

**Appeal 25/43 referral**

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**THE COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS**

**Decision of 07 August 2025**

In registered case no. 25/43, lodged on 19 July 2025, with the aim of requesting a referral pursuant to Article 40a of the Rules of Procedure, relating to the case in respect of Reasoned Order no. 25/37 issued on 19 June 2025 by the judge rapporteur designated by the Chairman of the Complaints Board under the conditions laid down in Article 32 of the Rules of Procedure, where said application was lodged by Ms ██████████ and Mr ██████████ ██████████, residing at ██████████ ██████████, assisted by Mr ██████████, lawyer at the Brussels Bar,

**Mr Eduardo Menéndez Rexach**, Chairman of the Complaints Board,

on 07 August 2025, issued the decision whose reasons and operative part are set out below,

## **Facts of the case and arguments of this request**

1.

By reasoned order of 19 June 2025 (hereinafter "RO" or "the Order"), the judge rapporteur designated by the Chairman of the Complaints Board dismissed as manifestly unfounded the appeal lodged by the applicants under no. 25/37 and brought against the decision of the Central Enrolment Authority of the Brussels European Schools (hereinafter "CEA") dated 14 May 2025, in which their request seeking review of the Decision dated 8 April 2025 offering their son a place at the Brussels IV European School was rejected.

2.

This is the RO against which the applicants are now bringing a request for referral to a section composed of three members pursuant to Article 40a of the Rules of Procedure, which requires that it be "*based on a particularly serious ground*".

3.

In support of their request for referral, the applicants put forward the following arguments:

a) The RO violates the fundamental principles of application in judicial decisions, such as the principle that legal considerations must be based on facts that are established or accepted as such by the parties; however, the RO dismisses, based on assumptions (the importance of sleep and a medical certificate prepared for the purposes of the case), the applicants' argument that they only

become aware of their son's particular vulnerability to sleep deprivation after learning of the administration decision. This particular vulnerability is revealed in the medical certificate dated 9 April 2025, the content of which must be accepted by the judge.

b) The RO erroneously interprets the concept of "*treatment*" within the meaning of Article 8.5.4. of the Policy on Enrolment in the European Schools for the 2025-2026 school year (hereinafter, "PoE") by considering sleep not to be a form of treatment within the meaning of this Article; this raises a general question that justifies referral to a section composed of three members: shouldn't children whose health condition makes them particularly vulnerable to the harmful effects of sleep deprivation, such as children with neurodevelopmental conditions, have the right to be enrolled in a school near their home to ensure they get sufficient sleep?

The term "*treatment*" must not be interpreted in the strict sense of the word. Excluding "*natural*", "*non-invasive*" or unmedicated methods of treatment from the scope of Article 8.5.4. of the PoE discriminates between children whose health conditions require medicinal treatment and those whose - equally serious - health conditions are treated by natural and "*non-invasive*" methods (such as by ensuring they get enough sleep).

In both cases, the treatment is prescribed based on a clinical assessment and has equal benefit to the child's health. The applicants assert that refusing to recognise one form of treatment over another discriminates against children whose medical needs fall outside the traditional pharmaceutical framework. And such disparity is contrary to the spirit of Article 8.5.4. of the PoE.

c) The RO exceeds the limits of judicial review, insofar as the judge is not competent to challenge or interpret a medical opinion, except in cases of manifest error; the judge is not a healthcare professional and cannot substitute himself for one. In this case, the judge who issued the RO substituted the medical opinion as contained in the certificate dated 9 April 2025 with his own.

d) Lastly, the RO disregards the child's best interests, recognised by Article 24 of the Charter of Fundamental Rights of the European Union (hereinafter, the "Charter"). Even supposing the paediatric neurologist's certificate, dated 9 April 2025, were not a new element (*quod non*), the contents of this certificate, issued by a doctor, must be taken into consideration when considering the child's best interests. The applicants also invoke the right to education (Article 14 of the Charter) and justify their request for referral based on the implications of this approach, which extend beyond the present case. Indeed, the reasoning suggests that medical information emerging later should be ignored, even though this information has direct consequences on the child's health and well-being. In other words, strict adherence to procedural rules is prioritised over actual consequences for children and, in particular, for vulnerable children. At the heart of case no. 25/37 is not just the enrolment of the applicants' child; this case raises a fundamental question on the way in which medical evidence should be assessed with regard to the best interests of the child. This is a question of principle, with wide-reaching and long-lasting consequences, on the way in which vulnerable children are treated within the European Schools system.

## **Assessment of the Chairman of the Complaints Board**

4.

Article 40a of the Rules of Procedure states the following:

1. *Irrespective of the revision procedure provided for in Articles 39 and 40, decisions taken in accordance with the conditions laid down in Articles 20a and 32 of these Rules 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.*
2. *The decision to refer or to reject the request for referral shall be taken by the Chairman of the Complaints Board or, should the case have been heard by the latter, by the Chairman of the section to which it could be assigned. There shall be no right of appeal against this decision.*
3. *In the event of referral, the section composed of three members may not include the member of the Complaints Board who sat as a single judge. It shall give a ruling in the form of a decision in accordance with the ordinary Rules of Procedure.*

5.

The request for referral was submitted before the one-month deadline. It is therefore admissible *ratione temporis*.

It is then a matter of examining whether the grounds invoked by the applicants are "*particularly serious*", a phrase that must be interpreted in light of the exceptional, and therefore restrictive, nature of these proceedings since the Complaints Board was granted jurisdiction to rule "*in the first and final instance*" (Article 27.2 of the Convention defining the statute of the European Schools).

