policy. The Applicants, not having invoked any particular circumstance in the introduction of their transfer request, they are not permitted to refer to any “logistical difficulties” for the first time in the context of their contentious application.

24.

The European Schools contend that the increased inconvenience for the family resulting from the impugned decision is limited as the journey from the family home to the two sites would add a very short period of time to transport the children to the

two sites, which the Schools estimate as involving a one minute longer journey to the Uccle site as compared to that to the Berkendael site. This they submit does not amount to a disproportionate result from the policy. They submit that in any event the elder sister could avail of the school transport arranged by the Parents' Association to get to the Uccle site of the school. In addition the European Schools refer to Article 8.5.3 e) of the Enrolment Policy which indicates that the location of the place of employment or the constraints resulting from the performance of the professional activities of the legal representative or the legal representatives, even if it is imposed by the employer, are not circumstances that may be taken into account in the assessment of 'particular circumstances' where it is shown that "a given situation requires appropriate treatment to mitigate the unacceptable consequences that the rules of this Policy would otherwise have had".

25.

As opposed to the circumstances of the Applicants, the European Schools refer extensively to the Enrolment Policy of the European Schools which since 2022 has been adopted to address the particular difficulties in accommodating an increasing school population in the European Schools by concentrating maternal and primary education at one of the sites of the schools having two sites so as to optimise the accommodation of pupils in these sites. In this regard to Schools refer to the policy to concentrate nursery and primary education at the Berkendael site while concentrating secondary education at the Uccle site and to avoid duplication in the provision of primary education at the two sites.

26.

The Schools submit that the development of the policy on the regrouping of siblings to mean that they could be accommodated in different sites of the one school by redefining the notion of school to include different sites such as at issue in the instant case.

27.

The Schools refer to the current situation whereby the distribution of the numbers of the nursery and primary cycles is operating progressively. During this transitional phase, the two sites of Uccle and Berkendael offer nursery and primary classes in the English language section. It is intended not to continue this situation in the future, which is the reason why the welcoming of students in lower school cycles in Uccle is limited only to the situations of particular circumstances (which were not invoked in the instant case). To permit the transfer of younger brothers and sisters of pupils welcomed into the S1 at Uccle coming from the P5 in Berkendael would permanently impede the elimination of parallel structures of the inferior cycles of the two sites.

28.

The anticipated growth in the total number of the school population in the secondary cycle at the Uccle site makes it necessary to reserve useful spaces and to reduce as far as possible the total number of the nursery and primary pupils of the language sections who could be accommodated at Berkendael.

29.

It is accordingly imperative to prevent any doubling up of nursery or primary classes on the Uccle site and to direct any surplus students to the Berkendael site dedicated to welcoming them.

30.

The European Schools are also confronted by factors which they cannot control such as the increased secondary cycle population of language sections which are only available at Uccle such as Polish, who can only be accommodated by doubling up the classes there.

31.

There is therefore very significant pressure on the availability of classes on the Uccle site of the European School of Brussels I resulting from the reception of P5 students from the constantly growing Berkendael site and the increase in secondary enrolment of certain unique linguistic sections. In this context, in order to allow as much as possible to accommodate all category I students who request it, drastically limit the reception of students in English and Italian language sections at the nursery and primary levels to direct them towards the Berkendael site adapted to their reception, constitutes an essential measure for carrying out the mission entrusted to the European Schools.

32.

It is submitted that the objective thus pursued by the European School is reasonable and indispensable to ensure the primary mission of the European Schools under Article 1 paragraph 2 of the Convention establishing the Statute of the European Schools.

33.

With regard to the balance of interests it is submitted that the limitation of the fundamental principle of the protection of siblings responds to a legitimate objective pursued by the European Schools, namely, the welcoming of all the children of staff members of the European institutions into the existing schools in Brussels.

34.

The limitation of the principle of the protection of siblings is not disproportionate by reference to the objective pursued by the Board of Governors and the CEA having regard to the disadvantages suffered by the Applicants following the impugned decision.

35.

The constraints imposed on the Applicant accordingly do not exceed what is necessary to attain the objectives pursued.

36.

In conclusion, it is submitted that the Applicants plea in law is unfounded.

37.

