

**Appeal 22/66**

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## **COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS**

### **Reasoned Order of 9 December 2022**

In the case registered with the Registry of the Complaints Board under No **22/66**, concerning an appeal lodged on 2 December 2022 by Ms ■■■■■ and M. ■■■■■, legal representatives and parents of ■■■■■, brought against the decision of the Central Enrolment Authority dated 25 November 2022,

**Mr Eduardo Menéndez Rexach**, Chairman of the Complaints Board, acting 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 9 December 2022, the grounds for and operative part of which appear below,

## **Main facts of the case and arguments of the appeal**

1.

Both applicants are Commission AD officials: M. [REDACTED] works in Brussels and is a permanent official of the Commission since 1996 and Ms [REDACTED] is a permanent official of the Commission since 2007 and works in the Commission's Helsinki Delegation where she has been posted since 2021.

Their daughter [REDACTED] attended the European School of Brussels II – Woluwe (hereinafter EEB 2) from 2018 to 2021.

She then moved with her mother to Helsinki, where she is enrolled at the accredited European School of Helsinki since the 2021-2022 school year.

She currently benefits from the S5 exchange program, spending the first semester of the 2022-2023 school year at the EEB 2.

2.

[REDACTED] (and/or her parents) decided that she will not return to Helsinki in January in order to finish the school year in her school there, but will instead stay permanently in Brussels as of 1<sup>st</sup> January 2023, to live with her father and continue her studies at the EEB 2.

The applicants submitted therefore an enrolment application for their daughter at the EEB 2 – Woluwe in S5 of the Finnish language section for the (remaining) 2022-2023 school year.

3.

With its decision dated 25 November 2022, the Central Enrolment Authority (hereinafter the CEA) declared this enrolment application inadmissible, pursuant to Article 12.1 of the Policy on Enrolment in the Brussels European Schools for the 2022-2023 school year (hereinafter the PE 2022-2023). It considered that the elements invoked in the applicants' accompanying letter "*do not allow the rules on mid-year enrolment to be waived, in so far as they do not characterise your situation or differentiate it from other cases*".

4.

The current contentious appeal is being lodged against this decision, as permitted by Article 67, paragraph 2 of the General Rules of the European Schools and Article 14.1 of the PE 2022-2023.

The applicants request the Complaints Board to "*reconsider*" the disputed decision.

In support of their appeal, they submit, in essence, the following:

- The disputed decision does not take into account the situation of two parents, both officials of the European Commission, posted in two different cities and makes it practically impossible for the child to move back to the parent staying in his permanent Commission job in Brussels; this is not in line with the principle of family reunification;
- The condition foreseen under Article 12.1 b) is fulfilled as far as [REDACTED] is enrolled in a school at Helsinki;

- It is against ██████'s educational interest to change for the spring term to the local Belgian schooling system, where she will not be granted education in her mother tongue, Finnish, and where the curriculum is completely different. This would destabilize her studies and her motivation for learning that are currently at a very high level and producing excellent results. The alternative of a return to Helsinki would have a negative impact, and is not in the best interest of the child;
- Finally, they point out that there are only 12 pupils in S5 FI, including ██████, after a number of recent departures: ██████'s staying in the S5 FI class would be in the collective interest of the Finnish section.

### **Assessment of the Chairman of the Complaints Board**

#### ***Regarding the admissibility of the appeal,***

5.

Under the terms of Article 27, paragraph 2 of the Convention defining the Statute of the European Schools, *“The Complaints Board shall have sole jurisdiction in the first and final instance, once all administrative channels have been exhausted, in any dispute concerning the application of this Convention to all persons covered by it with the exception of administrative and ancillary staff, and regarding the legality of any act based on the Convention or rules made under it, adversely affecting such persons on the part of the board of Governors of the Administrative Board of a school in the exercise of their powers as specified by this Convention. When such disputes are of a financial character, the Complaints Board shall have unlimited jurisdiction. The conditions and the*

*detailed rules relative to these proceedings shall be laid down, as appropriate, by the Service Regulations for the teaching staff or by the conditions of employment for part-time teachers, or by the General Rules of the Schools.'*

The Complaints Board only has unlimited jurisdiction, allowing it not only to annul the disputed decision but also to amend it or pronounce other measures, only when the dispute is of a pecuniary nature, which is not the case in this instance.

Consequently, this appeal is only admissible insofar as it may be interpreted as seeking the annulment of the disputed CEA's decision.

***Regarding the merits,***

6.

For enrolments in the European Schools of Brussels after the beginning of the school year, Article 12.1 of the PE 2022-2023 provides that:

*"As from 6 September 2022, the following enrolment applications will be allowed, restrictively and on the strict condition that at the time of their submission within the meaning of Articles 2.12. and 2.14., the following three cumulative conditions are fulfilled, save in exceptional cases affecting the pupil concerned that are duly justified at the time of submission of the application:*

- a) they involve categories I, II\* and II' pupils for whom no other enrolment application for the 2022-2023 school year has been submitted,*
- b) the pupil concerned has been being educated outside Belgium for at least five months when the application is submitted,*
- c) one of the following two cases arises three months at the earliest before the*

*start of the child's actual schooling.*

- one of the pupil's legal representatives will be taking up his/her post with one of the European Union institutions,*
- one of the legal representatives residing outside Belgium will be settling in Brussels on a long-term basis in the context of a change to the family situation”.*

7.

This appeal is manifestly unfounded in law under the provisions of Article 32 of the Rules of Procedure for the Complaints Board mentioned above.

The applicants do not prove the existence of a procedural irregularity affecting the legality of the disputed decision, nor that a new and relevant fact needs to be taken into consideration, nor the existence of a manifest error.

None of the arguments submitted in support of the appeal is well-founded.

8.

The enrolment applications submitted after the beginning of the school year are allowed restrictively, under three *cumulative* conditions; if one of the conditions is not met, it is irrelevant whether the other two are met or not.

It is undisputable that at least one of the cumulative conditions laid down in Article 12.1 of the PE 2022-2023 is not fulfilled insofar as the pupil's legal representatives have both taken up their posts with the European Union institutions for much more than 3 months before January 2023, one of them is not settled outside Belgium and the other, residing outside Belgium, will not be

settling in Brussels on a long-term basis in the context of a change to the family situation." (article 12.1 c).

9.

The disputed decision is clearly and sufficiently reasoned.

There is indeed no element allowing the rules on mid-year enrolment to be waived.

If the family is separated, it is the result of the applicants' decisions.

■■■■ will have the right to join the EEB 2 for the next school year if she wishes and provided that her parents submit an enrolment application in respect of the PE 2023-2024.

■■■■ has a place in her school in Helsinki, where she can continue her schooling in Finnish. There is no educational need for her to change for the spring term to another school, taking indeed the risk to destabilize her studies and her motivation for learning. The applicants do not explain why the return to Helsinki would have a negative impact and would not be the best interest of their daughter. This return to Helsinki is just the normal step after a semester abroad in the context of the S5 exchange program.

Finally, the rules of the PE are the same for all the parents submitting an enrolment application and must be applied equally to all of them. To do exceptions for some linguistic sections less crowded would amount to establishing a practice based on discrimination according to the language of

pupils applying for enrolment – which is against one of the fundamental principles presiding the legal system of the European schools.

10.

The appeal must therefore be dismissed as unfounded.

**ON THESE GROUNDS, the Chairman of the Complaints Board of the  
European Schools**

**D E C I D E S**

Article 1: The appeal of Ms [REDACTED] and M. [REDACTED], registered under No **22/66**, is dismissed.

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

E. Menéndez Rexach

Brussels, on 9 December 2022

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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."*