

COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

Reasoned Order of 5 March 2020

In the case registered with the Registry of the Complaints Board under No 20-07, the subject of which is an appeal lodged on 28 February 2020 by Mr [REDACTED] and Mrs [REDACTED] legal representatives and parents of [REDACTED] against the decision of the Central Enrolment Authority for the Brussels European Schools, dated 26 February 2020, whereby it rejected the application for their son's enrolment in S1 of the English section at the European School, Brussel I – Uccle and instead offered him a place at the European School, Brussels II (same year group and section) as from 3 March 2020,

Mr Eduardo Menéndez Rexach, Chairman of the Complaints Board, giving a ruling by way of a reasoned order in accordance with the conditions laid down in Article 32 of the Rules of Procedure, which states: *"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 by the rapporteur designated by him,"*

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

handed down the following order, the grounds for and the operative part of which appear below, on 5 March 2020.

Main facts of the dispute and arguments put forward in support of the appeal

1.

The applicants' son, [REDACTED], is a former pupil of the European School, Brussels I – Uccle, Anglophone section, which he attended from primary year 1 to primary year 5 (2013-2018).

The family left Brussels for Hong Kong in 2018, when Mrs [REDACTED] was posted with the EEAS to the EU Office to Hong Kong and Macao.

[REDACTED] is being educated there in an international school.

To contain the coronavirus outbreak, the Hong Kong government closed schools from 23 January 2020.

[REDACTED] and his father left Hong Kong and arrived in Brussels on 2 February, while his mother stayed in Hong Kong.

2.

On 5 February 2020, the applicants submitted an application for their son's temporary enrolment at the European School, Brussels I – Uccle, in S1 of the English section.

In support of their application for his "*temporary, during closure of schools in Hong Kong*" enrolment at the European School, Brussels I – Uccle, the applicants argued as particular circumstances that Santiago is only 12 years old and cannot be expected to learn online by himself during a prolonged period (both his parents work): he needs to remain in school, in a learning structure, offering him social interaction with children of his age.

3.

On 26 February 2020, the Central Enrolment Authority for the Brussels European Schools (hereinafter referred to as the CEA), considering the case to be a duly substantiated case of *force majeure*, offered a place for [REDACTED] at the European School, Brussels II (same year group and section), pursuant to the provisions of Articles 12.1., 6.1., 6.19., 6.20 and 6.21.(l) of the Enrolment Policy, as from 3 March 2020.

4.

On 28 February 2020, [REDACTED]'s parents lodged a direct contentious appeal with the Complaints Board against that CEA decision, as allowed by Article 67.2 of the General Rules of the European Schools.

They request the Complaints Board to

1. annul the CEA decision not to consider their case as "special circumstances" within the meaning of Article 8.4
2. consider the case as "special circumstances" and grant such a priority criterion, and
3. temporarily readmit [REDACTED] to the Uccle school.

They also request, in the same appeal, an interim measure: [REDACTED]'s immediate readmission to his former school until the Complaints Board has ruled on their appeal.

5.

In support of their appeal, the applicants contend that the disputed decision lacks a (relevant) statement of the grounds on which it is based ; according to them, the CEA failed to justify its assertion that the case cannot be regarded as "particular circumstances within the meaning of Article 8.4. of the Enrolment Policy."

Findings of the Chairman of the Complaints Board

On the admissibility,

6.

It is clearly stated in Article 27 of the Convention defining the Statute of the European Schools that the Complaints Board has sole jurisdiction in the first and final instance to rule on all disputes pertaining to the legality of the acts of the organs of the European Schools and has unlimited jurisdiction allowing it not only to annul an administrative decision but also to change it, to censure the administration or to issue an injunction in respect of it solely when the dispute is of a financial character (see decision of the Complaints Board, 13/43) – something which is not the case here.

Consequently, and in accordance with the settled and consistent case law of the Complaints Board, this appeal is admissible only to the strict extent that it seeks annulment of the CEA's decision of 26 February 2020.

7.

