



COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

(2nd section)

Decision of 28 June 2021

In the case registered with the registry of the Complaints Board under No **21/04**, the subject of which is an appeal lodged on 24 March 2021 by Mr [REDACTED], lawyer, acting in the name and on behalf of Ms [REDACTED], of Mr [REDACTED] and of their daughter [REDACTED], against the decision of the Secretary-General of the European Schools of 10 March 2021 rejecting the administrative appeal lodged by the applicants against the decision of 5 February 2021 of the Director of the European School, Brussels I to refuse a change of Language 1 from English to Croatian for their daughter [REDACTED]

the Complaints Board of the European Schools, 2nd section, composed of:

- Andreas Kalogeropoulos, Chairman of the 2nd section;
- Mario Eylert, member;
- Paul Rietjens, member and rapporteur;

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

in the light of the written observations presented on the one hand, by Mr [REDACTED], lawyer, on behalf of the applicants and on the other, on behalf of the European Schools, by Ms [REDACTED], barrister at the Brussels Bar,

after having decided, as allowed by Article 19 of the Rules of Procedure, that the case would not be heard at a public hearing, on account of the health restrictions,

of which the parties were duly informed,

in the light of the operative part, of which notification was given on 28 June 2021 pursuant to Article 26.2 of the Rules of Procedure,

delivered the following decision, the grounds for and the operative part of which appear below.

Facts of the dispute and arguments of the parties

1.

The applicants' daughter, [REDACTED], has been on roll since the beginning of the 2018-2019 school year in the Anglophone section of the European School, Brussels I – that section having been requested by her parents, on account of her academic background in an Anglophone international school and of her excellent knowledge of the language, with the School's agreement.

Although her mother tongue is Croatian, [REDACTED] is therefore being educated in English (Language 1, hereinafter referred to as: L1) and is taking French as her Language 2 (hereinafter referred to as: L2), in which language she was very quickly provided with educational support.

[REDACTED] is currently in S6 (2020-2021 academic year).

2.

In view of their daughter's difficulties in French (L2) and the health problems that she was developing (stress and anxiety), the applicants submitted a request for a change of language section, involving a switch from the Anglophone section to the Croatian section, so that Croatian would become her L1, English her L2 and French her Language 3 (hereinafter referred to as: L3).

This first request for a change of L1 was made during the 2019-2020 school year,

when [REDACTED] was in S5.

By decision of 6 March 2020, the School's Management refused this change and on 19 June 2020, the Secretary-General of the European Schools (hereinafter referred to as: SGES) rejected the applicants' administrative appeal against that decision.

3.

The applicants did not lodge a contentious appeal against the SGES' decision of 19 June 2020, but requested, with a view to the beginning of the 2020-2021 school year, that a Class Council meeting be convened in order to examine their daughter's situation and the "*compelling pedagogical reasons*" that should lead to the change of L1 sought by them.

That request was rejected by the School's Director on 28 August 2020 – thus confirming his decision of 6 March 2020.

4.

The first semester of the 2020-2021 school year was marked by exchanges of letters between the applicants and the Management.

On 7 December 2020, the applicants finally approached the SGES to request the convening of a Class Council meeting (which, according to the applicants, "*will be able to take a position independently, without being put under any pressure from the management, on the interest for [REDACTED] of continuing or of changing L1 / L2*") and to request that their daughter should take a test to ascertain her proficiency level in French "*in order to check that no mistake in her initial choice of languages needs to be acknowledged and corrected.*"

By letter of 17 December 2020, the Secretary-General reminded the applicants that he was not allowed to adjudicate on change of language(s) questions, pointing out that he had already responded with respect to the substance of their administrative

appeal on 19 June 2020 and drawing attention above all to the consequences of their request, both logistical (a necessary transfer from Brussels I to Brussels IV, the only school with a Croatian section) and pedagogical, for a year S6 student: [REDACTED] will have to continue to take History and Geography in French, she will no longer be able to take the advanced English course and she will have to repeat S6 in the Croatian section to be able to enter for the Baccalaureate examinations in S7 in that section.

