

Case 25/01

██████████

COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

(2nd section)

Decision of 29 April 2025

In the case registered with the Registry of the Complaints Board under N° **25/01**, concerning an appeal lodged on the 3rd of January 2025 by ██████████, legal representatives and parents of ██████████ ██████████, seeking the annulment of the decision of the Central Enrolment Authority of the 20th of December 2024 rejecting their request that their son be transferred from the Uccle to the Berkendael site of the European School Brussels I,

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

- Ms Brigitte Phémolant, Chairwoman of the 2nd section,
- Mr Pietro Manzini, member,
- Mr Mark Ronayne, 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 submitted, on the one hand, by the applicants and, on the other hand, for the European Schools, by Me Marc Snoeck,

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 29 April 2025 the decision in respect of which the reasons and grounds and the operative part thereof appear as follows:

Main facts of the case

1.

The applicants are the parents of ██████████ a pupil in the second primary class of the German language section of the European School I - Uccle site (██████).

██████ suffers from conductive hearing loss in his left ear, a condition that challenges his ability to participate effectively in classroom activities.

The ████████ class is also attended by two pupils with special educational needs whose behaviour is disruptive and includes physical and verbal aggression towards their classmates. The applicants, without being contradicted on this by the defendant, describe various acts of physical aggression such as boxing and kicking children in the stomach, kicking children against their knees, pushing a drinking bottle into another child's mouth, throwing children from the climbing frame, shouting loudly in children's ears from close range, throwing children to the ground and keeping them there by sitting on them, hitting children in the face, slapping children's backsides and throwing items at children's heads.

2.

The provisions currently in force regarding transfers from one Brussels European School to another, or from one site of a School to another, are set out in Articles 8 and 13 of the Policy on Enrolment in the Brussels European Schools for the 2024–2025 school year (hereafter “the Enrolment Policy”).

Article 13.1 of the Enrolment Policy provides that “*as from 11 September 2024, transfer applications for categories I and II* pupils may be submitted only on the*

basis of particular circumstances, within the meaning of Article 8.5., arising after the end of the second and third enrolment phases”.

Article 8.5.1 of this same document provides that *“where a pupil’s interest so requires, duly established particular circumstances that 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....”.*

Article 8.5.2 adds that *“the priority criterion will be accepted only when it is invoked upon 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 that the rules of this Policy would otherwise have had”.*

Finally, Article 8.5.4 stipulates that *“any medical complaints from which the child, or one of the people involved in his/her care on a daily basis, might suffer will be taken into consideration only in so far as evidence is provided that the child’s attendance at the school/site designated is an essential measure for the treatment of the condition from which the person concerned suffers”.*

3.

In October and November 2024, the Central Enrolment Authority accepted applications for the transfer of two pupils in the ██████ class to other European Schools, pursuant to these provisions.

4.

On the 17th of December 2024, the applicants submitted a request that ██████ be transferred from the Uccle site to the Berkendael site of the European School Brussels I on the grounds that, because of his medical condition, the disruptive behaviour of the two special needs students had a particularly detrimental effect on his health and education.

5.

By letter of the 20th of December 2024, the CEA informed the applicants of its decision to reject their request (hereafter “the contested decision”). The reasoning contained in this decision reads as follows:

« You submitted an application to the European School, Brussels I - Berkendael Site for the transfer from the European School, Brussels I - Uccle Site of ██████████ ██████████ in Primary 2 of the DE language section for the 2024-2025 school year (Enrolment Application No Ph3-BRK- 010566 – This application number should be quoted in all correspondence).

The CEA notes that you are applying for the voluntary transfer of your son after the beginning of the school year from EEB1-UCC to EEB1-BRK.

In accordance with Article 13.1 of the Enrolment Policy, transfers of pupils from one Brussels School to another Brussels School are allowed only on the basis of an application stating the precise reasons, considered according to the same conditions and arrangements as set out in Article 8.5.

You explain that your son has a hearing impairment, with a reduction in speech perception. You indicate that he perceives sounds differently in his left ear and remains particularly sensitive to loud noises.

You invoke the fact that, despite various measures put in place by the school, you are worried about the situation in his class (there have been various incidents of physical and verbal violence) and the risks he runs because of his hearing impairment. You add that because of his condition he must make much more effort to assimilate the content of the lessons than the other children. You emphasize that joining a smaller class at EEB1-BRK would enable him both to maintain his links with Uccle and his sister, a link that is of great emotional importance to him, and to attend an educational environment best suited to his specific needs.

In support of your son’s transfer request, you provide a series of medical certificates, attestations as well as correspondence exchanged between the School and the parents.