On the merits,

Pursuant to and in compliance with the rules laid down in the Policy on Enrolment in the Brussels European Schools for the 2019-2020 school year (hereinafter referred to as the Policy), the appeal is manifestly unfounded in law within the meaning of the aforementioned provisions of Article 32 of the Rules of Procedure of the Complaints Board.

8.

According to Article 8.1, *"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."*

The CEA was right to consider that [REDACTED] could not benefit from any special priority criterion within the meaning of Article 8.

It clearly states in its decision, by reference to Article 8.4.2.(l), that attendance at one of the European Schools/sites in a previous school year is not a relevant circumstance for the purposes of recognition of a particular priority criterion.

The only exception to that rule is the provision on 'Return from assignment' (Article 8.3), which does not apply in this case (see point 11 below).

9.

Article 8.4 states *"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 or transfer to one or more schools/sites of his/her choice. If the particular circumstances can justify the pupil's enrolment at several schools/sites, the CEA has discretionary power to award the place according to the order of preference expressed by the applicant and to pupil numbers in the classes in which enrolment is possible."*

Article 8.4.1 states 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."*

And Article 8.4.4 states that *"Any particular circumstances alleged by applicants must be set out in a clear statement of the facts, to which should be attached all the supporting documents appended to the enrolment application."*

10.

The particular circumstances invoked by the applicants are related to the consequences of the coronavirus crisis in Hong Kong: closure of local schools and the need to find a schooling structure for [REDACTED], both of whose parents work.

The CEA responded to that request by offering a place in one of the European Schools in Brussels: [REDACTED]'s schooling is thus ensured.

Pursuant to the provisions of Articles 12.1., 6.1., 6.19., 6.20. and 6.21.(I) of the Enrolment Policy, the place was offered at the European School, Brussels II, as there were no more places available, as meant by Article 4.2. of the Policy, in the first, second and third preference schools/sites.

The applicants requested their son's enrolment at his former school (Brussels I – Uccle) in order to *"minimise distress"* and *"to mitigate the unacceptable consequences which the rules of this Policy would otherwise have had"*, as foreseen in Article 8.4.1.

Nevertheless, they did not explain or justify with supporting documents why their son's situation might require appropriate treatment and why it might be characterised by circumstances differentiating it from other cases.

11.

As stated above, Article 8.3, relating to 'Return from assignment', does not apply in this case.

The applicants raised the question, by stating that their son would return to the European School, Brussels I – Uccle when Mrs [REDACTED]'s assignment (posting) is over, but they recognise themselves that this is not currently the case.

And indeed, the conditions of a return from assignment are not met.

Article 8.3 cannot therefore justify today a special priority criterion for enrolment at the European School, Brussels I – Uccle.

The CEA responded to that question because it was raised by the applicants themselves, but that is only one part of the statement of the reasons on which its decision was based.

12.

In conclusion, the CEA's disputed decision gives a clear and proper statement of the reasons on which it is based, pursuant to the Policy on Enrolment in the Brussels European Schools for the 2019-2020 school year.

The appeal is manifestly unfounded in law within the meaning of the aforementioned provisions of Article 32 of the Rules of Procedure of the Complaints Board and there is therefore no alternative but to dismiss it.

13.

As regards the application for an interim measure, it must be pointed out that according to Articles 16, 34 and 35 of the Rules of Procedure for the Complaints Board, an application seeking suspension of enforcement or other interim measures may be presented only secondarily to the main proceedings.

It follows therefrom that an application for interim measures cannot be accepted if the main appeal is itself dismissed as inadmissible or unfounded.

Consequently, on account of the dismissal of the main appeal as being inadmissible and unfounded, the application for an interim measure must also be rejected (see order of 31 October 2019, appeal 19-57).

ON THESE GROUNDS, the Chairman of the Complaints Board

HAS DECIDED AS FOLLOWS:

Article 1: The appeal lodged by Mr [REDACTED] and Mrs [REDACTED] registered under No **20-07**, is hereby dismissed.

Article 2: Notification of this decision will be given as provided for in Articles 26 and 28 of the Rules of Procedure.

Eduardo Menéndez Rexach

Brussels, 5 March 2020

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pp. The Registry

Nathalie Peigneur

Pursuant to 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."