

Appeal 21/15

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Complaints Board of the European Schools

(1st section)

Decision of 19 July 2021

In the case of

Ms ■■■■ and Mr ■■■■,

■■■■,

applicants,

v.

the European Schools,

rue de la Science 23, B-1040 Brussels,

represented by ■■■■, lawyer, ■■■■

defendant,

whereby the applicants, in a contentious appeal lodged on 14 May 2021 and registered under No 21/15, seek the admission of their daughter ■■■■ to the European School, Brussels III,

the Complaints Board of the European Schools – 1st section – composed of :

- Mr Eduardo Menéndez Rexach, Chairman of the Complaints Board,
- Dr Mario Eylert, member of the Board and rapporteur,
- Prof. Pietro Manzini, member of the Board,

assisted by Ms Nathalie Peigneur, registrar, and Mr Thomas D'Immerseel, legal assistant,

in light of the parties' written observations, submitted on the one hand, by the applicants and on the other hand, on behalf of the European Schools, by [REDACTED], lawyer,

having decided, as permitted by Article 19 of the Rules of Procedure, that the case would not be examined at a public hearing, the parties having been informed accordingly,

handed down on 19 July 2021 the following decision, the grounds for and the operative part of which appear

Facts of the case and main arguments of the parties

1.

The applicants are European Commission officials and the parents of [REDACTED], born on [REDACTED]. The family currently lives in [REDACTED].

On 29 January 2021, during the first enrolment phase, the applicants submitted an application for their daughter's enrolment in the nursery cycle of the German language section at the European Schools of Brussels (hereinafter referred to as: ESB). They listed the ESB in the following order of preference: Brussels III, Brussels I (Uccle Site), Brussels I (Berkendael Site), Brussels II (Woluwé Site), Brussels II (Evere Site), Brussels IV.

In support of their application for the enrolment at the European School, Brussels III, the applicants did not mention any particular circumstance justifying a priority criterion.

2.

By decision of 30 April 2021, the Central Enrolment Authority (hereinafter referred to as: CEA) offered the applicants a place for [REDACTED] at the ESB II - Evere Site, pursuant to Articles 6.1., 6.17., 6.18.a), 6.19.1. and 10.6.k) of the Policy on Enrolment in the Brussels European Schools for the 2021-2022 school year (hereinafter referred to as : EP).

3.

On 14 May 2021, the child's legal representatives lodged a direct contentious appeal with the Complaints Board against that CEA's decision, as allowed by Article 67.2. of the General Rules of the European Schools and Article 14.1 of the EP.

They request the Complaints Board to annul CEA's disputed decision so as their daughter could be enrolled at the ESB III.

In support of their appeal, the applicants essentially argue that the disputed decision does not take sufficient account of the fact that they chose their place of residence in Woluwé-Saint-Pierre for reasons of service interest. They are required, on the basis of Article 20 of the Staff Regulations, to be available to the Commission at all times and to choose their place of residence accordingly (*"[a]n official shall reside either in the place where he is employed or at no greater distance there from as is compatible with the proper performance of his duties"*). They argue therefore that the children of Commission employees should attend the school nearest to their home.

According to them, there is at least, in any case, a need to minimise travelling time and distances between home and school. Consequently, [REDACTED] should be awarded a place at the ESB III, which is only 2 km from her home. The grounds for awarding of a place at the ESB II - Evere Site are inadequate.

4.

In their written observations, the European Schools request the Board to dismiss the claim as unfounded and to condemn the applicants to pay the legal and other costs of the proceedings, amounting to 750 €.

In support of their arguments, they argue the following:

No particular circumstances that would have required [REDACTED] admission to the first choice ES, namely the ES Brussels III, were claimed with the enrolment application. No priority criteria in the meaning of Article 8.4.2 EP were invoked.

In any case, having regard to the requirements mentioned in the 2021-2022 Enrolment Policy, in accordance with Article 8.4.2., the applicants' arguments are not relevant exceptional circumstances. The inconveniences mentioned by the applicants in connection with traffic in the Brussels Region or with the distance between home and school do not differentiate their situation from that of the majority of parents of pupils of the European Schools who have to travel to their workplace and to make arrangements for their children to get to the place where they attend school.

The European Schools refer to the constant case law of the Complaints Board on that matter.

5.

In their reply, the applicants repeat the arguments set out in their appeal.

Findings of the Complaints Board

On the legality of the disputed act,

6.

The applicants' appeal is admissible but unfounded.

There was no error in law in the award of a place for [REDACTED] at the ES, Brussels II - Evere Site, as it proceeded in accordance with the general enrolment provisions under Articles 6.1, 6.19.1 *et seq.* of the EP. There is no special criterion within the meaning of Article 8 of the EP for her admission to the ES, Brussels III.

7.