By letter of 13 January 2021, the School's Director explained [REDACTED] situation even more precisely and in even greater detail and the possibilities open to her and their consequences, already pointed out by the SGES.

In the light of the health problems put forward by the applicants (worsening of psychological difficulties), the Director did, however, agree to organisation of a test of knowledge of Croatian, in [REDACTED] interest.

5.

This Croatian language test was conducted on 20 January 2021 and [REDACTED] scored 75%. It was subsequently decided, again in the pupil's interest, to convene an extraordinary Class Council meeting on 2 February 2021.

The Director set out [REDACTED] situation in detail and the concrete consequences of a change of L1.

The Class Council emphasised the work done by [REDACTED] and her progress in all subjects, her integration into the school and the support that she is receiving from the school, concluding as follows: *"the class council felt that, with the support continuing here in EEBI she would continue to improve and see this as a much better option than (sic) having to re-establish new relationships with a whole new staff in the middle of a school year."*

The votes were then cast: 2 members in favour of the change, 11 members against.

The change was refused but the Class Council nevertheless said that it was concerned about [REDACTED] pedagogical and psychological development and was willing to re-examine the request for a change of L1 at the end of the school year (in June 2021).

6.

On the basis of the reasoned opinion of the extraordinary Class Council of 2 February 2021, the School's Director notified the applicants, by registered letter of 5 February 2021, of his decision to reject their request for a change of L1.

The applicants then lodged an administrative appeal against that decision, which was rejected as unfounded by decision of the SGES of 10 March 2021.

7.

It was against the latter decision that this contentious appeal was lodged on 24 March 2021, whereby the applicants request the Complaints Board to declare their appeal admissible and well founded, to annul the decision to refuse a change of L1 and to order the European Schools to pay the legal and other costs of the proceedings, estimated to amount to €2 500.

In the alternative, they request the designation of a psychiatric expert to respond to the medical opinions of Dr Fuks and of *PhD.Sc.* Renata Coris Spoljar.

8.

In support of their appeal, the applicants put forward, in substance, the following line of argument:

a)

The change of L1 is fundamentally necessary for their daughter's pedagogical development, her wellbeing and her health.

The applicants argue that their daughter finds herself in a situation where she is suffering, this becoming persistent and intensifying, of which the School is fully aware.

Dr Lucy Fuks, a psychiatrist, reports a case of severe depression due to the major efforts made by [REDACTED] to achieve fairly disappointing results (for her). She concludes: *"In the face of these new medical developments in my patient, I think that all the considerations about potential academic hurdles don't really matter. (...) It would be a shame if I have to give antidepressant medication to a child because she doesn't feel heard."*

The applicants also draw on the opinion of Dr Renata Coris Spoljar (Clinical Psychologist and the Head of the Diagnostics and Treatment Clinic for the Protection of Youth and Children in Zagreb).

They invoke in this connection the child's best interests (see Article 3 of the UN Convention on the Rights of the Child and the Protocol on its Interpretation and Article 24 of the Charter of Fundamental Rights of the EU), considering that they were not taken into consideration either by the School or by the SGES, since [REDACTED] state of health is totally minimised or indeed ignored, without the slightest medical justification on the School's part.

The applicants also consider that the contested decision is based on a manifest error; they have never disputed that their daughter's mother tongue is Croatian and that her dominant (learning) language is English.

They dispute, on the other hand, that they *chose* French as L2: in the European School system, L2 is limited to three languages (French, English or German); in their daughter's case, as she is on roll in the Anglophone section, *this choice* is reduced to languages (French or German) and they deplore the fact that Croatian could not have been chosen as L2.

