

Appeal 24/13

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THE COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS

(2nd section)

Decision of 21 August 2024

In the case registered with the Complaints Board under No **24/13**, concerning an appeal submitted on 30 April 2024 by Mrs ■■■■■ and Mr ■■■■■, residing in U■■■■ at ■■■■■, directed against the decisions of the Central Enrolment Authority of 25 April 2024 offering their children ■■■■ and ■■■■■ places at the Brussels IV European School (Laeken), in the English language section, in the second year of the secondary cycle and in the third year of the primary cycle respectively,

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

- Ms Brigitte Phémolant, President of the 2nd section and rapporteur,
- Mr Paul Rietjens, member,
- Mr Aindrias Ó Caoimh, member,

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

in the light of the written comments submitted, on the one hand, by the applicants and, on the other hand, for the European Schools, by Mr Marc Snoeck, a lawyer registered with the Brussels Bar,

having been heard at the public hearing of 18 July 2024, Mr Alexis FIERENS for the applicants and, for the European Schools, Mr Marc SNOECK and Ms Deborah RUMMENS, as well as Mr BECKMANN, the Secretary-General,

on 21 August 2024, issued the decision whose reasons and instrument are set out below.

The facts and the procedure

1.

The applicants submitted an enrolment application for their daughters, [REDACTED] and [REDACTED], to join the English language section in the second year of the secondary cycle and the third year of the primary cycle respectively. They chose the Brussels III European School – Ixelles – as their first preference.

They requested that the enrolment applications be dealt with jointly pursuant to Article 2.41 of the 2024–2025 Enrolment Policy (hereinafter the EP). Moreover, they requested that their applications be given priority consideration, invoking particular circumstances within the meaning of Article 8.5 of the EP, based on the education of the older daughter in the sibling group, living with a disability, at the International School of Brussels (hereinafter the ISB).

2.

In two decisions dated 25 April 2024, the Central Enrolment Authority (hereinafter the CEA) considered that the circumstances invoked were not similar in nature to those conferring a priority within the meaning of Article 8.5.3 h) of the EP and offered them two places at the Brussels IV European School, their fourth choice of school.

These are the contested decisions.

Conclusions of the parties

3.

The applicants conclude that the Complaints Board should annul the decisions.

The defendant concludes that the Complaints Board should reject the Appeal and rule that the applicants should bear the sum of EUR 800 in costs and, secondarily, were an appeal to be granted, that each party should bear its own costs.

The parties' pleas and arguments

4.

The applicants argue in substance that their situation justifies priority treatment pursuant to Article 8.5.1 of the EP. They make reference to the significant intellectual disability (greater than 50%) of their elder daughter [REDACTED], who has Down's syndrome, which limits her independence and means that she cannot be educated in European Schools establishments (hereinafter the ES). They enrolled their elder daughter at the ISB, a school that was able to take her disability into account, and will elect domicile nearby. They argue that the rarity of their daughter's condition and its consequences for the teaching methods suited to her disability constitute exceptional circumstances justifying her sisters' priority enrolment at their first choice of ES, closer to their home and their sister's school, and that their enrolment at the Brussels IV ES imposes unacceptable consequences on their family within the meaning of this article. They make reference to their elder daughter's lack of independence to travel and the excessive constraints on the other two children if they had to be educated at the Brussels IV ES.

They also argue that, in accordance with Article 8.5.2 of the EP, they had invoked these circumstances at the time of submitting the enrolment file.

Finally, they observe that Article 8.5.3 h) is only enforceable against them because these constraints do not derive from any choice on their part, but have been imposed on them by circumstances.

5.

The ES recognise the admissibility of the conclusions of the application but consider that the plea is unfounded.

Firstly, they raise the inadmissibility of the factual information relating to the applicants' elder daughter's condition and to its consequences in terms of education. This information is not supported by any document and does not constitute new facts within the meaning of Article 50a of the General rules of the European Schools. Under Articles 8.5.1 and 8.5.5 of the EP, particular circumstances may only be taken into account if they have been presented in the enrolment application, while under Article 8.5.7 evidence produced subsequent to the application will be rejected. The Complaints Board case law is similar in nature.

However, the ES observe that, in their enrolment requests, the applicants confined themselves to producing the elder sister's ISB enrolment certificate without further explanation. These only appear in this appeal and must be rejected under Article 8.5.7 of the EP.

The ES maintain that it was quite right that, under Article 8.5.3 of the EP, the CEA had rejected ██████'s enrolment at another school as constituting a particular circumstance granting a priority for the enrolment of her two sons at the Brussels III ES, as specified in point h) of this Article.

Secondarily, they argue that, even taking into account the information submitted in the appeal, the applicants do not establish how educating their other two daughters at the Brussels IV ES might result in unacceptable consequences within the meaning of Article 8.5.2 of the EP.

The ES also consider that Article 8.5.4 of the EP cannot be interpreted so extensively that it would apply to any person close to the pupil to be enrolled, even if it was a member of their sibling group. It could only have been invoked if ██████'s enrolment at ES had been requested.

The ES do not challenge the assertions concerning ██████'s condition and specific needs but regret that no document has been produced, meaning that no assessment may be made *in concreto*. They also observe that the applicants did not take any action to research whether the ES could have educated their elder daughter giving her the support necessary, nor do they further specify the measures that will be implemented by the ISB. Even if it was motivated by the desire to give their daughter the best possible support, this enrolment derives from a choice made by the applicants that is not covered by the provisions of Article 8.5, as this case is excluded by Article 8.5.3 h) of the EP.

