

Appeal 25/01 R

██████████

COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

Interim Order of 17 February 2025

In the case registered with the Registry of the Complaints Board under No 25/01 R, concerning an appeal in summary proceedings lodged on 3rd January 2025 by ██████████ ██████████, legal representatives and parents of ██████████, domiciled at ██████████ ██████████, an appeal seeking suspension of enforcement of the decision of the Central Enrolment Authority dated and notified on 20 December 2024,

Mr Eduardo Menéndez Rexach, Chairman of the Complaints Board of the European Schools, ruling on the summary proceedings,

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

having regard to both this appeal lodged in summary proceedings and the main appeal lodged on the same day, registered under no **25/01**,

having regard to the written observations submitted, on the one hand, by the applicants and, on the other hand, for the European Schools, by Me Marc Snoeck,

having regard to the final sentence of Article 35.1 of the Rules of Procedure, which states that, *'Unless the rapporteur decides otherwise or the two parties expressly request to be heard at a public hearing, applications of this nature shall not involve oral proceedings'*,

issued this interim order on 17 February 2025, the grounds for and operative part of which appear below.

Main facts of the case

1.

The applicants are the parents of [REDACTED].

In September 2023, their son started attending the Primary 1 class of the German language section of the European School I Uccle – where his sister [REDACTED] is also schooled. He is now in the class [REDACTED].

They state that in this class, two children with special needs (SEN) have a violent, noisy and disruptive behaviour towards their son, the other classmates, the teacher and the assistants.

They describe several acts of physical aggression such as boxing and kicking children in the stomach, kicking children against their knees, pushing a drinking bottle into another child's mouth, throwing children from the climbing frame, shouting children loudly in their ears from a close distance, throwing children to the ground and keeping them there by sitting on them, hitting children in the face, slapping across the backside of children and throwing items at children's heads.

2.

The applicants also state that [REDACTED]'s health and wellbeing have been deteriorated because of the situation in the class.

Their son has a severe disorder of the left outer and middle ear, and his hearing is impaired, with a decrease in the perception of speech. Despite medical treatment and surgeries at the ages of 5 and 7 and quite recently, he suffers from conductive hearing loss. He perceives sounds differently in his left ear and is particularly sensitive to loud noises.

His class teacher noted that ██████ showed problems to concentrate and started being negatively affected by the class situation due to his condition.

3.

In this context, the applicants applied, by request introduced on 17 December 2024, for the immediate voluntary transfer of their son from the ██████ of the DE language section of the EEB1-UCCLE to the ██████ of the DE language section of the EEB1-BERKENDAEL for the 2024-2025 school year. This application was supported by several annexes, including medical certificates.

This request was rejected by decision of the Central Enrolment Authority (hereinafter, the CEA), notified on 20 December 2024, by application of Article 13.1 of the Policy on Enrolment in the Brussels European Schools for the 2024–2025 school year (hereinafter, the PE). The CEA has considered that the medical certificates and attestations “*do not allow it to be established that attendance at EEB1-BRK is an essential measure for your son’s condition, as required by Article 8.5.4. of the Policy*”.

4.

Both this appeal in summary proceedings and the substantive direct appeal are brought against this CEA’s decision (hereinafter, the disputed decision).

5.

In their appeal in summary proceedings, the applicants request the Complaints Board to suspend the enforcement of the disputed decision and to condemn the European Schools to the payment of legal fees and expenses assessed at € 800.

In their observations in response, the European Schools request the Complaints Board to dismiss the appeal and order the applicants to pay an amount of 800 € as legal and other costs.

Arguments of the parties

- ***Concerning the two first conditions laid down in Articles 16, 34 and 35 of the Rules of procedure of the Complaints Board.***

6.

Position of the applicants

The conditions of **urgency** and **real risk of absence of effectiveness of the right to appeal** are met.

They state that, in order to avoid a serious and irreparable damage, and based on the advices of three doctors, ██████ should be transferred to another class or school as soon as possible for his physical and mental health protection.

The time needed to get a decision in the main appeal is incompatible with the necessity to preserve ██████'s health, well-being and academic development in 2025.

7.

Position of the European Schools

The Schools argue, in essence, that there is no urgency nor real risk of absence of effectiveness of the right to appeal since that the applicants do not prove that awaiting the end of the main procedure would cause the pupil a serious and irreparable damage.

They state that the academic development of the child is not at stake (“*the reports show that the pupil achieved excellent results throughout all year*”) and the medical certificates recommend his transfer in order to reduce the stress undergone by him.