In their Reply of the 19th June, 2024, the Applicants firstly, reject the plea of inadmissibility raised by the European School, second they purport to raise new elements of fact, third, they submit on the substance of the case that the European Schools have misinterpreted the Enrolment Policy and they submit that the manner in which the Schools dealt with the transfer request runs counter to the spirit and objective pursued by the regrouping of siblings principle, fourth they re-assert that the impugned decision amounts to a failure to comply with the principle of proportionality and they challenge the arguments advanced by the European Schools raised in connection with this plea and conclude that the impugned decision should be annulled.

38.

With regard to the first item, the plea of inadmissibility, the applicants contend that the e-mail of the 13th May “had neither the object nor the effect of raising a new plea” and they submit that it introduced new elements of fact. In addition, they submit that their original request raised the plea of the breach of the principle of proportionality.

39.

Secondly the Applicants raise new elements of fact as follows:

On 10 June 2024, the first Applicant (the mother) was appointed assessor of the

Dean of the Faculty of Legal, Political and Social Sciences of the University of Lille (France) in charge of research making her the third person in the hierarchy of the Faculty of Legal, Political and Social Sciences of Lille, after the Dean and the Vice-Dean.

On 16 June 2024, the second Applicant (the father) left the European Anti-Fraud Office (OLAF) to join the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW).

It is submitted that these appointments will undoubtedly accentuate the disadvantages that the applicants' family may suffer as a result of the dismissal of their appeal, as they both lead to an increase in their workload, typical of any new appointment. That overload of work will be particularly heavy for the first applicant, whose presence at the University of Lille (France) will be further increased, which will keep her even further from her home in Brussels and leave the applicant alone to manage the school trips of their children.

40.

Thirdly, it is submitted that the approach of the European Schools to the transfer request and the principle of the regrouping of siblings runs counter to Article 8.2.1 of the Enrolment Policy itself and that the suggestion of the need for a fresh enrolment application does not result from a correct reading of this Policy. They refer to the fact that their children are pupils “*who already attended one of the schools/sites in Brussels in 2023/2024*”.

The Applicants add that in the Application document for the pupil, subtitled ‘Transfer Request’, the following question is expressly asked: *Are you requesting a regrouping of siblings in accordance with Articles 8.2.1 to 8.2.5 of the Policy?*

They add: “Such a question would not be asked if, as the European Schools assert, that provision involved ‘a *new* application for enrolment of a pupil who is not enrolled in one of the European Schools in Brussels’.”

41.

The Applicants point out that Article 8 sets out priority criteria that apply across the board to issues relating to the allocation of pupils in the various sites and schools, and not only, as the European Schools maintain, to 'enrolments' in schools. That follows from the very wording of Article 8.1 of the Registration Policy, which states that '*certain applications for registration and transfer shall be considered as priorities*'. These priority criteria are set out in the following articles, including Article 8.2 on the regrouping of siblings.

42.

They assert that the analysis of the European Schools excluding the application of Article 8.2 to site transfers is therefore vitiated by an error of law.

43.

However, the applicants submit further that the European Schools analysis of Article 9.10.d) of the Enrolment Policy is flawed, as evidenced by the case-law of the Complaints Board; they add that while it is true that that provision does not require siblings to be reunited on the same site where the children are enrolled in the same school, Article 9.10.d does not prohibit it either, provided that there is a place to be filled. Such regrouping is certainly not automatic, as is clear from Article 9.2. However, they submit it is permissible where it is possible. However, at no time do the European Schools mention such an impossibility.

44.

The Applicants contend that the European Schools in their reply have failed to show that the transfer sought by them would jeopardise the objectives set out in the 2024/2025 Enrolment Policy Guidelines, and they add that the European Schools do not indicate how the continuation of the pupil's schooling at the Berkendael site would have an effect on the maintenance or opening of English-speaking primary classes in Uccle.

45.

They add that Interpreting the Guidelines as prohibiting, absolutely and automatically, the regrouping of siblings at the same site would thus disregard ‘a *principle as fundamental as that of regrouping of siblings*’, as recognised by the Board of Appeal in its case-law (Decision 23/11 of 31 August 2023, paragraph 17).

