



COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

(2nd section)

Decision of 04 September 2023

In the case registered with the Registry of the Complaints Board under the number 23/30, having as its object an Appeal introduced on 17 July 2023 by [REDACTED] and [REDACTED], legal representative and parents of [REDACTED] and [REDACTED] (hereinafter ‘the children’), residing together at [REDACTED], the application seeking to have quashed the decision of the Central Enrolments Authority (hereafter the CEA) of 29 June 2023, notified on 07 July 2023 by which the applications for the enrolment of the above children were rejected and could not be considered in so far as the applications did not provide any substantiating evidence to justify their claim that the first applicant took up a post with the European Union Institutions after 31 December 2022.

The Complaints Board of the European Schools, 2nd section, comprising:

- Brigitte Phemolant, President of the Second Chamber of the Complaints Board
- Pietro Manzini, member and
- Aindrias Ó Caoimh, member and rapporteur

assisted by Ms. Nathalie Peigneur, Registrar, and by Mr. Thomas van de Werve d’Immerseel, legal assistant,

having regard to the written observations presented on the one hand by the Applicants and on the other hand by Marc Snoeck, advocate at the Brussels Baron behalf of the European Schools,

in light of the circumstances pertaining to this appeal and the urgency of the proceedings, the Complaints Board, having decided pursuant to Article 19 of the Rules of Procedure to determine this appeal without a public hearing,

delivered on 04 September 2023 the decision in respect of which the reasons and grounds and the operative part thereof appear as follows:

Main facts of the case and arguments of the parties

1.

The first applicant has been working at the Committee of the Regions since November 2020 but until April 2023 it was only as a contract agent with very little to no certainty of contract renewal and no long-term prospects. In April 2023, she became a temporary agent with much better prospects and currently her contract runs until 2025 and will be hereinafter renewed for a permanent temporary contract.

2.

The applicants submitted an application for the enrolment of [REDACTED] at the European School, Brussels IV in Primary 1 of the EN language section for the 2023-2024 school year on 05 June 2023, during the second enrolment Phase and an application for the enrolment of [REDACTED] at the European School, Brussels IV in the nursery cycle of the EN language section for the 2023-2024 school year during the second enrolment phase. They requested that the two applications be dealt with together.

3.

In the enrolment applications, it was indicated that one of the applicants for enrolment is taking up his/her post in Brussels after 31 December 2022.

4.

The first applicant confirmed that she took up duties as a contractual agent in November 2020, and explained that she started a new contract in April 2023. In support of the two applications, she produced her contract entering into effect on 01 April 2023.

5.

The Central Enrolment Authority (hereafter the CEA) noted however, the document produced merely attests to a change of post within the same institution where she has been employed since 01 November 2020, as indicated on her attestation for the European Schools.

6.

Consequently, the CEA by decision of 29 June 2023 and notified to the first Applicant on 07 July 2023 considered that the conditions of Article 2.22 were not met in so far as the first applicant did not provide any substantiating evidence to justify her claim that she took up a post with the European Union Institutions after 31 December 2022.

7.

It was considered that the applications were therefore inadmissible and the CEA was unable to accept them for the 2023-2024 school year.

8.

In their appeal, it is indicated by the first Applicant that it is true that she been working at the Committee of the Regions since November 2020, but until April 2023 it was only as a contract agent in her capacity as an Auxiliary Contract Staff Member with very little to no certainty of contract renewal and no long-term prospects. It is indicated that she is now a temporary agent with much better prospects and

currently her contract runs until 2025 and will be hereafter renewed for a permanent temporary contract.

9.

In its Response, the European Schools request the Complaint's Board to declare the Appeal inadmissible or at least unfounded in holding against the applicants and to condemn the Applicants to pay the full costs of the proceedings to be taxed in the sum of € 750.

10.

They refer to the 4 European schools in Brussels over 6 sites in Brussels and the existence of Category I and Category II pupils, being those of the personnel of the European Union and those of other institutions which have concluded financial arrangements with the European Schools and for the children of other people (Category III) limited to the extent that other places are available.

11.

The enrolment of pupils of Category I takes priority with the enrolment of Category II and Category III pupils is only possible to the extent of places remaining. The elaboration and the putting into practice of the annual enrolment policy are conferred upon the CEA in accordance with the decision of the Board of Governors of 07, 08 and 09 December 2016.

12.

For the 2023-2034 school year, guidelines have been adopted by decision of the Board of Governors of 09 December 2022, the Enrolment Policy being formulated in a reference document.

13.

Enrolment and transfer requests must be made online via the Brussels European Schools enrolments portal. There are two phases whereby the legal representatives of children express their preferences for the designation of schools and sites in the maternal and primary cycles and the secondary cycles in descending order.

14.

All enrolment requests should be introduced for Category I and II pupils in the first phase to ensure the optimal realisation of the acceptance capacities of the schools/sites and to adapt the consequential class structures. Only enrolment applicants entering into service after 31 December 2022 may apply during the second phase together with cases of *force majeure*.

