EBH Booklets 4

The experience of the Equal Treatment Authority with discrimination in the area of education

EGYENLŐ=
BÁNÁSMÓD HATÓSÁG

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Budapest
2017

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Published by Equal Treatment Authority
1013 Budapest, Krisztina krt. 39/B, Hungary

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Illustrations: flickr.com, pixabay.com, jogvadasz.com, jgypk.hu
Press: Pauker-Holding

HU ISSN 2498-5732

The pictures in this booklet are only illustrations.

Egyenlő Bánásmód Hatóság
Equal Treatment Authority

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Introduction

In 2015, the tenth year since its founding, the Equal Treatment Authority decided to create a series of specialised publications entitled EBH Booklets. The first in the series of Equal Treatment Authority Booklets was published on the subject of workplace harassment, the second concerned harassment in education and the third reviewed the protected characteristic known as "other situation." These publications are all available on the Authority's website.

During the past years numerous parents turned to the Equal Treatment Authority because of discrimination that their children experienced in the context of education and kindergarten care. As a result, the Authority has an extensive record of applying the law in this thematic area. The experience gathered by the Equal Treatment Authority in the course of its procedures can be instructive for others as well, which is why this publication presents cases of discrimination in the area of education, along with the relevant legal regulations and the Authority's application of the law. The present booklet does not address the issue of harassment in schools because that topic was addressed in an earlier booklet.

Although our previous publications have already summarised the most important information about the Authority and the concept of discrimination, let us briefly review what we wrote then!

1. About the Authority

The Equal Treatment Authority (Egyenlő Bánásmód Hatóság (EBH), hereinafter referred to as the Authority) is responsible for monitoring the implementation of the principle of equal treatment, and its jurisdiction extends across Hungary. The Authority was established in 2005. It is an independent and autonomous administrative body, subject only to the laws. It is not subject to instructions regarding its functions, and it discharges its responsibilities separately from other bodies and free of outside influence. Its responsibilities must be set out in law. The President of the Equal Treatment Authority is nominated by the Prime Minister and appointed by the President of the Republic for a term of nine years.

The Authority's first and main responsibility is to investigate complaints and reports filed concerning cases involving alleged discrimination. The Authority conducts its investigations based on the rules governing public administration procedures, and its work is helped by a nationwide network of equal treatment consultants.

The legal framework for the activities of the Equal Treatment Authority is set out in *Act CXXV of 2003 on equal treatment and the promotion of equal opportunities* (hereinafter referred to as the Ebktv following the Hungarian abbreviation).

Detailed information about the Equal Treatment Authority and its procedure is available on the Authority's website.

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2. The concept of discrimination in the Authority's procedure

We refer to instances when the principle of equal treatment is violated as discrimination. According to the law, we speak of a violation of the principle of equal treatment, that is discrimination, if a person/persons suffer(s) a disadvantage in connection with a *protected characteristic* enumerated in the Ebktv.

3. What do we refer to as protected characteristics?

The law offers legal remedies against discrimination with respect to a set of attributes defined as protected characteristics. Protected characteristics are the characteristics and personal features enumerated in the Ebktv that may not be used as a basis for differential treatment according to the law, for that would constitute a violation of the principle of equal treatment.

The protected characteristics listed in the Ebktv are the following:

a) gender
b) racial origin
c) skin colour
d) nationality
e) belonging to a national or ethnic minority
f) mother tongue
g) disability
h) health condition
i) religious or ideological conviction
j) political or other opinion
k) family status
l) motherhood (pregnancy) or fatherhood
m) sexual orientation
n) gender identity
o) age
p) social background
q) financial status
r) limited term or part time employment or other form of work contract
s) membership in a trade union
t) other situation, characteristic or attributes

As is apparent, the Ebktv generally extends protection to innate characteristics that are either permanent, immutable or difficult to change. In line with international practice, protected characteristics refer to essential features of a person's character that lend themselves to group formation and may give rise to prejudice, or which are in some way connected to an underprivileged situation.

4. Equal opportunities

Source: flickr.com

However, discrimination is not only realised in a situation when someone is treated unfavourably in connection with a protected characteristic he/she possesses, but also in a situation in which those who would be legally so obliged fail to fulfil their legally established additional responsibilities concerning persons with protected characteristics. Let us consider the obligation to ensure accessibility, for example! The legislator provides that certain obligants must comply with accessibility requirements to ensure that persons with disabilities have equal access to their services or public services. If the providers of services and public services fail to comply with this obligation, then they violate the principle of equal treatment because with respect to persons with disabilities the principle of equal treatment can only be effected by fulfilling the additional responsibilities designated by the legislator. As the following will show, many of the cases in the area of education pertain to the promotion of equal opportunities.