- ***Concerning the third condition: a serious doubt about the legality of the disputed decision***

8.

Position of the applicants

They invoke three pleas in law.

a) a manifest error of assessment

The disputed decision minimizes the various incidents of physical and verbal violence and the constant disruptive behaviour of two SEN classmates within the █████ class, and the impact of this classroom negative environment on █████’s medical condition, addressed by the class teacher but also established by medical certificates.

The CEA is fully aware of the extent and gravity of the situation since it has already accepted the transfer of two classmates of █████ due to this context.

This negative environment is *particularly detrimental to* █████ who suffers much more than other classmates because of his hearing impairment. His specific situation constitutes “*particular circumstances that are beyond the control of the applicants and/or the child*” within the meaning of Articles 13 and 8.5 PE.

As the medical certificates and the class teacher's observations show, █████ needs an immediate transfer to prevent him from suffering further physical and psychological damage.

The disputed decision completely ignores the multiple medical certificates, established by three recognized physicians, including one specialist (Annexes 1-3).

They state that these three experts clearly advise a “*transfer to a disturbance-free class environment to ensure his healthy physical and academic development*” and a “*change of school as quickly as possible to a secure environment for our child’s hearing development and emotional health.*”.

Secondly, the applicants argue that none of the action and safety measures taken so far by the EEB1-UCC management has brought a noticeable improvement in the behaviour of the SEN children concerned or a positive impact on their son’s specific condition.

In their reply, they add that the School fails in his duty to protect their son from harm and fails in creating and guaranteeing “*a safe and secure educational environment for all the pupils.*” According to them, the new measures do not minimize the risk of injury. “*Inclusion cannot happen at the expense of a secure and safe learning environment for students and teachers.*”.

They consider moreover that the legality of the disputed decision, taken and notified on 20 December 2024, cannot be appreciated at the light of the measures announced on 13 December 2024 and put in place on 7 January 2025. The CEA could only take

into account the facts, circumstances and interests existing at the time of its decision.

In any case, according to them, the new measures are not effective, as incidents continue: despite the school's efforts and action, the two SEN pupils remain a danger for their son, and for the other children in the class; the children of this class are “*constantly*” (rather than ‘*sometimes*’) experiencing, as victims or as witness, disturbing and violent incidents and suffering significant physical and psychological harm.

b) a violation of the principle of equal treatment

The applicants state that one classmate has left the School in December 2024 because of the violent and disruptive environment in class and that the CEA accepted the transfer of two other children in autumn 2024, to the EEB1/BRK and EEB II Evere, after being attacked by the two SEN children.

In their reply, they add some elements to emphasize that their son [REDACTED] is in the exact same objective situation as these two pupils, insisting on the bad health condition of their son : stress, fears, bad sleep quality, “*feeling of being left alone regarding the helplessness of the school staff*”, all these problems being accentuated by his hearing impairment (they are referring to their annexes 2, 5, 6 and 7).

There is no justification for a different treatment of [REDACTED]’s case.

c) a violation of the principle of proportionality and the child's best interests

(Article 24.2 of the European Union Charter of Fundamental Rights), especially because the health of a child is here at stake.

It is unacceptable that the European Schools policies (on Enrolment and on Educational Support and Inclusive Education) would prevail on the physical and mental wellbeing of the pupils.

9.

Position of the European Schools

The Schools reject as unfounded the pleas invoked by the applicants.

a) There is **no manifest error of assessment**

The Schools recognize that the ██████ class is also attended by two pupils with special educational needs “*whose behaviour can sometimes be disruptive, including physical violence and verbal aggression towards their classmates*”; “*This behaviour mainly consists of shouting in class and in the playground, but also involves physical violence such as hitting certain pupils in the class*”.

They deplore the occurrence of incidents arising due to the inappropriate behaviour of two of its pupils, the gravity of which they do not dispute. However, they state that the Brussels I School Uccle pays a particular attention to the situation and takes the necessary measures to face it, in order to improve the atmosphere of the class and the well-being of all of the pupils by increasing supervision, assigning one of the school psychologists to the ██████ class.

Since September 2023, regular monitoring meetings are also organised with the management of the School, the teacher and the parents of the ██████ class; the last one took place on 13 December 2024, when it was decided to implement additional measures such as:

- Exceptional sessions in which the class-group is divided into two groups of variable composition, each with its own class teacher; as there are a total of 11 pupils in the class, each group will consist of a maximum of 6 pupils;
- A requirement for monitoring and/or therapy, additional to the support provided by the School, for the two pupils with special needs.