They consider that if the School had had doubts about their daughter's ability to keep up with lessons in French as L2, a test ought to have been organised. Or even

that the consequences of her enrolment in the Anglophone section ought to have been taken into consideration more adequately: if [REDACTED] had been enrolled in the Croatian section and not the Anglophone one, her mother tongue would have been her L1, English her L2 and French her L3 (with a great deal less work to be done) – something which would have been decided taking account of her interest.

The applicants also argue that the serious consequences and the difficulties of a change in S6 could have been avoided if the change had been accepted when [REDACTED] was still in S5 (their first request was made during the 2019-2020 school year).

b)

The applicants consider that there are definitely compelling pedagogical reasons justifying the change of L1: [REDACTED] does not have the proficiency level required in French to pass the Baccalaureate next year, yet the School is refusing to change her L1, and hence her L2, something which is exacerbating her stress and her anxiety.

[REDACTED] is wearing herself out trying to scrape through her courses in French and has developed anxiety and depression, which are preventing her from devoting sufficient time and concentration to courses in other subjects. Her whole education, in its entirety, is suffering as a result.

They invoke here an infringement of the principle of proportionality: all the efforts have to be shouldered solely by a child who is suffering as the School is refusing her an education in her mother tongue – of which she has a perfect command – even though this is one of the fundamental principles of the European Schools.

Emotional stability and health are elements that are essential for overall educational development and that need to be taken into account to assess the child's best interests, in accordance with the UN Convention on the Rights of the Child, and in particular Article 29 thereof (which stipulates that the education of the child shall be directed to the development of the child's personality, talents and mental and

physical abilities to their fullest potential) and also Article 12 thereof (which provides for children's right to express their views freely in all matters affecting them).

The applicants denounce the fact that medical opinions count for nothing in the decision-making process for a change of Language 1, since, under the rules in force, this decision is purely pedagogical in nature and is a matter for the Director alone, on the basis of the conclusions of the Class Council – whose members have no medical expertise.

Now in the case in point, even though the doctor's opinion is very clear (*“the absolute priority is to move the child from French as L2 because the prolonged stress and lack of solution has increased the level of her anxiety and depressive feelings”*), it is quickly swept aside by the Class Council (*“a change ... would not likely remedy [REDACTED] anxiety management”*), which thus claims medical expertise that it manifestly does not have.

Similarly, in his response to the administrative appeal, the SGES totally ignored Dr Fuks's report of 11 February 2021, which indicates that [REDACTED] is suffering from clinical depression and that there has been a deterioration in her state of health, Dr Fuks even considering that a change of school – if it cannot be avoided – is a solution for which arrangements need to be made quickly.

Whilst acknowledging the existence of the medical problem, the School offers nothing concrete and immediate – at most a re-examination of the situation at the end of the school year – something that is tantamount to refusing to help a child in danger.

9.

In their response, the European Schools request the Complaints Board to declare the appeal admissible but unfounded and to order the applicants to pay the legal and other costs of the proceedings, evaluated at the sum of €1 200.

They contend in substance that:

a)

The child's interest was indeed taken into consideration and no manifest error of assessment was committed.

Although no teacher sought a change of Language 1, it was decided, in response to the applicants' numerous questions on the subject and in [REDACTED] interest, to organise an extraordinary meeting of the Class Council, which convened on 2 February 2021 and undertook a thorough examination of her situation, from both the pedagogical angle and the health angle.

Each element was analysed: [REDACTED] successful integration into the Brussels I School, the change of school in the event of a change of section, the modification of the curriculum, the change of options, the change of Language 2, her development, the educational support put in place, the medical certificates produced, etc.

Eleven out of 13 teachers judged that [REDACTED] has the abilities to continue her education in the English section, with French as Language 2, considering that she is a diligent and conscientious student and that she is developing well in French.

The European Schools consider that the School did not, moreover, commit an error of assessment or a procedural irregularity, which are the only factors that would allow the Complaints Board to call the Class Council's conclusion into question.