With regard to the principle of proportionality the Applicants refer in their reply to the extensive duties of the first Applicant (Mrs. [REDACTED]) and to the increased responsibilities in her promotion in Lille and they add that in view of the responsibilities and workload involved in that new administrative function, the first applicant’s presence in Lille will be further increased. Therefore, the second applicant (Mr. [REDACTED]) will be forced to take care of their children alone for the journeys between their home and the schools. This risks jeopardising his new professional responsibilities, to the point that the first applicant may have to relinquish some of her current duties at the Faculty of Lille.

46.

The Applicant indicate that after careful consideration and because the logistical constraints entailed by their daughters’ schooling at two different sites are very onerous, both for the first applicant’s professional activity in Lille and for the second applicant’s taking charge of school trips to two different sites, that they chose to apply, with full knowledge of the facts, for the siblings to be reunited within the Uccle site.

47.

With regard to the time from the Applicants’ home to the school site in Berkendael referred to by the European Schools, the applicants point out that the time estimate is without any traffic while the reality is that the school trips will take place in peak-time traffic and the estimates do not take account of the return journeys from the schools.

48.

With regard to the use of the buses provided by the Parents' Association, they add that this would certainly involve two different bus schedules and two different stops. Given the ages of the children at the start of the school year (8 and 10 years, respectively), the applicants say that do not wish to let them make the journeys alone between home and the bus stop and/or wait alone for the bus in Saint-Gilles.

49.

With regard to the alleged disadvantage suffered by the European Schools if the pupil is transferred, it is claimed that she is the only child to their knowledge currently schooled in the Berkendael site whose transfer to the Uccle site is sought. They allege that the English language primary section will continue at Uccle for some more years and that the transfer of the pupil will only affect the situation for two years when she would in any event be transferred to Uccle. The Applicants claim that the European Schools have not shown how her transfer would adversely affect the teaching at the Uccle site either in the context of overcrowding, duplication of classes or impact staffing there.

50.

In those circumstances, the Applicant submit that the transfer would not entail a constraint disproportionate to the public interest objective pursued.

51.

With regard to the balance of interests the Applicants claim that their own disadvantages are disproportionate in the light of the objective pursued by the relevant article of the Enrolment Policy, namely the management of overcrowding at the Uccle site, since the primary cycle on that site will continue to exist for several years without constituting an imminent danger to the safety of the site.

Findings of the Complaints Board

On the admissibility of the ground of the alleged breach of the Principle of Proportionality,

52.

Article 18 (2) of the Rules of Procedure of the Complaints Board provides as follows:

2. No submission of a new plea in law may be introduced in the course of proceedings, unless it is based on matters of law or of fact which have come to light in the course of the procedure.

53.

The Applicants have been unable to show that the alleged breach of the principle of proportionality was raised as a plea of law in their initial complaint to the Complaints Board on the 10th May, 2024. Accordingly, it must be concluded that the plea of law, as opposed to the factual circumstances, raised in the communication of the 13th May, 2025 represents a new plea of law which, having regard to the provisions of Article 18.2 of the Rules of Procedure of the Complaints Board, especially in the circumstances where the Applicants submitted in their initial complaint that the refusal of the transfer requested “would pose a significant logistical challenge for their family” is inadmissible.

On the substance of the Appeal,

54.

The principle of sibling grouping has been an important feature of the rules governing the enrolment of pupils in the different Brussels European Schools since the creation of the Central Enrolment Authority in 2006.

However, on several occasions over the last decade, its scope has been limited. As explained in the relevant Guidelines, adopted annually by the Board of

Governors, these changes were each time deemed necessary in view of the growing overcrowding of the European Schools in Brussels.

The Complaints Board's case-law makes clear that it is open to the Central Enrolments Authority, which introduced the principle of sibling grouping into its rules, to limit the scope of application of this principle in certain situations provided that these limits are established in a proportionate manner, and under precise conditions, bearing in mind the balance which must be sought between the interests of the pupils and their families, on the one hand, and the interest of the organisation and management of the schools, on the other (see, for example, decision 23/11 of the 31st of August 2023, points 9 and 13).

The interpretation of these exceptions does not exclude the possibility that the Schools may review the situation of the pupil concerned at the end of the enrolment phases, provided that this review does not conflict with the objectives of the Enrolment Policy relating to the optimal use of the Berkendael and Uccle sites.

