

██████████

(1st section)

In the case registered under No **25/24**, concerning an appeal lodged on 21 April 2025 by M. [REDACTED] [REDACTED] and Ms [REDACTED] [REDACTED], legal representatives and parents of [REDACTED], against the decision of the Central Enrolment Authority dated 8 April 2025,

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

having regard to the written observations presented by the applicants as well as by Me Marc Snoeck, lawyer registered at the Brussels Bar, on behalf of the European Schools,

having decided that, as permitted under Article 19 of the Rules of Procedure, the case would not be heard at a public hearing,

delivered on 4 August 2025 the following decision.

Main facts of the case and arguments of the parties

1.

On 7 January 2025, the applicants submitted an enrolment application for their son [REDACTED], in the first year of the nursery cycle, in the English language section of the Brussels I European School – Berkendael site.

The pupil's sister has attended the English language section of the Brussels I European School – Berkendael site since the 2022–2023 school year.

[REDACTED] holds American and Bulgarian nationality. According to the enrolment application, he speaks Bulgarian and English with his father, [REDACTED] and English with his mother and French at the crèche.

2.

On 6 February 2025, the Brussels I School acknowledged receipt of the pupil's enrolment application, informing the applicants of its decision to submit him to comparative language tests in Bulgarian and English, in order to determine his mother tongue/dominant language, in accordance with Article 47 e) of the General Rules of the European schools.

Between 6 and 12 February 2025, the applicants exchanged a number of emails with Mr [REDACTED], Deputy Director of the nursery and primary cycles of the Brussels I School – Berkendael site. The applicants asked the School

management to reconsider its decision to submit the pupil to comparative tests in Bulgarian and English, given the circumstances characterising their case, or at least to reform the said decision in order to include French among the languages tested.

In a decision dated 11 February 2025, the Deputy Director of the School confirmed the decision dated 6 February 2025 to submit the pupil only to a Bulgarian test and an English test.

3.

The English and Bulgarian language tests were held on 18 February 2025, from 08.40 to 09.00 and from 09.15 to 09.45 respectively.

They produced the following results:

	English	Bulgarian
Listening	5/10 'Average'	7/10 'Higher'
Fluency – speaking	3/10 'Lower'	7/10 'Higher'
Vocabulary – speaking	3/10 'Lower'	6/10 'Average'
Grammar – speaking	3/10 'Lower'	6/10 'Average'

With regard to English, the teacher concluded that the pupil would be able to join the section '*With many difficulties*' (3/10).

With regard to Bulgarian, the teacher concluded that the pupil would be able to join the section "*Without any difficulty*" (7/10).

4.

Based on these results, the School management decided, without prejudice to the decision of the Central Enrolment Authority, that the pupil should be enrolled in the Bulgarian language section, specifying that this section was not open at the Brussels I European School.

The Director informed the applicants accordingly by email on 4 March 2025.

5.

In a decision dated 8 April 2025, the Central Enrolment Authority offered the pupil a place in the Bulgarian language section of the Brussels IV European School, in accordance with Articles 6.1., 6.5., 6.13. and 10.4.b) of the Policy on Enrolment.

6.

The applicants do not specifically mention the form of order sought as required by Article 15 (d) of the Rules of Procedure. Nevertheless, the Complaints Board understands from the context of the appeal that they are seeking the annulment of the decision of 8 April 2025.

Pleas of the parties

7.

In their application the applicants put forward three pleas:

First plea: incorrect or flawed language selection process

In this regard, the applicants essentially argue that the marks obtained in languages are not informative in terms of language development in a 4-year-old child. They point out that the child was intimidated during the English test, as noted by the teacher herself. Furthermore, the teacher concluded that ██████ could be educated in English, albeit with difficulty. Finally, the applicants point out that they are a multilingual family in which children are encouraged to speak ██████ and Bulgarian at home in order to preserve these minority languages in an environment where English and French are predominantly spoken.

Second plea: violation of the principle of the best interests of the child

The applicants argue that the contested decision is contrary to the principle of the best interests of the child. In this regard, they argue that:

- a) ██████ will have to commute to school for two hours every day, thus reducing the time available for family, friends and active learning;
- b) the fact that ██████ is enrolled in a different school from his sister will deprive him of her emotional support;
- c) there will be language and cultural barriers between brother and sister given their different educational experiences;
- d) one of the parents will not be able to participate actively in the child's initial

education, as she does not have sufficient knowledge of Bulgarian;

e) ██████, who was born in the US, is unlikely to return to Bulgaria and therefore the ES's efforts to maintain his father's language are futile;

f) the father of the pupil, who works in the external action service of the EU Commission will probably be posted abroad to countries only provide international education in major languages, French or English and will be precluded from integrating in future educational cycles.