As regards [REDACTED] state of health and the medical certificates produced, the European Schools argue, on the basis of the Board's decision on case 19/60, that *"a medical certificate cannot in itself impose a change of Language 1, even if it asserts, echoing this Board's case law, that such a change is essential or fundamental for the child's wellbeing. In reality, for strict application of the GRES, which the Complaints Board is required to enforce, the Class Council alone may make such a finding, since it is best placed to assess pupils' pedagogical context."*

According to Article 47(e) of their General Rules (hereinafter referred to as: GRES), the Director (and not a doctor or a psychiatric expert) is empowered to allow a change of language, and solely for compelling pedagogical reasons established by the Class Council, and not on the basis of medical considerations.

The Schools emphasise that nevertheless, the psychological difficulties, as attested by the documents and duly noted by the teachers, were carefully considered in adopting the Class Council's decision.

b)

The European Schools also draw attention to the wording of Article 47(e) of the GRES and to the Board's case law with respect to a change of L1: it is necessary: a) for the request to come from a member of the Class Council; and b) for there to be "*compelling pedagogical reasons*".

Now those two conditions are not met in the case in point.

First of all, none of the members of [REDACTED] Class Council took the initiative of proposing a change of L1; the applicants requested that a member of the teaching staff (her French teacher, Mr Jérôme Ceccon) should initiate the procedure, something which in the end he did not do; the female applicant then submitted herself the request for a change of Language 1 to the Director.

The Schools point out that despite this, to give the applicants all necessary assurances regarding their child's academic development, an extraordinary Class Council meeting was convened on 2 February 2021 to consider the question of a change of section and, consequently, a change of School, since the European School, Brussels I does not have a Croatian language section.

According to the Schools, the Class Council (hence, [REDACTED] teachers) considered in great detail the request for a change of language made by the applicants, but did not accept any "*compelling pedagogical reason*" justifying it in mid-year: [REDACTED] is a diligent and conscientious pupil who has made huge progress, her unhappiness

was taken into consideration and a change of a school is not advisable, especially during this period of alternating distance and in-person teaching and learning. At this stage, the Class Council considers that a change of L1 in mid-year would have more adverse effects than continuing her schooling as it stands. The reason is that apart from her changing school, the whole of [REDACTED] course of studies would be disrupted. The Class Council points out that the School has set up educational support for [REDACTED] and that this will continue throughout her schooling.

The Schools therefore consider that the Class Council examined [REDACTED] pedagogical and personal situation and deemed that her proficiency level in French was acceptable to continue her year. Examining the pros and cons of a change of language section, also involving a school transfer during a school year preparing students for the European Baccalaureate examinations, the Class Council judged the request to be inopportune, in the pupil's best interests, whilst not ruling out a new assessment of [REDACTED] pedagogical situation at the end of the school year.

10.

In their reply, the applicants maintain their initial claims, responding to the line of argument developed by the European Schools, and emphasise the following in substance:

a)

They acknowledge first of all that it was indeed their choice to enrol [REDACTED] in the Anglophone section but invoke a lack of knowledge to some extent of the European School system, in particular the requirements expected in L2 for the Baccalaureate examinations, and criticise the Schools for not providing enough assistance both at the time of enrolment (and hence at the time when the language choices were made) and subsequently, when the difficulties in French emerged, something which their daughter's teachers recognised but then ignored; in that connection, they denounce pressure from the School's Management and the rigidity of the rules, in so far as the request for a change cannot come from parents.

b)

The applicants go on to emphasise the fact that neither the Director nor the Class Council have the slightest medical expertise to refute the detailed opinions of the doctors who are treating [REDACTED] or to grasp the scale of the medical problems from which she is suffering.

Her doctors are of the opinion, after a thorough examination, that this change of language, is fundamentally necessary to resolve [REDACTED] problems, both pedagogical and psychological (stress and anxiety), and to avoid the need to prescribe antidepressants for her.