Finally, the ES observe that, even supposing that they had had no other choice than to enrol their elder daughter at the ISB, the applicants do not demonstrate the unacceptable consequences of enrolling their other two daughters at the Brussels IV ES. Points a) and g) of Article 8.5.3 of the EP exclude geographical considerations and practical constraints, which anyway have not been established. The ES observe that educating the children at the Brussels I and Brussels II ES, the best choice, would have led to their being at separate sites pursuant to Articles 5.4 and 5.5 of the EP.

Assessment of the Complaints Board

Concerning the admissibility of the conclusions of the appeal,

6.

The admissibility of the conclusions of the Appeal is not discussed and there is no information that might automatically justify any grounds for inadmissibility.

Concerning the merits,

7.

Article **8.5** of the EP, entitled 'Particular circumstances', specifies in Article **8.5.1** 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.'* and in Article **8.5.2**: *'The priority criterion will be accepted only when it is invoked at the time of 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'.*

In the terms of Article **8.5.3** of the EP: *'The following circumstances will not be relevant for this purpose: a) the location of the home or place of residence of the child and/or his/her legal representatives, even if it is imposed by the appointing authorities of the member of staff concerned [...]*

*g) occupational or practical constraints on the organisation of travel
h) location or choice of the place where other members of the group of siblings, other members of the family or other social relations of the child attend school ...'*

Finally, Article **8.5.5** specifies that *‘Any particular circumstances alleged by applicants must be set out in a clear and concise statement of the facts, to which should be attached all of the supporting documents appended to the online enrolment or transfer application.’* and Article **8.5.7** of the EP specifies that *‘Except in duly substantiated cases of force majeure, items of information and documents communicated after submission of the application for enrolment will automatically be disregarded in considering the application, even though they might relate to a situation occurring prior to the submission of the enrolment application or to its handling by the CEA.’*

8.

The enrolment applications submitted for their daughters [REDACTED] and [REDACTED], produced by the ES and whose content is not disputed, show that the applicants requested that these applications be examined jointly for enrolment at the same school and that they also claimed a priority criterion as provided for in the provisions of the aforementioned Article 8.5 of the EP to obtain their first choice of school. To this end, they produced a single document, evidence of the enrolment of their elder daughter, [REDACTED], at the ISB, a non-specialised school, and did not accompany it with any presentation of their situation. Based on this information, the CEA considered, applying point h) of Article 8.5.3, that the circumstance invoked did not confer a priority criterion.

In their appeal, the applicants state that their elder daughter’s enrolment at the ISB was made necessary by her condition, Down’s syndrome, which involves a significant intellectual disability as well as a loss of independence, and that the ISB was established as the school suited to her disability. They also state that due to these constraints, they would have to choose a home near the ISB, which justifies their enrolment application for their other two daughters at the Brussels III ES – Ixelles. At the hearing, the applicants’ counsel for the first time invoked the technical difficulties encountered during the enrolment process that had been an obstacle to additional elements being brought to the attention of the ES when the enrolment applications were submitted.

However, the alleged technical difficulties have not in any way been established.

Therefore, the ES are justified in maintaining that the new items of information provided to establish the priority criterion invoked should be disregarded in the debates, as provided for in Article 8.5.7 of the EP.

9.

Moreover, even were one to take these items of information into account, they concern the education of the applicants' elder daughter outside the ES system while the contested decisions concern the enrolment of the two younger daughters. The difficulty invoked concerning them is that of the distance between the Brussels IV school and the home that the applicants, who still reside in Angola, say that they must establish close to the school attended by their elder daughter. It is established in the case law of the Complaints Board that circumstances linked to the distance between home and school are not taken into account in the terms of the EP as they derive from a choice made by the parents as to their place of residence.

Even were one to admit that in this case the choice of family home were dictated by the constraint of proximity to the school attended by their elder daughter, the applicants do not provide any information, either in their written submissions or in the pleas presented by their counsel, to explain how educating their younger daughters at the Brussels IV ES would impose unacceptable consequences on their family life, as required under Article 8.5.2 of the EP.

10.

As a consequence of the above, even taking into account all of the items of information presented after submission of their daughters' enrolment applications, the applicants are not justified in maintaining that the points invoked constitute particular circumstances justifying granting them priority to obtain their first choice of ES. They are thus not justified in requesting annulment of the

decisions of the CEA insofar as these decisions allocate their daughters a place at the Brussels IV ES.

Consequently, their appeal must be rejected.

Concerning the legal and other costs,

11.

Under Article 27 of the Rules of Procedure, *'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 follows from these provisions, which are in fact quite similar to those in force before most national or international courts, that the unsuccessful party must, in principle, bear the legal and other costs of the case. However, these provisions allow the Complaints Board to assess the conditions under which they should be applied on a case-by-case basis.

12.

Pursuant to these provisions and in view of the conclusions of the European Schools concerning costs, Mr and Mrs [REDACTED] should, as the unsuccessful party, be ordered to bear the costs of the case at the value of EUR 400.

FOR THESE REASONS, the Complaints Board of the European Schools

D E C I D E S

Article 1: The Appeal of Mr and Mrs [REDACTED], registered under No **24-13** is rejected.

Article 2: Mr and Mrs [REDACTED] will pay the European Schools a sum of EUR 400 in costs.

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

B. Phémolant

P. Rietjens

A. A. Ó Caoimh

Brussels, 21 August 2024.

Original version: FR

For the registry,
Nathalie Peigneur