5. Discrimination in the area of education

The generic case of discrimination in the area of education is the adverse treatment of a child in an educational institution as compared to other children, in connection with the child's protected characteristic (or, potentially, because of the protected characteristic of his/her parents or siblings). Discrimination occurs, therefore, when the child is subject to some genuine disadvantage, potentially harassment, compared to his/her fellow students. (For example, if the child is not admitted to a school because his/her mother is a lesbian and raises the child together with her same-sex partner, or if the child is not admitted to a kindergarten because of his/her Roma ethnicity, or is not allowed to participate in school excursions, to attend the theatre or joint outdoor programmes, etc.).

6. The topic of this publication

Nevertheless, in the Authority's actual practice, complaints concerning the failure of educational institutions to discharge their additional responsibilities, or the inadequate performance of these responsibilities, are far more frequent than cases involving "classic" discrimination. The law or a relevant expert opinion may require that ***special treatment, special needs education*** be provided for children with disabilities or special needs. If the public body/institution that has the obligation to provide the additional service/care in question fails to perform it, or if it fails to ensure that the

necessary preconditions for the provision of said services are in place, a petition may be filed requesting that the Authority launch proceedings against the public body/institution in question.

This class of cases also includes situations when a child's necessary kindergarten or school education, as well his/her special needs education, are provided for, but his/her ***transportation*** to the institution that provides the service in question have not been arranged. In some cases, this situation may lead to a failure to provide care. After all, in some situations special care cannot be provided at the kindergarten or school in the area where the child resides and is only available at a more distant institution, where certain particular conditions are in place that enable it to provide the appropriate care. In a situation in which those upon whom this obligation is incumbent fail to take the necessary measures to ensure that the underage person with a disability receives the proper kindergarten care or school education that he/she is entitled to by law, along with the necessary special needs education, the Authority will apply Section 8 (g) of the Ebktv along with other special provisions pertinent to the case at hand, and will make a determination that discrimination on the grounds of disability has occurred.

In another class of cases, which is also typical of the Authority's case-law, the educational institution that the child attends fails to provide him/her with meals based on the ***special diet*** compatible with his/her condition. For a child who requires a special diet, the principle of equal treatment cannot be ensured based on a normal diet; to ensure that the principle of equal treatment prevails, an additional responsibility must be performed – based on conditions set out in law – in light of the child's health condition. In these cases, the procedure based on Section 8 (h) of the Ebktv could lead to a determination of direct discrimination on the grounds of a health condition.

A further typical type of complaint concerns children ***with a chronic health condition*** who are not provided by the educational institution with the special care or treatment that their health condition requires (e.g. measuring blood glucose levels or administering insulin in the case of a diabetic child). The issue in these cases is not that the municipal government fails to offer kindergarten care for diabetic children, but that the child cannot avail him/herself of the care if the institution does not make the necessary arrangements for providing the additional responsibilities necessitated by the child's health condition.

The care and development of children with special needs

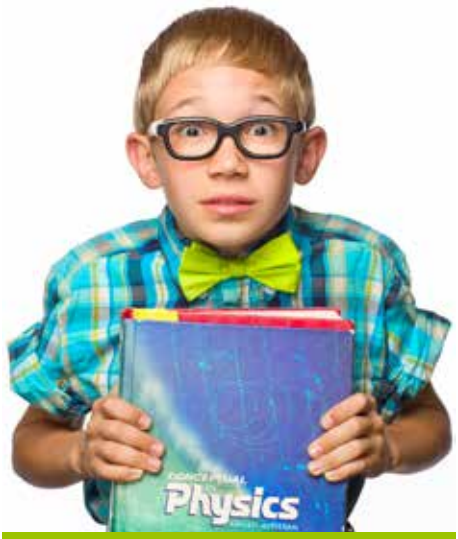
The Authority has received many petitions in which the parents complained that their special needs child did not receive the proper kindergarten or school care or special needs education, or did not receive these in the proper quality. In some cases, the institution designated by the expert failed to provide the mandated level of care for the child, but there were also instances in which the institution refused to enrol the child. The Authority also investigated cases in which the competent expert failed to designate an appropriate educational institution for the child.