Third plea: discriminatory treatment of the application for enrolment

Referring to the experience of ██████'s older sister, the applicants claim:

a) that there are several examples of breaches of the principle of schooling in the child's dominant language;

b) that they have learned that several children were given the opportunity to take tests in English and French in addition to their “mother tongues”;

c) that ██████ is a US citizen and would be deprived of the opportunity to be educated in the official language of that country;

d) that a child with dual nationality was not required to take the language test;

e) that there is discrimination against families with three languages; in this regard, it would be common practice for minority languages to be supported at home and languages of social communication to be taught at school.

8.

The European Schools (hereinafter the ES) defended their decision on the basis of the following arguments.

On the first plea

With regard to the selection process, the ES state that:

- a) the applicants themselves had stated in their application form that [REDACTED] spoke Bulgarian (intermediate) better than English (basic);
- b) the teacher responsible for the tests had made sure that the child felt at ease;
- c) the fact that the English test preceded the Bulgarian test cannot explain the lower results in the first test;
- d) Article 47(e) of the General Rules confers exclusive competence to determine the dominant language on the School Director;
- e) the case law of the Complaints Board confirms that educational choices are the exclusive competence of the teaching staff;
- f) under Article 50 of the General Rules, the School Director may, but is not obliged to, take specific circumstances into account;
- g) the fact that [REDACTED] is being educated in a multilingual environment is not exceptional in the ES.

The ES's defence also addresses the issue of the French test, which had been requested by the applicants during the proceedings prior to the language tests. This request was made because [REDACTED] had been enrolled in a French nursery school for two years. According to the ES, under Article 47 of the General Rules, the School Director also has exclusive competence to decide on which languages to conduct a comparative test, and this decision is taken on the basis of the information provided by the parents. In the circumstances of the case, French is not spoken by any member of the family, and it was therefore reasonable for the School Director to consider comparing only English and Bulgarian. Furthermore, the exception provided for in Article 47(e)(2) cannot be applied in the case because the parents never requested

the enrolment of their child in the French section.

On the second plea

With regard to the protection of the child's interests, the ES state that:

- a) once it has been established that Bulgarian is ██████'s dominant language, the only school available is the one assigned to him, Brussels IV;
- b) Article 8.5.3 of the Enrolment Policy excludes the distance between the school and the home of his legal representatives as a relevant circumstance;
- c) the negative consequences associated with the fact that the siblings are being educated in different places are also irrelevant;
- d) the fact that one of the parents cannot follow the education in Bulgarian cannot be attributed to the schools but to the life choices of the applicants;
- e) the fact that ██████ will not live in Bulgaria is irrelevant and hypothetical.

On the third plea

With regard to the alleged discrimination, the ES deny any violation of the principle, referring to the case law of this Board. They also note that the applicants' claims refer to a few cases of children without nationality of a country where English is not spoken who were enrolled in an English section. However, nationality is only one of the factors taken into account by the school principal when deciding on the language section. Therefore, no violation of the principle can be inferred from the applicants' claims.

9.

In their reply, the applicants essentially repeat the arguments already presented in the application.

In addition, the applicants:

- a) claim that the methodology used by the schools to determine the dominant language is questionable; in their opinion, based on scientific literature, there is a risk that the second language analysed will be less well known;
- b) point out that they do not contest the language tests but the correct interpretation of the results of those tests;
- c) specify that they did not request the French test because the enrolment policy allows only one language section to be indicated and their preference was English, as the language of [REDACTED]'s citizenship;
- d) argue that extensive scientific research proves that children between the ages of 3 and 7 can easily acquire new languages through full immersion in them;
- e) affirm that the scientific community supports the model of “*minority language at home and majority language at school*”;
- f) note that the rule of grouping of siblings together is not being followed;
- g) claim that international and European legal instruments affirm the right of parents to shape and direct the education of their children.

Assessment of the Complaints Board

10.

In the opinion of the Complaints Board, none of the arguments put forward by the applicants is such as to invalidate the decision taken by the European Schools.

11.

On the first plea: incorrect or flawed language selection process

With regard to the correctness of the language tests, the Complaints Board finds that neither the procedure followed nor the results can be challenged. The applicants claim that a child is more relaxed and therefore performs better during the second test is not supported by concrete scientific evidence. Children's performance may vary from case to case. Initial shyness may reduce performance during the assessment of the first language, however, the same result may occur due to fatigue during the assessment of the second language. These variables, even if they exist, are inevitable in a process that must necessarily begin with the assessment of one language and end with the assessment of another.

As regards the results, it should be noted that the English teacher concluded by giving the test a score of 3/10 and stating that [REDACTED] would be able to join the English section "*with many difficulties*". On the other hand, the Bulgarian teacher gave the test a score of 7/10, concluding that [REDACTED] could follow the Bulgarian class "*without any difficulty*". Given that the language test is not intended to determine whether a child is able to join a specific language section, but to understand which is his dominant language, the result cannot be questioned.