These measures are in place since 7 January 2025 and “*should contribute significantly to reducing the negative impact of the disruptive behaviour of the two pupils with special needs and improving the well-being of all of the pupils in the class*”.

The Schools underline that these additional measures should particularly improve the situation of [REDACTED]: as said measures consist in reducing the number of pupils in the class by half for certain class periods, they should have a significant positive impact for him, whose medical condition leads to concentration problems due to reduced auditory acuity.

b) There is **no violation of the principle of equal treatment**

The two applications for the transfer of pupils in the [REDACTED] class have been accepted by the CEA in October and November 2024, i.e. before the new additional measures decided on 13 December 2024 and put in place since 7 January 2025.

The Schools consider that the situation of [REDACTED] is *objectively different* to those of the two pupils concerned: in the first case, the pupil had been subject to physical aggression from SEN pupils in the class, as *recorded in reports from the school infirmary and medical certificates*. And in the second case, a medical condition suffered by the pupil (with *severe risks of haemorrhage*) was supported by medical certificates.

[REDACTED] situation does not correspond to any of those two cases.

c) There is **no violation of the principle of proportionality**

According to the Schools, the medical certificates do not show to what degree transferring the pupil might be an “*essential measure for the treatment of his medical condition*” and differentiate [REDACTED]’s case from those of the other pupils in the class.

In this regard, they underline that, in his attestation of 21 October 2024, Doctor [REDACTED], O.R.L. formulated only practical recommendations aimed at promoting the pupil's hearing and concentration in class (Annex 11 of the applicants' case file) while, in his attestation of 2 December 2024 (Annex 1 of the applicants' case file), he recommends an immediate change of school, this assessment is not explained by new elements of a medical nature.

They add that submitting voluntary transfers to restrictive admission conditions (those set out in Article 8.5 of the PE) constitutes a proportionate and necessary measure to maintain the benefit of successive enrolment policies. They also underline that they must follow their policies on inclusive education.

Findings of the Chairman of the Complaints Board acting in summary proceedings

Admissibility of the application for interim measures,

10.

According to Article 16 of the Rules of Procedure of the Complaints Board,

'The application shall not have suspensory effect unless a member of the Complaints Board orders otherwise, at the applicant's request, where, in the event of proven emergency and of serious doubt about the legality of the disputed decision, there is, in the circumstances of the particular case, a real risk of absence of effectiveness of the right to appeal. The special procedure provided for that purpose is laid down in Articles 34 and 35.'

Under Article 34 of those Rules of Procedure,

'Applications seeking the suspension of enforcement and other interim measures must be express and must be presented in summary proceedings, separately from the main proceedings. The applicant must establish the urgency of the case and set out de jure and de facto elements providing supporting evidence justifying the measure requested.'

Finally, under Article 35 of the Rules of Procedure,

'1. Investigation of applications for suspension of enforcement and of applications for other interim measures shall be conducted by the member of the Complaints Board designated as rapporteur by the Chairman. They must be conducted as a matter of urgency. The time periods allowed to the parties for submission of their written observations on these applications shall be the shortest possible and may not be extended. Unless the rapporteur decides otherwise or the two parties expressly request to be heard at a public hearing, applications of this nature shall not involve oral proceedings.

2. The designated rapporteur shall give a ruling on these applications following summary proceedings, stating the grounds on which the ruling is based. Where the urgency of the matter so justifies and there is a plea in law likely, at that stage of the investigation, to give rise to serious doubts as to the legality of the disputed decision, the rapporteur may, if he considers that there is, in the circumstances of the particular case, a real risk of absence of effectiveness of the right to appeal, and unless the taking into consideration of the interests at stake precludes this, order any interim measure required to be taken. Such measures may only be temporary in nature and shall end at the latest when the Complaints Board has ruled on the main proceedings

3. Should an application be made to the same rapporteur by one party after notification of the order made in the summary proceedings and prior to the decision of the Complaints Board in the main proceedings, the said rapporteur may, after having requested the other party to submit its observations within a period set by him, amend the measure or measures which he has ordered or terminate them.'

11.

Those provisions shall also lay down the conditions under which an application for suspension of operation or other interim measures may be granted: where urgency so justifies, where there is evidence of a means capable of creating, at the stage of the investigation, serious doubt as to the lawfulness of the contested decision and where there is, in the circumstances of the case, a real risk that the right to bring proceedings will not be effective.

Those three conditions are, in accordance with their wording, cumulative and not alternative.

Furthermore, if they are met, the taking into consideration of the interests in question

must not preclude the measure applied for.