1. The expert opinion as the standard of care

In a situation in which the parent (the legal representative) of a kindergarten or school pupil complains about a failure to provide the proper special needs education for the child, the proceedings of the Authority – pursuant to Section 47 (1) of *Act CXC of 2011 on national public education* (hereinafter referred to as Nktv following the Hungarian abbreviation) – are always based on the effective expert opinion issued by the responsible and competent expert committee.

> According to Section 47 (1) of the Nktv, upon the determination of their eligibility children/students with special education needs have the right to receive special treatment, including special education, adapted physical education and conductive education matching their particular needs. This special educational care shall be provided for in line with the expert opinion of the committee of experts.

The educational institution designated by the expert opinion is therefore obligated to provide the special needs education prescribed by the expert opinion. It has been the Authority's consistent approach towards this obligation that – in light of the right of the child with special needs to receive special needs education and special treatment, as well as the fact that the designated institution is obligated by law to provide these – it is irrelevant to the matter whether the expert opinion refers to the relevant instructions concerning special needs education and habilitation as "*recommendations*." Hence, no institution obligated to provide special needs education may claim that the instructions in the expert opinion did not include an actual obligation and may thus be regarded as mere suggestions. At the same time, this also implies that the instructions in the expert opinion concerning special needs education must be provided by the obligant educational institution comprehensively, to the fullest extent prescribed. A failure to comply with this obligation, or a partial compliance therewith, will provide the grounds for a determination that the principle of equal treatment was violated.



Source: flickr.com

Nevertheless, it is important to note that the *so-called preliminary examination reports* often issued by expert committees do not qualify as expert opinions containing detailed recommendations concerning special needs education or as designating the responsible educational institution for the provision of such care. If they did qualify as such, that would give rise to a right of appeal in situations when the child's legal representative disagrees with the conclusions in the opinion. The preliminary examination report is merely meant to inform, however. Based on the *Ministry of Human Resources' (abbreviated as EMMI in*

Hungarian) Decree 15/2013 (II.26) on the operations of the institutions of the pedagogical assistance service, the binding document in this context is the detailed expert opinion. This was the position taken by the Authority in its decision rendered in the case with the case number **EBH/277/2017**, when it held that the kindergarten refusing to admit a special needs child had not violated the principle of equal treatment merely because it was mentioned in the preliminary examination report as the institution *recommended* to be designated as the educational institution responsible for enrolling the child.

The so-called preliminary examination report is merely meant to provide information for the parent (legal representative); the pertinent rights and obligations emanate from the final draft of the expert opinion.

In the Authority's proceedings, the binding force of the instructions in the expert opinion does not only imply that its provisions must be fully adhered to by the obligant legal entities (schools, kindergartens), but also means that the diagnosis set out in the expert opinion, the determinations concerning the child's special needs classification, the designation of the responsible institution, as well as the special needs education prescribed may not be challenged before the Authority. As the Authority determined in the cases with the case numbers **EBH/584/2013** and **EBH/277/2017**, the EBH is not authorised to review the instructions in the expert opinion, that is it cannot effectively review these opinions. The parents must indicate their consent to the directives set out in the expert opinion by signing it. Should they disagree with its contents (for example with the diagnosis, the special needs education prescribed or the designated institution), then they have the right to appeal it based on the corresponding instructions in the document, and they must file the appeal with the institution and by the deadline designated in the opinion.

The determinations of the expert opinion (diagnosis, designation of responsible institution, recommendations concerning special needs development) cannot be challenged before the Authority. In the case of disagreements with the determinations in the expert opinion, an appeal may be filed in accordance with the requirements set out in the expert opinion.

At the same time, however, problems may arise regarding the interpretation of the expert opinion. In case No. **EBH/77/2017**, for example, the Authority had to examine whether the kindergarten-age child had been provided with the "extra attention and individual care" required by the expert opinion. The parent was of the opinion that the provision in the expert opinion stating that "although the child may be placed in kindergarten care, he will require extra attention and individual care" must be interpreted as meaning that the designated kindergarten must hire an additional assistant to provide these for the child, and must also create a separate playing corner and a separate room where his diapers can be changed. Furthermore, the parent argued, the educational institution must provide a parking space for persons with limited mobility in front of the kindergarten. The kindergarten had failed to provide these, however. In this case, the Authority examined whether in educating/caring for the underage child, the kindergarten had complied with the cited provisions of the expert

opinion. In other words, it had to assess whether the grievances presented by the parents reflected a failure to comply with the terms of the expert opinion or whether they stemmed from personal expectations advanced by the child's legal representative even though based on the expert opinion the kindergarten was not actually obliged to meet these.