The Complaints Board notes, furthermore, that in the application form, the applicants themselves state that the child's language skills can be described as "*intermediate*" for Bulgarian and "*basic*" for English.

Furthermore, as repeatedly stated, the Complaints Board is not competent to

judge the merits of educational assessments made by the Schools, which can only be decided and carried out by competent teaching staff (see Decision 21/19 of 8 July 2021).

In view of the arguments put forward by the applicants, the Complaints Board considers it appropriate to recall that the fundamental principle of the European Schools is to provide education in the child's mother /dominant language, with a view to giving him or her a solid linguistic and cultural foundation on which to learn other languages. Parents cannot therefore choose the language section, which must be determined on the basis of an educational assessment. Any other considerations, such as the nationality of the child or the country where he or she will hypothetically live as an adult, are not relevant in this context.

This approach does not deprive parents, as the applicants' claim, of the possibility of making educational choices for their children, because these choices can be made by enrolling their children in schools that adopt a different language policy, such as the one that seems to be preferred by the applicants, according to which minority languages should be learned at home and majority languages at school.

The applicants' request to have their son take a French test also appears to be flawed by the idea that parents have the right to choose their child's language, an approach that is not the one adopted by the European Schools. In this regard, the Schools' defence rightly pointed out that the choice of test languages is made by the School Director, who bases his/her decision on information provided by the child's legal representatives. These are educational choices on which the Board, as already mentioned, has jurisdiction only in cases of manifest error. Now, considering that according to the

application form [REDACTED] speaks Bulgarian and English with his father, [REDACTED] and English with his mother and French only at nursery, i.e. outside the family, the choice of the School Director not to give [REDACTED] a French test does not appear to be vitiated by any manifest error.

12.

On the second plea: violation of the principle of the best interests of the child

The second plea is based on the breach of the principle of the best interest of the child

In the Complaints Board's view, this principle has not been violated either. The educational policy of the European Schools is that, from a linguistic point of view, the best interest of the child is best served by placing him or her in the section of the language he or she knows best. Neither the length of the journey to and from school nor the fact that the sister/brother is educated in another language can call this conclusion into question.

Furthermore, the fact that these circumstances are not relevant to the choice of school is expressly provided for in Article 8.5.3 of the Enrolment Policy, which the applicants had an easy access to. As for the fact that [REDACTED]'s mother, not having a perfect knowledge of Bulgarian, may not be able to follow her son's linguistic development easily, this cannot be attributed to the European School but to the life choices of [REDACTED]'s parents. In any case, it seems counter intuitive that schooling [REDACTED] in English, which is not the mother tongue of either parent, could be in the best interests of the child.

Finally, the applicants point out that the child's father, who works in the external

action service of the European Union, is likely to be posted in the future to a third country where only international schools teaching in English and/or French are normally available. It would therefore be in ██████'s best interests to be educated in English from now on. In that regard, the Complaints Board must point out that the European schools are not ordinary international schools but are established on the basis of a specific international convention and adopt an educational policy based on the best interests of the child, which is shared by the Member States and the European Union that are parties to the Convention defining the statute of the European Schools. If the applicants, in view of their specific career prospects, consider that the educational policy of the Schools does not meet the interests of their children, they may still enrol them in international schools of their choice.

13.

On the third plea: discriminatory treatment of the application for enrolment

Finally, with regard to the alleged violation of the principle of non-discrimination, it should be noted that this principle is violated when, in the absence of objective justification, identical situations are treated differently and different situations are treated identically (see Decision 17-41 of 18 September 2017, pt. 11). The applicants now claim that, unlike ██████, other children were given the opportunity to take the English test. However, in order to prove that the principle of non-discrimination has been violated, it would be necessary to prove that these children were in the same situation as ██████ in terms of their knowledge of the languages tested. This proof has not been provided, even in part, and therefore the argument cannot be upheld.

14.

In view of the above, the appeal must be dismissed.

Regarding the legal and other costs,

15.

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 also 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.

16.

In the circumstances of this case, characterised by the absence of a public hearing, it is appropriate to decide that the applicants should have to pay the costs of these proceedings assessed *ex aequo et bono* in the sum of € 400.

ON THESE GROUNDS, the Complaints Board of the European Schools

D E C I D E S

Article 1: The appeal brought by M. [REDACTED] and Ms [REDACTED], registered under No **25/24**, is dismissed.

Article 2: The applicants are ordered to pay the European Schools an amount of 400 € for the legal and other costs of this procedure.

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

E. Menéndez Rexach

P. Manzini

A. Ó Caoimh

Brussels, on 4 August 2025

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On behalf of the Registry,
Nathalie Peigneur