The applicants have a further question: why did the Director not consult the School's psychologist or doctor for advice (as allowed by the General Rules in cases of absences on sickness grounds, for example)?

By disregarding [REDACTED] medical situation (her anxiety, her panic attacks, her doctors' opinions) and allowing the situation to persist for two years, the Director seriously harmed the child's best interests.

There is no point in re-examining the situation in June 2021, at the end of S6: allowing the change so belatedly would oblige [REDACTED] to repeat S6, when she is working hard to pass: it would be completely absurd and contrary to her interest.

c)

The applicants also wonder why a change of school should be imposed on [REDACTED] when a Croatian teacher teaches at the Brussels I School, and refer in that connection to *"similar arrangements put in place for other children in comparable situations."*

The School therefore had the resources to allow [REDACTED] to continue her schooling in her mother tongue, without changing school, and to have English (and not French) as L2.

Finally, the applicants wonder about the reasons why [REDACTED] Francophone teachers, who admitted to the female applicant her daughter's difficulties in French and her suffering, did not seek to initiate the change, as members of the Class Council; they see in this pressure on the Management's part.

Findings of the Complaints Board

The appeal's admissibility

11.

The appeal's admissibility will not be discussed.

Substance

12.

The first, second, sixth and seventh paragraphs of Article 47(e) of the GRES lay down the following:

"A fundamental principle of the European Schools is the teaching of mother tongue/ dominant language as first language (L1). This principle implies the pupil's enrolment in the section of his/her mother tongue/dominant language where such a section exists.

This principle may be waived only where the child has been educated in a language other than his/her mother tongue/dominant language for a minimum of two years at primary or secondary level. The European Schools will presume in that case that the child will be capable of continuing his/her schooling in the language in question.

(...)

Determination of L1 at the time of the child's enrolment is definitive in principle.

A change of Language 1 may only be authorised by the Director for compelling pedagogical reasons, duly established by the Class Council and on the initiative of one of its members."

It is necessary to examine whether the European Schools' decision to refuse [REDACTED] [REDACTED] the applicants' daughter, a change of L1 (and, implicitly, of L2) complies with the said provisions of GRES.

13.

It is clear from the documents in the file that [REDACTED] was enrolled, in 2018, in the Anglophone section of the European School, Brussels I (hereinafter referred to as: EEB 1), at the explicit request of the applicants themselves, expressed on the enrolment form.

As parents are not free to choose L1, its determination being the responsibility of the school's Director, in the light of the pupil's background (several years' schooling in English), he agreed to the parents' request, as allowed, moreover, by the second paragraph of Article 47(e).

On the same enrolment form, the parents chose French as L2, although they indicated that their daughter had a moderate proficiency level in the language but did not need special educational needs support.

The L1 and L2 of the applicants' daughter were therefore determined in accordance with the GRES - which they are assumed to have read, understood and accepted, on enrolling their child in the European School system -, which was in line with their wish expressed at the time of enrolment.

In this connection, the Board has already pointed out in its case law that *"In so far as the parents themselves chose, in agreement with the European Schools, a specific language section, they must live with the consequences of that choice (...)"* (see decisions of the Board on appeal 16-43 of 15 August 2016 and appeal 19-48

of 13 December 2019).

14.

According to the GRES, the determination of English as L1 for [REDACTED] is definitive in principle and a change of that L1 may only be authorised by the Director for compelling pedagogical reasons, duly established by the Class Council.

In this connection, it is important to note that under the procedure laid down in Article 47(e) of the said GRES, the Class Council looks into a change of L1 *"on the initiative of one of its members"*, something which was not the case for [REDACTED] the request having been made by her parents. The fact that the Class Council nevertheless considered this request, after a Croatian language test had been organised, also at the parents' request, shows that the school took those requests seriously and wished, out of concern for the child's interest, to give the applicants all necessary assurances regarding their daughter's academic development.