With regard to the parent's complaint concerning the fact that the child was not always helped by a designated special assistant, or that the pedagogical assistant who was employed by the kindergarten – in compliance with the relevant statutory requirements – was not always near the child, the Authority's decision concluding the case emphasised that the expert opinion did not include such a stipulation. With respect to the lack of an assistant who was continuously and exclusively dedicated to the care of the child, the kindergarten's responsibility would only have been subject to an investigation by the Authority if such a requirement would have been expressly laid down in the expert opinion. The expert opinion, however, did not specify in detail what specific measures must be taken to comply with the requirement of "extra attention" or "individual care" that the document called for. In the case at hand, the Authority deemed it realistic that the kindergarten of the small municipality in question, which operated with only three classes – and whose charter specified the integrated, and not segregated – education of children with special needs, did not have the capacity to create a special resting corner or a separate space for changing diapers, or a distinct space or room where the child would be able to sleep alone but under constant supervision. The Authority held that within the limits of its capabilities, the kindergarten had done everything possible to take proper care of the child. The Authority further pointed out that the new expert opinion, which had been drawn up while the proceeding was ongoing and was based on a follow-up review of the child's condition, held that starting with the next academic year the child's integrated education would no longer be possible, and hence he would have to be educated in a segregated setting. This determination, the Authority argued, also supported the kindergarten's claims. Providing everyday care for the child was indeed a source of difficulties for the institution, and gave rise to numerous challenges which it had to tackle by going beyond the framework of the general notion of "extra attention" and "individual care" as the expert opinion put it. The Authority did not investigate the parent's complaint regarding the failure to create a parking space for persons with limited mobility immediately adjacent to the kindergarten because the child's legal representative failed to reply within the deadline provided to the Authority's inquiry whether he wants a procedure to be conducted against the responsible and competent municipal government. The building of parking space for persons with limited mobility is not the responsibility of institutions of public education, but part of the responsibilities of the municipal governments that operate the latter.

Source: flickr.com

In light of the fact, therefore, that in the Authority's view it was not possible to make a determination that the kindergarten had failed to comply with its additional responsibilities set out in the expert opinion, it was also not possible to hold that it had discriminated against the child in connection with the health condition of the latter. Thus, the petition had to be rejected. In its decision concluding the case, the Authority explained that if the parents had doubts or questions regarding the expert opinion's provisions concerning the prescribed care for their child, or as to what specific obligations the expert opinion sets out for the kindergarten, then they had the option of requesting that the opinion be amended or that the child be subject to an unscheduled review by the expert committee. The best interests of the child and the enforcement of his rights obviously demand that the conditions of the care he is provided with, and the measures that need to be taken to this end, be as clearly defined as possible, and that the parent and the educational institution do not become enmeshed in a conflict over this issue that can only be resolved with great difficulty, or worse, cannot be resolved at all.

In a situation when either the parent or the designated institution of public education (kindergarten, school) has doubts or questions concerning the contents of the expert opinion, or with regard to the specific measures that compliance with the relevant provisions would entail for the designated institution, the parties (be it the educational institution or the child's legal representative) can request that the expert committee that issued the opinion interpret or amend its stipulations for them. Moreover, a review of the child's condition may also be requested, that is if either party feels or experiences that the institution or course of development prescribed for the child are not appropriate for whatever reason, then it is not necessary to wait for the date of the next review as mandated by the expert opinion.

Case No. **EBH/443/2014** also demonstrates that in the context of the child's special needs education, the Authority's procedure may only examine whether the child has received the special education prescribed by the expert opinion to the fullest extent and with respect to every recommendation and directive set out in the opinion. In the case of an underage child with special educational needs, the institutions of public education are only obliged to extend such special education as is specifically mandated by the effective expert opinion. In the case at hand, the parent complained that even though the medical specialist had recommended that the child receive kinesitherapy, the institution mainte-

Source: flickr.com

nance centre had failed to provide this. At the same time, it was also possible to determine during the proceedings that the relevant expert opinion concerning the child's condition prescribed intensive speech therapy and did not include a recommendation concerning kinesitherapy. In light of the fact that the expert opinion did not expressly mandate kinesitherapy for the child, the institution maintenance centre complained against had no obligation to provide this, and correspondingly the Authority rejected the petition.