15.

The European Schools refer to the fact that the first applicant was in office from 01 November 2020 with the Committee of the Regions which entitled her to apply for enrolment of her children as Category I pupils.

16.

Having referred to the Policy on Enrolment, the European Schools refer to the necessity to comply with the policy and enrol in the first phase in circumstances where the right to apply during the second phase is open to those who did not have the right to apply during the first phase. They consider that all who had the right to attend the school prior to 31 December 2022 should apply before 31 January and only those who did not have this right until after 31 December 2022 may apply during the second phase.

17.

The European Schools refer to the fact that the applicants had the right to enrol their children in the European Schools since 01 November 2020 and that the new contract entered into by the Applicant in April 2023 neither restricted nor enlarged that right.

18.

They contend that they applied the provisions of Article 2.22 of the Policy on Enrolment in a correct manner such that the Applicants appeal should be considered to be unfounded.

Findings of the Complaints Board

On the substance of the Appeal,

19.

While the European Schools seek to have the Appeal declared inadmissible, the essential issue is one of interpretation of the Policy on Enrolment for the 2023-2024 School year and to determine whether the applicants were entitled to apply for the enrolment of their children during the second phase of enrolment or whether, having regard to the said policy, they were obliged to apply for the enrolment of their children during the first enrolment phase.

20.

It is convenient to have regard to the definition of Category I pupils which are defined in the Policy on Enrolment as follows:

“Category I pupils are the children of staff in the service of the Community institutions and of the organisations listed on the European Schools’

website www.eurasc.eu, in 'Terms and conditions of admission', *employed directly and continuously for a minimum period of one year.*"

21.

At the time of the first phase of enrolment, the first applicant's then contract did not continue until the commencement of the school year in September 2023 and it appears that she was not in a position to communicate any proof of renewal/extension of her post no later than the day on which the new school year begins.

22.

The issue arises whether the new contract entered into by the first applicant represented a renewal or extension of her post or otherwise. The post that the first applicant had up to the end of March 2023 was that of a contract agent and thereafter as a temporary agent. The essential issue is whether this involved a change of post or otherwise.

23.

In the impugned decision as notified by e-mail of 07 July 2023 it is stated that the "document produced merely attests to a change of post..."

24.

It is appropriate to refer to the relevant provisions of the Policy of Enrolment for the year in question which provides, *inter alia*, as follows:

2.20 *Except for applications based on Article 8.4.3.k), applications for categories I and II pupils **MUST be submitted during the first phase**, failing which applications will be inadmissible and will automatically and as of right be rejected.*

2.21 Applicants whose post with the European Union institutions terminates before the beginning of the school year will be allowed to submit their application for enrolment, on condition that proof of renewal/extension of their post is communicated no later than the day on which the new school year begins (or at a later date communicated by the CEA).

2.22 Only applicants for the enrolment of Category I and Category II pupils who will be taking up a post with the European Union institutions after 31 December 2022 for a minimum period of one year will be allowed to submit their application during the second phase.

25.

It appears from the documentation furnished by the first Applicant that she had a contract, which was concluded for the period of less than one year from 01 November 2022 to the last day of March 2023. During the first phase, she had a post with the European Union institutions terminating before the beginning of the school year, which was only for five months. Consequently, the applicant could legitimately believe, given the terms of Article 2.22, that she did not meet the conditions of Article 2.21. She did show that she had taken up a post with the European Union Institutions after 31 December 2022 for a period which was of a minimum period of more than one year. Furthermore, the fact that the first applicant had a series of contracts of short duration is not equivalent to a contract of one year's duration insofar as this was required by the Policy of Enrolment.

26.

In the above circumstances, it must be concluded that the European Schools could not consider that the application for enrolment of the applicants' children could not be submitted in the second phase.

Consequently, they are entitled to have the impugned decisions annulled.

On the legal and other costs,

27.

In accordance with the provisions of Article 27 of the Rules of Procedure of the Complaints Board “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. Where the parties have come to an agreement on costs, the decision as to costs shall be in accordance with that agreement. If costs are not claimed, the parties shall bear their own costs.”

28.

It follows from these provisions, which are furthermore entirely comparable to those in force in the majority of jurisdictions, national or international, that the party which succumbs should, in principle, pay the costs and expenses of the proceedings.

However, the Applicants in their appeal did not seek any costs against the European Schools.

In the circumstances, it is appropriate that each party bear their own costs.

FOR THESE REASONS, the Complaints Board of the European Schools

DECIDES

Article 1: The decisions notified on 07 July 2023, whereby the Central Enrolment Authority of the European Schools Brussels rejected the enrolment applications made on 05 June, 2023 of the Applicants [REDACTED] and [REDACTED] in respect of their children, are annulled.

Article 2: Each party shall bear its own costs.

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

B. Phémolant

P. Manzini

A. Ó Caoimh

Brussels, 04 September 2023

Original version: EN

For the Registry,
Nathalie Peigneur