It may also be added, with respect to the nature of and the need for the measures requested, that *'the very purpose of summary proceedings, as organised by the aforementioned provisions of the Rules of Procedure, is to allow, in all cases where the urgency of the matter so justifies, expeditious suspension of an administrative decision contested by the applicant or any other interim measure justified by the circumstances'* so as thus to ensure the effectiveness of the decision on the substance of the appeal (see orders 14/37R, 16/50R (points 13 to 15), 19/51R (point 9), 22/37R (point 16), 22/42R (point 13) and 23/40R).

12.

In the present case, the formal conditions for ensuring the admissibility of the application for interim measures are met, since it was presented separately from the main appeal and contains the elements, of fact and of law, intended to justify the measure applied for and the urgency.

It remains to be examined whether the substantive conditions for interim measures are met in the present case: urgency, real risk of ineffectiveness of the right to bring proceedings and serious doubts as to the legality of the contested decision.

13.

Urgency and real risk of effectiveness of the appeal

The European Union General Court recalled in Order of the President of 30 March 2022 (T-125/22 R), *'[...] urgency must, generally, be assessed with regard to the present need for an interim ruling in order to avoid serious and irreparable damage being incurred by the party requesting the provisional protection. It is the responsibility of this party to provide evidence that they cannot wait until the end of the substantive*

appeal procedure without suffering serious and irreparable damage (see Order of 14 January 2016, AGC Glass Europe and Others/Commission, C-517/15 P-R, EU:C:2016:21, point 27 and case law cited)'.

In the present case, urgency is demonstrated by the pupil's health conditions, reflected in the medical reports from which it can be inferred an unfavourable development during the last recent weeks and the need to adopt measures, which requires a swift decision, even if provisional, to prevent the situation from becoming more serious, which could also explain a request for transfer to another School once the school year is well advanced.

That concern to avoid negative consequences for the child's health, as well as the nature of his illness, satisfies the condition relating to the real risk of effectiveness of the appeal.

14.

Serious doubts on the legality of the disputed decision

Concerning the existence of any serious doubt concerning the legality of the decision, it should be recalled first that administrative appeals and contentious appeals are non-suspensive in nature (Article 66.3 of the General Rules of the European Schools and Article 16 of the Rules of Procedure for the Complaints board respectively), since acts adopted by bodies of the European Schools benefit from a presumption of legality (Interim Order 22/42 R, point 17).

As the President of the European Union General Court recalled in his Order of 31 March 2022, Case T-22722 R), *that 'The Judge hearing applications for interim measures can only exceptionally order the suspension of an act contested before the Court or prescribe provisional measures'.*

It should also be remembered that the judge giving a ruling in summary proceedings cannot express considerations on the substance that might prejudge the decision on the main appeal (Interim Order 21/22 R, point 12).

The established case law of the Court of Justice of the European Union shows that the condition relating to the '*fumus boni iuris*' (apparently well-founded nature of the application or serious doubts as to the legality of the disputed decision (Article 35.2 of the Rules of Procedure for the Complaints Board) may be considered met '*when at least one of the pleas relied on by the applicant for interim measures in support of the main action appears, prima facie, not unfounded. Such is the case when one of these pleas reveals the existence of a significant legal or factual difference for which there is no immediately obvious solution and is therefore worth in-depth examination, which cannot be carried out by the judge of the summary proceedings but must be the subject of the substantive procedure*' (Order of the President of the EUGC of 31 March 2022 T-22/22 R).

It means that it must be examined whether, *prima facie*, there are grounds for the pleas in law invoked by the applicant and whether at least one of them is sufficiently serious to cast doubt on the legality of the disputed decision and justifies adoption of the requested interim measures.

The disputed decision is motivated by the fact that the medical certificates do not justify the requested transfer as an "*essential measure for the treatment of the condition from which the person concerned suffers*", within the meaning of Article 8.5.4 of the PE.

It appears from the documents produced before the Complaints Board that the exceptional situation in the class attended by the applicants' child is known to the School, which organises frequent meetings with parents and adopts measures to avoid troubles in the class, which includes SEN pupils – for who the School is obliged to ensure inclusive education; the adoption of frequently up-dated measures shows that the School is aware of this situation and trying to resolve it.

In order to contest the motivation of the disputed decision, the applicants allege above all that their son's specific health condition is not adequately considered. They submitted with their request medical certificates, dated 21 October 2024 (Dr. ■■■■■■■■■■, specialist in otorhinolaryngology), 21 November 2024 (Dr. ■■■■■■■■■■), 22 November 2024 (Dr. ■■■■■■■■■■, pediatrician) and one last dated 2 December 2024 from Dr. ■■■■■■■■■■.