In case **EBH/500/2015,** the Authority ruled against an elementary school because for a period of two and a half months the institution had failed to provide the children in question with the special education development mandated by the expert opinion. At the same time, in its decision concluding the case the Authority also pointed out that the grievances in the petition concerning the educational method employed (concerns about the special needs education and the special needs education exercise sheet, both of which were deemed inadequate) must be regarded as expert issues that the Authority was not competent to address, which is why it did not examine them in its proceedings.

2. Which institutions may incur responsibilities?

Source: jgypk.hu

The special needs education prescribed for a child must be provided by the institution designated in the expert opinion. Nevertheless, in light of the complexity of the relevant regulatory setting and of the rules delineating the relevant institutions' respective scopes of responsibilities, several institutions of general public education might incur responsibilities with respect to providing care for children with special needs. The responsibilities and scopes of responsibility regarding the education of children with special needs are different in the contexts of kindergarten and school education, respectively.

Kindergarten care

Pursuant to Subsections 74 (1) and (2) of the Nktv, arranging for the kindergarten education of children with special needs who may be educated jointly with other children is the responsibility of the local municipal government. The municipal government operates the kindergarten in the given municipality. In a situation, therefore, when the child with special needs does not receive the special needs education mandated by the expert opinion, in addition to the responsibility of the educational institution (the kindergarten),

the responsibility of the municipal government that operates the local kindergarten may also be at issue. In a case in which the facts suggest the possibility that mistakes may have been made with regard to the child's special needs education, or that some omission occurred, the Authority will investigate the pedagogical assistance service that operates the expert committee which examined the child, while the responsibility of the regionally competent school district is also subject to review.

In case No. **EBH/131/2014** the petition submitted that a child with special needs stemming from his speech impediment did not receive the weekly three hours of special needs education provided by a speech therapist, which had been prescribed by the expert committee. The Authority examined the responsibility of the kindergarten, the municipal government, the pedagogical assistance service, and the school district. The parent had initially filed the complaint against the kindergarten for failing to provide special needs education. Based on its charter, however, the kindergarten had no responsibility to provide care for children with special needs, which is why in response to the parent's amended petition the Authority launched proceedings against the municipal government. It soon became apparent that in this case the school district and the pedagogical assistance service had both failed to take the legally required measures to ensure that the child receives the care he is entitled to. Correspondingly, the Authority launched ex officio proceedings against the school district and the pedagogical assistance service.

It was possible to ascertain that according to the expert opinion submitted, as a result of his speech impediment the child did have a protected characteristic (disability) pursuant to Section 8 (g) of the Ebktv. It was further possible to ascertain that despite the fact that his disability had been established, the child did not receive the proper special needs education prescribed by an expert.

A violation of the provisions meant to protect the equal opportunities of persons with disabilities constitutes a violation of the principle of equal treatment. Applying the Ebktv jointly with Act XXVI of 1998 on the rights and ensuring the equal opportunities of people with disabilities (hereinafter referred to as the Fot, following the Hungarian abbreviation), the Nktv and EMMI Decree No. 15/2013, as the relevant specialised statutory provisions, we can conclude that the principle of equal treatment is violated if those who incur such a responsibility fail to take the necessary measures to ensure that the right of an underage person with disability to special needs education is being implemented.

In its decision concluding case No. EBH/131/2014, the Authority held that all of the public bodies complained against had violated the principle of equal treatment. The Authority did not accept the municipal government's reasoning that none of the kindergartens in the municipality have the proper conditions in place to provide care for children with special needs, and hence cannot provide kindergarten care for the child in question. It is up to the municipal government that operates the kindergarten to make sure that the necessary conditions prevail. Nor did the Authority accept the argument that the expert committee

had not designated the municipality's kindergarten as the institution responsible for providing kindergarten care for the child, wherefore the municipal government was not obliged to provide such care. The expert committee had not been able to designate the municipality's kindergarten as the institution of care for the child because the municipal government had failed to create the conditions necessary to provide care for children with special needs.