Referral to a section composed of three members cannot be assimilated to any form of remedy, a case taken to the Appeal Court or an appeal lodged by any other means organised within many national legal systems for the purpose of raising the dispute with a superior court. This is why the application for referral must be based on "*a particularly serious ground*", which must indicate the serious question relating to the application or interpretation of the Convention defining the Statute of the European Schools or legal texts enacting it, or the serious question of a general nature, not limited to a particular case, which merits examination (see, by way of analogy, Rule 73 of the Rules of the European Court of Human Rights which outlines requests for referral to the Grand Chamber, and Paragraph 2 thereof which states that "*Reasons need not be given for a refusal of the request.*").

6.

In this case, it is important to note that the arguments put forward by the applicants do not meet the conditions laid down in Article 40a of the Rules of Procedure since their request is not based on a problem with application or interpretation of the texts in force in the European Schools system, nor does it raise a particularly serious problem of a general nature.

7.

Firstly, the applicants are contesting the RO on the grounds that the judge rapporteur allegedly ignored medical expertise, and the considerations put forward by the paediatric neurologist in the certificate dated 9 April 2025. In particular, they allege that the interpretation in the Order of the concept of "*treatment*" within the meaning of Article 8.5.4. of the PoE differentiates between

a treatment they qualify as "*natural*" (such as sleep, as prescribed by a doctor) and a "*medica*" treatment involving pharmaceutical interventions (medications), with the former being excluded from the application of priority criteria as granted by this Article.

The RO's interpretation on this point excludes such a conclusion by the applicants. In it, *it clearly states that the medical condition was invoked in support of the "special educational needs" of the child and not as a particular circumstance within the meaning of Article 8.5.4. of the PoE ("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")*.

The RO states, for the reasons outlined (paragraph 10, in fine), that the medical certificate dated 9 April 2025 does not meet the conditions required by this article, without distinguishing between medicated and non-medicated treatments, and, even more so, without interpreting the general scope of this Article in a way that would lead to the consequences raised by the applicants in their request for referral.

This RO provides a legal response to a concrete situation, with facts specific to the case in question, and does not establish any general interpretation, either of Article 8.5.4. of the PoE, or of any text specific to the legal system of the European Schools.

8.

The applicants then reproach the judge rapporteur for overstepping his authority by substituting the medical opinion contained in the certificate dated 9 April 2025 with his own, in order to dismiss the applicants' argument that they were unaware of their son's particular vulnerability to sleep deprivation until after they were informed of the administrative decision.

The RO's interpretation excludes such an allegation.

While it is true that neither the administration nor the judges has the right to substitute expert advice with an opinion of their own - in this case, the opinion of a doctor -, except in the case of manifest error or procedural irregularity, they are nevertheless obligated to assess any evidence brought before them by the parties to justify their claims, including any expert testimonies.

And that is precisely what is done in this RO, where the judge rapporteur took into account the circumstances of the case, such as the timing of the submission of the medical certificate (i.e., after the unfavourable decision of the CEA had been communicated) and the language used in the document to assess whether the conditions required by the PoE were met, ultimately deciding that the certificate did not support the conclusion that enrolment at Brussels III or Brussels II would be "*an essential measure for the treatment of the condition from which the person concerned suffers*" (Point 8.5.4. of the PoE).

9.

Lastly, the applicants allege that the RO violates the child's best interests and his right to education (Article 14 of the Charter) in that it would require ignoring

late-emerging medical information, even though this information has direct consequences on the child's health and well-being, and that strict adherence to procedural rules is prioritised over the actual consequences for children, particularly vulnerable children.

Once again, the interpretation of the RO excludes such an allegation.

This RO is limited to examining the legality of the administrative decision subject to the contentious appeal and confirms it. It also notes that the medical condition the applicants' son suffers from already existed at the time the application for enrolment was submitted, and that the applicants cited it in order to justify a request for special educational needs, but not a special priority criterion within the meaning of Article 8.5.4. of the PoE.

It is important to remember that the PoE establishes specific rules for taking into account special priority criteria, due to particular circumstances and based on the pupil's best interests, notably including the obligation to mention this criterion at the time of submitting the application for enrolment and to provide the relevant supporting documents.

Naturally, it falls to the applicants to provide a clear and concise statement of the facts for the particular circumstances that must be considered in order to grant a priority criterion, as well as to append all of the supporting documents to the enrolment application form (Article 8.5.5. of the PoE), or to duly substantiate a case of force majeure when communicating said circumstances and supporting documents after submission of the application for enrolment (Article 8.5.7. of the PoE).

They do not exempt themselves from their obligations by reproaching the decision of the judge rapporteur who issued the Order of "*excessive formality to the detriment of vulnerable children*".

This allegation, along with the previous allegations, is not based on a question related to the application or interpretation of the texts in force within the European Schools system, nor does it raise a question based on particularly serious grounds.

10.

In conclusion, the grounds for the application for referral to a section composed of three members does not invoke a serious problem with the application or the interpretation of the applicable normative rules, nor any violation of a principle of fundamental rights.

As such, the request for referral is inadmissible within the meaning of Article 40a of the Rules of Procedure and must be rejected.

11.

In virtue of Article 40a of the Rules of Procedure, "*There shall be no right of appeal against this decision.*".

**FOR THESE REASONS, the Chairman of the Board**

**D E C I D E S**

Article 1: The request for referral to a section composed of three members, lodged by Ms [REDACTED] and Mr [REDACTED], and registered under case no. 25/43, is rejected.

Article 2: The parties shall be notified of this decision under the conditions set out in Articles 26 and 28 of the Rules of Procedure.

Eduardo Menéndez Rexach

Brussels, 07 August 2025

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For the registry,  
N. Peigneur