However, the medical certificates and attestations you provide do not allow it to be established that attendance at EEB1-BRK is an essential measure for your son's condition, as required by Article 8.5.4. of the Policy.

Considering, therefore, that your transfer application is not based on any particular circumstance as meant by the aforementioned Article 8.5., the Central Enrolment Authority is unable to agree to it.

Moreover, the CEA notes that the EEB1-UCC management took additional measures in order to address the situation in the P2 DE class in the near future.

These announced measures have been elaborated with the pedagogical staff involved and have been recently communicated in a meeting to all parents of the concerned class.

Therefore the CEA cannot agree to the transfer application of your son ...»

6.

On the 3rd of January 2025, the applicants brought proceedings before the Complaints Board seeking the annulment of the contested decision together with an application for interim relief pending the resolution of this case.

By decision of the 17th of February 2025, the Chairman of the Complaints Board suspended the contested decision and ordered that the requested transfer of ██████ be provisionally and temporarily authorised. He also reserved the decision regarding the legal and others costs of the summary proceedings pending the decision in the present appeal.

The forms of order sought

7.

The applicants request the Complaints Board to annul the contested decision of the President of the Central Enrolment Authority of the Brussels European Schools dated 20 December 2024, and to order the defendant to pay their legal fees and expenses.

The defendants request the Complaints Board to dismiss the application as unfounded and to order the applicants to pay all the costs of the case, namely compensation for the procedure, assessed *ex aequo et bono* at EUR 800.

The arguments of the parties

8.

The applicants invoke three grounds of annulment: first, that the contested decision is vitiated by a manifest error of appraisal, secondly, that this decision is discriminatory and, finally, that it contravenes the principle of proportionality and is contrary to the child's best interests.

9.

In support of their first ground of annulment, the applicants argue that the contested decision is marred by a manifest error of appraisal in so far as it concludes that there are no particular circumstances characterizing ██████'s situation and justifying a transfer. In so doing, it fails to take account of the particularly detrimental effect of the special needs students' disruptive behaviour on their son who, because of his medical condition, suffers from this type of disruption more than his classmates. They consider that the decision flies in the face of the medical evidence and fails to properly consider the issues raised.

The Schools argue that the applicants' claims that ██████'s academic progress is being hindered as a result of the combination of these two factors (the noisy classroom atmosphere and the reduced auditory acuity) are unfounded and that they have not produced any evidence to demonstrate the legitimacy of their fears regarding his academic progress.

The Schools also argue that the medical certificates do not demonstrate the necessity for the transfer with regards to the treatment of ██████'s condition.

10.

As regards the alleged breach of the principle of equal treatment, the applicants argue that two other children in their son's class whose medical conditions were comparable to his were allowed to transfer to other schools.

The Schools argue that there was no breach of the principle of equal treatment because ██████'s situation was objectively different from those of the two other pupils concerned. In one of these cases, there had been physical aggression from the special needs pupils in the class; in the second case, the pupil suffered from a medical condition meaning that he had an elevated risk of haemorrhage.

The situations were also different because of the additional pedagogical measures decided subsequent to the two accepted transfer applications but prior to ██████'s rejected transfer application.

11.

The applicants argue that the CEA failed to take a decision proportional to ██████'s needs or to take account of his best interests.

The Schools question whether transferring ██████ to another site is necessary from a medical point of view, recalling that his doctor initially formulated only practical recommendations aimed at promoting his hearing and concentration in the classroom before later recommending an immediate change of school without explaining why this new assessment was medically necessary.

They argue that submitting voluntary transfers to the restrictive admission conditions set out in Article 8.5 of the Enrolment Policy is a proportionate and necessary measure to safeguard the desired balance that is vital to maintaining the benefit of the successive enrolment policies.

Finally, the Schools recall that inclusive education is one of the fundamental values of the European Schools and that the effective implementation of an inclusive system means that the various interests must be weighed at multiple levels as part of the Schools' decision-making process; by choosing to send their child to a European School, the pupils' parents accept the system as a whole, notably including its inclusive nature.

Findings of the Complaints Board

On the admissibility,

12.

No issue is raised regarding the admissibility of this action.

On the substance,

13.

First ground for annulment: that the contested decision is marred by a manifest error of appraisal.

It follows from the terms of Articles 8 and 13 of the Enrolment Policy, cited above at point 2, that parents requesting their child's transfer must demonstrate the existence of particular circumstances beyond their control which characterise the situation of their child, differentiating it from other cases and creating the need for an appropriate response in order to mitigate the unacceptable consequences that the usual application of the rules would otherwise produce.

In their transfer request to the CEA, the applicants argue, in essence, that because of their son's medical condition the disruption in the classroom caused by the two special needs pupils was having a particularly detrimental effect on his health and education.