With regard to the responsibility of the pedagogical assistance service (as the institution responsible for operating the expert committee) and of the school district, the Authority held in its decision that despite their legally enshrined obligation they had failed to take the necessary measures to ensure that the child can begin receiving special needs education without delay, and had hence violated the principle of equal treatment. Despite its obligations laid down in Sections 17 and 18 of EMMI Decree 15/2013, the expert committee operated by the pedagogical assistance service failed to designate an institution to provide kindergarten care for the child. Its expert opinion did not include a recommendation as to the appropriate kindergarten for the child's special needs, it failed to mention a specifically designated educational institution for him, primarily because the kindergarten in the municipality could not receive special needs children but the parents insisted on that specific educational institution. The Authority assessed that insofar as they disagree with the educational institution designated for their child by the expert opinion, parents have a right to appeal it, but a parent's disagreement cannot be an impediment to the designation of an institution, nor does not in and of itself exempt the pedagogical assistance service from the obligation to designate an institution. In the case at hand, the expert referred the issue to the school district. In a situation in which the kindergarten education of a child cannot be arranged because the registry of institutions does not list an appropriate kindergarten, the expert committee must refer – pursuant to Section 20 of EMMI Decree No. 15/2013 – its expert opinion to the director of the school district with a call for action. In the case at hand, however, the pedagogical assistance service referred the issue to the school district even though the legal criteria for such a referral were not met, since the registry of institutions did in fact include appropriate kindergartens and the pedagogical assistance service itself acknowledged this. The pedagogical assistance service failed to ascertain whether there was any impediment to designating an appropriate institution, it relied completely on the parent's statement concerning this issue. Thus, the expert committee – regardless of the fact that it had proceeded with the parent's consent, in line with his request – had itself contributed to a situation wherein the child could not receive proper care that reflected his special

Source: jogvadasz.com

educational needs as they had been determined by the pedagogical assistance service's own procedure. With respect to the responsibility of the school district, the Authority held that it had failed to comply with its legal established obligation to take action, or did so only with delay. Section 20 of EMMI Decree No. 15/2013 mandates that if the expert committee informs the school district that kindergarten care cannot be provided because the registry of institutions does not include an appropriate kindergarten, then the director of the school district must take action by designating a kindergarten that is obliged to enrol the child, and the director must further inform the expert committee about this decision within 30 days. In the case at hand, the school district failed to take any concrete action within six months of the expert committee's submission.

The EBH ordered all three public bodies complained against to remedy the infringing situation, barred them from future conduct that violates the principle of equal treatment and ordered that its legally binding and executable decision be publicly displayed for a period of 30 days. It further obliged the municipal government to arrange, as of 1 September, the placement of the child in a kindergarten that complied with the recommendations set out in the expert opinion. The municipal government appealed the Authority's decision in the Budapest Court of Public Administration and Labour. In its decision No. 20.K.32.454/2014, the court rejected the appeal. The pedagogical assistance service and the school district did not appeal the Authority's decision in court.

Source: flickr.com

In the course of its proceedings in this case, the Authority also perceived that the relevant provisions of the Nktv were inadequate. The law did not specify exactly which legal entity incurred the responsibility for the kindergarten education of a child with special needs who can be educated in an integrated setting. Thus, the Authority turned to the Ministry of Human Resources with a notice. As of 18 June 2016, the Nktv was amended to include the above cited Subsection 74 (2), the currently effective text of which specifies that the kindergarten care of children with special needs who can be educated jointly with other children must be provided by the municipal government, either through the creation or maintenance of the relevant educational institutions or by concluding a so-called affiliation agreement with other municipalities for the purposes of dividing educational responsibilities amongst each other.

It was on similar grounds as in the previous case that the Authority ruled against a municipal government in case No. **EBH/558/2016**, in which the parent complained that the municipal government had failed to provide kindergarten care for her child, who has a mild intellectual disability and is visually impaired. In addition to determining that

the child had special needs, the expert opinion had prescribed that the child be educated jointly with other children in kindergarten. The expert opinion also stated that the only reason for not designating the municipal kindergarten as the institution obliged to enrol the child was that its charter did not include a provision stating that it can receive children with visual impairments. Consequently, the expert committee – based on Section 17 of EMMI Decree No. 15/2013 – asked the municipal government's registrar to take appropriate action. The registrar, however, failed to identify an appropriate solution for the child's kindergarten placement. The Authority's procedure revealed that the failure to place the child in an appropriate kindergarten, along with the special needs education that the expert opinion also called for, because despite its legal obligation to this effect, the municipal government had failed to arrange for the necessary conditions that would have made this possible.