55.

The Enrolment Policy for the 2024/2025 school year provides, *inter alia*, as follows:

8.2. Regrouping of siblings

8.2.1. The brothers and sisters of categories I, II and II pupils already enrolled at one of the Brussels schools/sites who attended that school/site during the 2023–2024 school year and will continue to do so during the 2024–2025 school year will be enrolled at the same school/site as the first one(s) enrolled, provided that they fulfil the following three conditions:*

- a) the applicant applies for enrolment at the same school/site as that which is or will be attended by the member of the group of siblings already on roll,*
- b) the children concerned are members of the same group of siblings within the meaning of Article 1.11.,*
- c) the language section (or satellite class) of the pupil for whom the application is being made exists at the school/site at the required level for which enrolment is requested.*

8.2.2. When the CEA awards a place at EEB1 in the EN and IT language sections in the context of regrouping of siblings, including at least one of whom concerns a pupil in the secondary cycle and at least one of whom concerns a pupil in the nursery or primary cycle, the newly enrolled sibling will be referred to EEB1 – UCC Site if they are to be schooled in the secondary cycle and to EEB1 – BRK Site if

they are to be schooled in the nursery or primary cycle, provided that there is a place to be filled.”

56.

Furthermore, the Enrolment Policy provides for the establishment of particular circumstances which may be taken into consideration to grant a priority criterion with a view to a pupil's transfer to one or more schools/sites of choice as follows:

8.5 Particular circumstances

8.5.1. Where a pupil's interest so requires, duly established particular circumstances that are beyond the control of the applicants and/or the child may be taken into consideration to grant a priority criterion with a view to the pupil's enrolment at or transfer to one or more schools/sites of his/her choice. If the particular circumstances can justify the pupil's enrolment at several schools/sites, the CEA has discretionary power to award the place according to the order of preference expressed by the applicant and to pupil numbers in the classes in which enrolment is possible.

...

8.5.3. The following circumstances will not be relevant for this purpose:

a) the location of the home or place of residence of the child and/or his/her legal representatives, even if it is imposed by the appointing authorities of the member of staff concerned,

...

e) without prejudice to Article 8.4, location of the place of employment or the constraints resulting from the performance of the professional activities of the legal representative or the legal representatives, even if it is imposed by the employer.

...

g) occupational or practical constraints on the organisation of travel,

57.

Specific provisions relating to Transfers are included in the Enrolment Policy for 2024/2025, which provide, *inter alia*, as follows:

“9. Transfers

A. Pupils on roll in P5 for the 2023–2024 school year at EEB1 – BRK Site and at EEB2 – EVE Site

9.1. Whatever their category, these pupils, who have already embarked upon their schooling in the European Schools, have priority over new pupils to be enrolled. Continuation of their schooling will be dealt with before enrolment applications and transfer applications.

9.2. Without having to submit a transfer application, **P5 pupils at EEB1 – BRK Site** will be automatically included in the S1 ‘shift’ of EEB1 – UCC Site for the DE, EN, FR, IT, LV and SK language sections.

This automatic transition to the S1 ‘shift’ of EEB1 – UCC Site does not involve the other members of these pupils’ group of siblings.

In February 2024, EEB1 will confirm the automatic transfer of P5 pupils from the BRK Site to the UCC Site.

B. Voluntary transfers

B.1. Authorised voluntary transfers

...

9.9. During the two enrolment phases, the **transfer of pupils from EEB1 – BRK Site to EEB1 – UCC Site** will be allowed for the DE section, without any particular justification, provided that there is a place to be filled.

9.10. Provided that they are submitted **during the first enrolment phase** and that there is a place to be filled, transfer applications will be allowed for categories I and II* pupils, without any particular justification, in the case of:

...

d) **pupils up to S5** who, during the **2023–2024** school year, attended a different school from one of their siblings, to **enable the siblings to be brought together**, so that the children will actually attend the same school (but not necessarily the same site) for the 2024–2025 school year, provided that there is a place to be filled in the language section and year group requested.”

58.