From these certificates, it can be inferred that the child, because of his severe hearing disorder (with a recent surgery), is more exposed than the other classmates to troubles occurring in the classroom and in the playground, in particular to sudden shouting or loud voices, which have a direct - and harmful - influence on his ability to concentrate and on his progress in studies.

It can also be concluded that, despite the measures taken by the School, the child's condition has not improved: while in October, Dr ■■■■■■■■■■ advised « *that ■■■■■ be seated as far away as possible from disruptive students so that the best possible conditions can be created which allow ■■■■■ to follow the teacher's instructions in class* », in December, he « *urgently advise that ■■■■■ be placed in a disturbance-free class environment to ensure his healthy physical and academic development* ».

In conclusion, the requested transfer is detailed and based on certificates, which, in this preliminary approach, do not appear *prima facie* to be unfounded in the light of the application of Article 8.5.4 PE.

This finding is sufficient to consider, without the need to examine the other pleas of the appeal, that the request in summary proceedings sets out a plea that, at the current stage of the investigation, raises serious doubts as to the legality of the disputed decision.

15.

According to Article 35.2 of the Rules of Procedure, the interests at stake must also be taken into consideration.

In this case, it must be taken into account:

- on the one hand, as foreseen in the Policy on Educational Support and under Article 4.7 of the Convention defining the Statute of the European Schools, the European Schools must take measures “*to facilitate the reception of children with special educational needs*” ; they also have to distribute the school population of the European Schools in Brussels, in the most favorable way under increasingly difficult conditions, as set out in the Schools’ response ;
- on the other hand, the interest of the child in the circumstances of the present case: it is a 7-year-old child who, due to his physical condition, is more vulnerable to disturbances, in particular those affecting his hearing and ability to understand and concentrate. These troubles are student-specific, and not only the consequence of inclusive education affecting all the students.

The School has put in place measures which show its serious willingness to deal with the problem and to deal with the interests at stake in a balanced way, measures which have certainly helped all the children in the class, but as regards the applicants’ son, they do not seem to have given the expected entire result.

For these reasons, there is serious doubt as to the legality of the disputed decision and, taking into account the interests at stake, it can be concluded that the conditions for obtaining the requested measure in summary proceedings are met.

As regards the requested measure, the Schools contend that the appeal is inadmissible on the ground that there is no interest in bringing proceedings because the decision in summary proceedings could only have the effect of suspending the execution of the decision refusing the transfer, with the consequence that the pupil

would remain at the same school pending the decision on the main appeal.

However, Article 34 of the Rules of Procedure refers not only to applications for suspension of enforcement but also to other interim measures ; it is clear from the application that the requested measure is not only the suspension of enforcement of the CEA's decision but also to temporarily authorize the refused transfer ; this is a measure of a positive nature, anticipating, albeit provisionally, the outcome of a possible decision of the Complaints Board in favour of the main appeal, otherwise the measure would be ineffective.

The applicants' interest in bringing proceedings is thus justified, and the measure must consist in temporarily authorising the requested transfer.

It should also be recalled that the measure may be revised or amended under the conditions laid down in Article 35.3 of the Rules of Procedure, following a justified request by one party.

Regarding the legal and other costs of the summary proceedings,

16.

Article 27 of the Rules of Procedure states that *"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 ... If costs are not claimed, the parties shall bear their own costs."*

It follows from these provisions, which are furthermore comparable to those in force in many national or international jurisdictions, that the unsuccessful party should, in

principle, pay the legal and other costs of the proceedings. However, these provisions allow the Complaints Board to assess the conditions under which they should be applied *ex aequo et bono* and on a case-by-case basis.

Pursuant to those provisions and in the light of the forms of order sought by the parties, the question of costs must be reserved until the decision of the Board of Appeal on the main appeal.

**ON THESE GROUNDS, the Chairman of the Complaints Board ruling on the
summary proceedings**

D E C I D E S

Article 1: The appeal in summary proceedings of [REDACTED], registered under No **25/01 R**, is declared admissible and well founded: the CEA's decision of 20 December 2004 is suspended, and the requested transfer of the pupil is provisionally and temporarily authorised.

Article 2: The decision concerning the legal and others costs of this summary proceedings shall be reserved pending the decision on the main appeal, registered under No 25/01.

Article 3: This interim order shall be notified in accordance with the conditions under Articles 26 and 28 of the Rules of Procedure.

E. Menéndez Rexach

Brussels, on 17 February 2024

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On behalf of the Registry,
Nathalie Peigneur