15.

It was therefore indeed in the child's interest that the Class Council examined whether or not the conditions to change L1 were met, as the fundamental principle of an education in the European Schools is that the child should receive teaching in his or her mother tongue/dominant language, so that he or she is able to follow the curriculum successfully in a language of which he or she has a sufficient command.

In the light of that principle, a change of L1 is possible only exceptionally and in the conditions laid down in the seventh paragraph of Article 47(e), namely *"for compelling pedagogical reasons, duly established."*

According to the settled and consistent case law of the Complaints Board, recalled, moreover, by the European Schools in their response, *"By using this wording ("compelling pedagogical reasons"), the GRES require more than the mere existence of pedagogical reasons or aspects: the reasons must clearly bring to light*

the fact that the change of language is essential or fundamentally necessary for the child's pedagogical development.” (See in this connection the Board's decisions on appeal 15-47 of 15 December 2015, appeal 16-4 of 1 September 2016 and appeal 16-48 of 14 December 2016).

The finding that there are such grounds remains a matter solely for the Class Council.

16.

In the case in point, the fact remains, on the basis of the documents in the file, that:

- the applicants' arguments, invoking the fundamental need for a change of L1 for their daughter's pedagogical development, are based on medical opinions and certificates concerning their daughter's wellbeing and on declaratory international texts relating to the child's best interests and to her fulfilment and development through education;
- none of [REDACTED] teachers sought a change of L1, not even her Francophone teachers; the applicants' claims that the said French teachers, who allegedly admitted to the female applicant that her daughter was experiencing difficulties and that there was a need for a change, but who had allegedly come under pressure from the management not to refer the matter to the Class Council, even though the female applicant had explicitly requested them to do so, are not corroborated by any evidence;
- in response to the applicants' insistent request for a change of L1, the school's Director convened, on 2 February 2021, an extraordinary Class Council meeting, at which the teaching staff examined very thoroughly their daughter's pedagogical and personal situation; as is clear from the report of the said meeting, it was explained to the teachers that at the end of the deliberations, each of them had to vote in accordance with their own judgement, taking account of all the facts presented and in the child's best interests;

- following this examination – which lasted for 1 hour 40 minutes – the Class Council considered, by a very large majority (11 votes out of 13 voters), that a change of L1 in mid-year – which would also involve a change of school, as EEB 1 does not have a Croatian language section – would have more adverse effects for the pupil than continuing her schooling as it stands, especially during this period of alternating distance and in-person teaching and learning in the context of the pandemic; before deeming the request for a change of language to be inopportune, the Class Council comprehensively analysed, in the child's well-understood interest, the impact of the different aspects of a change, including the necessary changes to the pupil's course of study, but also the fact of having to adapt to new teaching staff in a new school;

- whilst, moreover, deeming that [REDACTED] proficiency level in French is acceptable for her to continue the year and that she is a diligent and hard-working pupil who has made huge progress and is continuing to receive educational support, the Class Council did not accept any compelling pedagogical reason for a change of L1 in mid-year.

17.

As a question of a purely pedagogical nature is concerned, the Complaints Board only has marginal supervisory power over the Class Council's appraisal.

Indeed, in accordance with the Complaints Boards settled and consistent case law, *"The Class Council's assessments concerning pupils' abilities cannot in themselves be challenged, either before the Secretary-General or before the Complaints Board (...). Class Councils are best placed to assess pupils' abilities and it is not up to the Complaints Board to censure the pedagogical assessments made by the teachers (...). Pedagogical assessment is a matter for the teachers, whom the Complaints Board cannot supersede, unless there has been a manifest error of assessment or procedural irregularity."* (decisions of the Board concerning appeals 17-45 R and 17-45 of 7 February 2018 and 19-26 of 18 September 2019).