This latter exclusion of the regrouping of siblings on the same site of the B1 school results from a specific change to the Enrolment Policy, first adopted for the 2023/2024 school year. It is clear that the Applicants have not challenged the Enrolment Policy of the European Schools as such which has been adopted for the 2024/2025 school year and which follows upon the policy previously adopted by the Board of Governors of the European School and which has been referred to above.

59.

The applicants appear to accept that the above policy was adopted but question its logic having regard to the provisions of Article 8.2 thereof. It is clear, however, that the restrictions contained in Article 9. 10 of the Policy and in particular in subparagraph d) thereof, represent a restriction on the overall principle on the regrouping of siblings and does not as such defy logic or common sense but represents a clear limitation of the application of this principle.

60.

The Applicants have failed to advance circumstances which can be considered as 'specific circumstances' warranting the granting of the transfer request made as the circumstances advanced are excluded from those which may be considered to be specific circumstances within the terms of the Enrolment Policy.

61.

Accordingly, the Applicants were limited to the provisions of the Enrolment Policy relating to voluntary transfers and to the limitations of the transfers permitted under that policy. It is clear that they were not entitled to request the transfer in question under the terms of the Enrolment Policy as adopted for the forthcoming school year. The European Schools have indicated in their response to the Applicants' complaint, the circumstances leading to the adoption of the Enrolment Policy and the constraints on permitting transfers, such as those sought by the Applicants, which could result in undermining the overall policy on the optimal use of the school sites at the B1 and B2 European Schools.

62.

While it is clear that in the current transitional circumstances primary classes for the P3 and P4 in the English language section will continue to operate at the Uccle site in the forthcoming year at least and in all probability for a number of years, the admission of transfer requests such as that of the Applicants, even if limited in number at any time during the first or second enrolment phases could result in circumstances undermining the imperative to prevent any doubling up of nursery or primary classes on the Uccle site and to direct any surplus students to the Berkendael site dedicated to welcoming them.

63.

Accordingly, it must be concluded that the Applicants have failed to show that the impugned decision or the interpretation or application of the Enrolment Policy "defy

both logic and common sense”, or that they are “inconsistent with the objectives outlined in the Policy on Enrolment” or in the context of paragraph 42 above that “the analysis of the European Schools excluding the application of Article 8.2 to site transfers is therefore vitiated by an error of law.” This is so, notwithstanding the difficult circumstances faced by the Applicants as outlined in their initial complaint and as further accentuated in the circumstances further outlined by the Applicants in their Reply.

64.

In this circumstance, it must be concluded that the Applicants have failed to show that any of the pleas in law advanced by them are founded in substance and accordingly their complaint must be dismissed as unfounded.

On the Costs and Expenses,

65.

In accordance with the provisions of Article 27 of the Rules of Procedure of the Complaints Board *“The unsuccessful party shall be ordered to pay the legal and other costs of the case if they have been applied for by the other party. However, if the particular circumstances of the case so warrant, the Complaints Board may order the latter party to pay the legal and other costs or may order that they be shared between the parties. Where the parties have come to an agreement on costs, the decision as to costs shall be in accordance with that agreement. If costs are not claimed, the parties shall bear their own costs.”*

It follows from these provisions, which are furthermore entirely comparable to those in force in the majority of jurisdictions, national or international, that the party which succumbs should, in principle, pay the costs and expenses of the proceedings.

However, these provisions permit the Complaints Board to assess case by case the conditions under which it should apply same.

66.

In application of these provisions and in light of the observations of the parties, it is appropriate to condemn the Applicants who have failed in the present case to pay the costs and expenses.

In the particular circumstances of the instant case, it will be a just assessment of these costs and expenses to fix them *ex aequo et bono* in the sum of € 700.

FOR THESE REASONS, the Complaints Board of the European Schools

DECIDES

Article 1: The Application to annul of [REDACTED] and [REDACTED] under the number 24/33 is rejected.

Article 2: The Applicants shall pay to the European Schools the sum of € 700 in respect of costs and expenses.

Article 3: The present decision shall be notified in accordance with the conditions of Articles 26 and 28 of the Rules of Procedure.

E. Menéndez Rexach

P. Manzini

A. Ó Caoimh

Brussels, 26 August 2024

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For the Registry,
Nathalie Peigneur