In Article 6 of the EP (general rules for enrolment of categories I and II pupils), it is laid down under Article 6.17 of the EP that for *"Pupils for whom an application for enrolment in a multiple language section has been submitted are entitled to attend one of those schools/sites in so far as places are available, then as there are places to be filled, but not necessarily their first preference one, unless a special priority criterion, within the meaning of Article 8, can be claimed."* Then Article 6.19.1. of the EP determines that: *"Firstly, with the aim of optimising the new site's accommodation capacity, all applications for enrolment in the nursery and primary cycles of the DE, EN, ... sections will be referred to EEB2 – EVE Site."*

Article 8 of the EP regulates 'Special priority criteria'. Article 8.1. determines that *"Owing to personal circumstances or to particularities specific to the European Schools, certain enrolment or transfer applications will be deemed to have priority within their category."* In that connection, Article 8.2. mentions the regrouping of siblings, Article 8.3. mentions return from assignment and from a period of study abroad and Article 8.4. mentions 'Particular circumstances'. For 'Particular circumstances', which, under Article 8.4.4., must be set out with a *"a clear statement of the facts, to which should be attached all the supporting documents appended to the enrolment application"* to be claimed, Article 8.4. of the EP further elaborates,

stating: *"Where a pupil's interest so requires, duly established particular circumstances which 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 ... one or more schools/sites of his/her choice."* In addition, Article 8.4.1. determines that: *"The priority criterion will be accepted only when it is invoked on submission of the application and where, having regard to the precise circumstances characterising a case and differentiating it from other cases, a given situation requires appropriate treatment to mitigate the unacceptable consequences which the rules of this Policy would otherwise have had."* Finally, Article 8.4.2. then lists in detail, the *"circumstances [that] will not be relevant for this purpose, namely, amongst others:*

"a) location of the place of residence (home) of the child and/or his/her legal representatives, ...

e) 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 organisation of travel, ...

o) cumulative inconveniences, if they do not singularly consist of a relevant particular circumstance within the meaning of Articles 8.4.1. and 8.4.2."

Finally, Article 8.4.6. of the EP is worded 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 obtaining prior to submission of the enrolment application or to its handling by the CEA."*

8.

Having regard to this legal framework, the circumstances claimed by the applicants do not justify any other admission decision. The CEA's decision could not be annulled by the Complaints Board. Under the general enrolment and admission provisions of the EP, it is legitimate and not vitiated by an error in law. In the case in point, there is no special priority criterion in the meaning of Article 8 of the EP.

a) A place in the nursery cycle in the German language section at the ESB II - Evere Site had to be awarded under the unambiguous rule laid down in Article 6.19.1. of the EP. On account of the clearly formulated rule in Article 6.19.1 of the EP, no additional more detailed reasons for this award were required either.

Nor is there any legal argument discernible as to why the Board of Governors, as the body stipulating the rules, acting autonomously, might not adopt, and indeed was allowed to adopt, for organisational reasons, such prioritisation of award of places at the new site on account of the sharply rising pupil numbers in recent years (see in this connection the decisions of the Complaints Board of 31.07.2007 – 07/22 – and of 30.07.2012 – 12/30 – in the case of other organisational decisions). With the rules of the EP, it is guaranteed that – in accordance with Article 6.1. of the EP – all entitled pupils can be awarded **an** appropriate school or nursery place at the ES in Brussels, because fundamentally, entitled pupils have no claim to a place in a specific ES in Brussels but **only to a place in one of the ES** in Brussels (most recently: Decision of the Complaints Board of 29.08.2019 – 19/46).

b) [REDACTED] does not fulfil the requirements of a priority criterion within the meaning of Article 8 of the EP. More especially, there are no 'Particular circumstances' within the meaning of Article 8.4. of the EP, the more so as the applicants also did not claim such a criterion with the enrolment application (Articles 8.4.4. and 8.4.6. of the EP). The circumstances claimed by the applicants with the appeal are not relevant according to the clear stipulation of Article 8.4.2. of the EP.

aa) The applicants' place of residence in relation to the geographical location of the ES, Brussels II - Evere Site does not justify any particular circumstance, as Article 8.4.2.(a) of the EP explicitly shows.

bb) The same applies with respect to the applicants' places of employment, even if there must be compliance here with certain requirements of the Staff Regulations of Commission officials or if difficulties arise because of complicated organisation of transport or transport times. Under Article 8.4.2.(e) and (g) of the EP, those aspects are irrelevant. Another point to be noted is that Article 20 of the Staff Regulations only in general terms requires that "*An official shall reside either in the place where*

he is employed or at no greater distance therefrom as is compatible with the proper performance of his duties. The official shall notify the Appointing Authority of his address and inform it immediately of any change of address.” This therefore means that neither the official nor any other member of staff is obliged to live in close proximity to the office or that it is mandatory for 'family routes' – such as children's route to school – to be minimised within a city or a region.

On the legal and other costs,

9.

Article 27 of the Rules of Procedure provides 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 is clear from those provisions, which, incidentally, are fully comparable with those in force in most national and international courts, that the unsuccessful party must, in principle, bear the legal and other costs of the proceedings. However, the said provisions allow the Complaints Board to assess on a case by case basis the conditions in which this should be applied.

In view of the submissions of the European Schools, which are not the unsuccessful party in this case, and taking into account the particular circumstances of the case, the Complaints Board is of the opinion that an amount of 250 € is the adequate and appropriate sum to be charged.

ON THESE GROUNDS, the Complaints Board of the European Schools

H A S D E C I D E D A S F O L L O W S:

Article 1: The appeal lodged by Ms [REDACTED] and Mr [REDACTED], registered under No 21/15, is hereby dismissed.

Article 2: The applicant will pay to the European Schools the sum of 250 €, as legal and other costs of the case.

Article 3: Notification of this decision will be given as provided for in Articles 26 and 28 of the Rules of Procedure.

E. Menéndez Rexach

M. Eylert

P. Manzini

Brussels, 19 July 2021

The Registrar,
N. Peigneur