The Board could only, therefore, query the Class Council's conclusion of 2 February

2021 on account of a manifest error of assessment, of which there is no evidence in this particular case, or of a procedural irregularity, which was not invoked by the applicants.

18.

Moreover, the Board considers that the applicants' argument alleging that the school has not thought about their daughter's wellbeing, disregarding the detailed opinions of the doctors who are treating [REDACTED] and who maintain that continuing her schooling with French as L2 would have adverse effects on her health and wellbeing in general, must be rejected.

First of all, it emerges from the documents in the file that after the refusal of a first request for a change of L1, when [REDACTED] was in S5 (2019-2020 school year), the letter from her doctor accompanying a new request from the applicants in the middle of the 2020-2021 school year, was considered by the school to be a new fact, justifying an examination of [REDACTED] situation by the Class Council. In addition, the psychological difficulties, as attested by medical certificates, and [REDACTED] unhappiness – which it has not been established is associated (solely) with her language section at EEB1, given that the applicants also appended to their appeal a medical certificate issued by a psychologist in Zagreb and dating back to 2011 – were carefully taken into consideration when the Class Council took its decision, although it did not, however, consider that those elements constituted, in the case in point, a compelling pedagogical reason for a change of L1.

The reason, as the Board has already emphasised, is that *"a medical certificate cannot in itself impose a change of Language 1, even if it asserts, echoing this Board's case law, that such a change is essential or fundamental for the child's wellbeing. In reality, for strict application of the GRES, which the Complaints Board is required to enforce, the Class Council alone may make such a finding, since it is best placed to assess pupils' pedagogical context."* (See decision of 2 March 2020, concerning appeal 19-60).

19.

Finally, the Board considers that the applicants' allegation that the school has offloaded its responsibility towards ██████ leaving all the efforts to be shouldered solely by a child who is suffering, must also be rejected.

The reason is that it emerges from the documents in the file that already at the time of enrolment at EEB 1 in 2018, the school had made it clear to ██████ mother that with only three years' study of French and a moderate proficiency level in that language, the pupil might well experience difficulties in French and in the subjects that she would have to take in that language. She was advised at the time to consider the possibility of enrolling her daughter as a Croatian SWALS at EEB 4, where she would be able to be educated in Croatian as L1. That possibility was explicitly refused.

As soon as the first difficulties in L2 arose at EEB 1, the school assisted the pupil with acquisition of French by offering her support lessons. It has continued to do so throughout the three years of her school career so far (S4, S5 and S6). The child has been closely monitored by several of the school's teachers, including by the secondary cycle coordinator and the school's educational adviser; she has also received support in L3. The report of the Class Council's meeting of 2 February 2021 describes in detail the support lessons provided since 2018. These have led to the child's steady progress, which has been reflected in an improvement in her results in L2, in History and in Geography (subjects taken in French). Those findings and the favourable outlook for the pupil's future development in those subjects enabled, moreover, with other aforementioned elements, the Class Council to conclude that there was no compelling pedagogical reason for a change of L1, the Class Council remaining ready to re-examine ██████ pedagogical situation at the end of the school year.

20.

It follows from all the foregoing that the applicants have no grounds for seeking annulment of the contested decision. Their appeal must consequently be

dismissed.

Legal and other costs

21.

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.

22.

Pursuant to those provisions, and in view of the European Schools' submissions, the applicants, who are the unsuccessful party in this case, must be ordered to pay the legal and other costs of the proceedings.

In the particular circumstances of this case, having regard notably to the absence of oral proceedings, a fair assessment of the amount of those costs will be made by fixing them at the sum *ex aequo et bono* of €300.

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]
[REDACTED], registered under No **21/04**, is hereby dismissed.

Article 2: The applicants are ordered to pay to the European Schools the sum of €300, 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.

A. Kalogeropoulos

M. Eylert

P. Rietjens

Brussels, 28 June 2021

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pp. The Registry,
Nathalie Peigneur