In support of their argument, they produce, inter alia, a certificate drawn up by Dr [REDACTED], an otorhinolaryngologist, on the 2nd of December 2024, in which he explains that "*[REDACTED] presents with a conductive hearing loss in the left ear following a bilateral adenoidectomy and myringotomy (performed on 27 August 2024)*"; that "*further treatment to improve the hearing situation is currently not possible*"; that "*his hearing condition poses significant challenges to his ability to participate effectively in classroom activities*"; that "*due to his hearing impairment, he struggles*

to follow his teachers' instructions and requires a quieter learning environment"; that "compared to his peers, █████ finds listening to be a more demanding task, requiring a significantly greater degree of concentration", that "he is more sensitive to noise and finds loud sounds to be more distressing".

Having summarized the disruptive behaviour as reported by █████ and noted that the measures taken by the teacher to implement his previous recommendations had not resulted in a significantly quieter classroom environment for █████, who continued to experience some difficulties with speech sound development, he concludes: *"as an ENT specialist, I urgently advise that █████ be placed in a disturbance-free class environment to ensure his healthy physical and academic development".*

A separate certificate, signed by Dr █████, a general practitioner, on the 21st of November 2024, attests to a high level of stress borne by █████ on account of his exposure to the two pupils in question and recommends a change of school as soon as possible.

The Complaints Board considers that the applicants have made a strong case for █████'s transfer, demonstrating how, on account of his medical condition, the disruptive behaviour of the special needs pupils has a particularly detrimental effect on his health and educational development compared to his peers.

The conditions of Article 8 of the Enrolment Policy are thus met. The particularly detrimental effect of the special needs pupils' behaviour on the applicants' child clearly amounts to particular circumstances beyond their control, within the meaning of Article 8.5.1, which characterizes his case and differentiates it from others, creating the need for appropriate treatment in order to mitigate the otherwise unacceptable consequences, in accordance with Article 8.5.2.

The CEA's decision of the 20th of December 2024 fails to properly address these considerations.

The statement that “*the medical certificates and attestations you provide do not allow it to be established that attendance at EEB1-BRK is an essential measure for your son's condition, as required by Article 8.5.4. of the Policy*” does not adequately answer the applicants’ argument, supported by expert medical testimony. Indeed, it was not because of their son's state of health that the request for a change of the site was made but because of the fact that he suffered greater damage than his classmates to his health and education, on account of his hearing disability, arising out of the disruption caused by the two special-needs pupils.

The CEA’s conclusion that the transfer application is not based on any “*particular circumstance as meant by the aforementioned Article 8.5*”, and the Schools’ argument, put forward at point 24 of their reply, that all of the pupils in the class are equally affected by the negative aspects of this situation (shouting in class disrupting their concentration), fly in the face of Dr ██████’s expert testimony and are not supported by any evidence.

The reference to unspecified additional measures which, in any event, were only implemented after the adoption of the contested decision, do not adequately address the applicant’s concerns and are not relevant to the legality of this decision.

Finally, since the transfer to another site has the obvious effect of distancing ██████ from the source of the disruption, the Schools’ argument that “*the applicants do not demonstrate the way in which the Brussels I School - Berkendael site would be able to offer a teaching environment suited to his condition that the Brussels I School - Uccle site does not currently offer*” (point 14 of the reply) is manifestly unfounded.

14.

It follows that the decision contained in the letter of the President of the CEA of the 20th of December 2024 refusing to transfer ██████ from the Uccle to the Berkendael site of European School Brussels I is marred by a manifest error of appraisal and must be annulled.

It is unnecessary in these circumstances to examine the second and third grounds of annulment.

On the legal and other costs,

15.

Article 27 of the Rules of Procedure of the Complaints Board provides: “*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.*”.

It follows from these provisions, which are in fact quite similar to those in force before most national or international courts, that the Schools, as the unsuccessful party, must bear the applicants’ legal and other costs.

16.

The Complaints Board considers that the award of costs can be set, *ex aequo et bono* at EUR 500 for both proceedings (25-01 R and 25-01).

FOR THESE REASONS, the Complaints Board of the European Schools

DECIDES

Article 1: The decision contained in the letter of the President of the CEA to the applicants of the 20th of December 2024 refusing to transfer their son █████ from the Uccle to the Berkendael site of the European School Brussels I is annulled.

Article 2: The defendants are ordered to pay the applicants an amount of EUR 500 for the legal and other costs.

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

Brigitte Phémolant

Pietro Manzini

Mark Ronayne

Brussels, on 29 April 2025

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On behalf of the Registry,
Nathalie Peigneur