Source: flickr.com

The Authority did not accept the municipal government's defence that the expert committee had not designated the municipal kindergarten as the educational institution obliged to enrol the child. After all, the Authority stated, the reason that the kindergarten could not be designated by the expert committee was precisely the municipal government's failure to take the appropriate action necessary to this end. The fact that the kindergarten's charter did not include the education of children with special needs (in other words it did not state that the educational institution in question can receive children with visual impairments), and that the necessary conditions were not in place at the district kindergarten, could also not be invoked as grounds for exempting the municipal government from its responsibility, for the municipal government itself was the only agent authorised to amend the charter in question. It was also incumbent on the municipal government to ensure that the conditions necessary for providing kindergarten care for the child are in place. The decision concluding the procedure emphasised: The Authority may not evaluate the burden that compliance with a legal requirement imposes on the municipal government. The EBH does not have the authority to exempt anyone from compliance with statutory requirements, no matter how onerous the burden of compliance may be. Nor did the Authority accept the municipal government's defence that the registrar had intervened to ensure that the kindergarten of a neighbouring municipality receive the child, because the parents would not have supported this solution. Based on the information available, the Authority came to the conclusion that if the child would have had to be transported to the neighbouring municipality to attend kindergarten, then – in light of the child's age and special educational needs – this would have created substantially

Source: flickr.com

worse conditions for the children (siblings) and the parent when compared to the average circumstances of other children, despite the fact that the two municipalities are not remote from one another. Thus, the Authority could not accept the municipality's attempt at discharging its burden of proof by arguing that the child could have attended the kindergarten in the neighbouring municipality, for this would have imposed a disproportionate burden on the minor and his family.

In its decision concluding the case, the Authority determined that the municipal government had violated the principle of equal treatment by failing to provide kindergarten care for the child and by failing to ensure that the child be provided with the special needs education called for by the expert opinion. In its decision, the Authority barred the municipal government from future infringements. It also ordered that the municipality remedy the prevailing violation by providing kindergarten care for the child at the municipal kindergarten, along with the special needs education mandated by the expert opinion, either by hiring a special needs teacher with the requisite qualifications or by availing itself of the services of the network of travelling special needs educators. The municipal government appealed the Authority's decision in the Budapest Court of Public Administration and Labour. In its decision No. 29.K.34.457/2016, the Court rejected the appeal.

A settlement concluded case No. **EBH/164/2015**, in which the complaint claimed that the child, who suffers from mixed specific developmental disorder according to the relevant expert opinion and thus qualifies as a special needs student entitled to special education and speech therapy, did not receive or did not adequately receive the special needs education mandated for him by the expert opinion (the speech therapy only began with delay, while the special needs education never happened). According to the petition, the kindergarten complained against informed the child's legal representatives that the Unified Special Education Methodology Institute (hereinafter referred to as EGYMI following the Hungarian abbreviation) referred to in its letter was under obligation to ensure the availability of the professional services in question, but the institution did not have a sufficient number of special needs teachers at its disposal. The petition submitted that the kindergarten had in part failed to provide the special needs education for the minor, and had in part only provided it with delay. The EGYMI, which was also a subject of complaint in this case, had failed to secure the services of the necessary expert for the kindergarten, with the result that the child did not receive part of the special needs education at all, while he received another part only with delay. As a result, these institutions had violated the principle of equal treatment in their treatment of the child.

In the settlement approved by the Authority, the kindergarten and the EGYMI undertook to cooperate with one another in order to ensure that during the time period specified in the settlement, the child would receive three class hours a week of complex special needs education through the EGYMI, with the involvement of a special needs teacher who had previously worked with the child. The institutions also promised to cooperate with one another in the interest of ensuring that starting with the next kindergarten year, the child would receive 3 weekly class hours of special needs education in a small group, which would have to be jointly provided by the kindergarten and the EGYMI. The kindergarten pledged to ensure that all the necessary conditions will be in place for the special needs education of the child (i.e. the necessary space, tools and time).

School care

The special needs education mandated by the expert opinion for children with special needs who are of school age must be provided by the respective institution of public education designated in the expert opinion. Nevertheless, just as we saw with respect to kindergarten care, other institutions in the public education system might also incur responsibilities in this context in a situation in which the special needs education mandated for the child is either not provided or not provided in the manner recommended by the expert opinion. Before 1 January 2017, the responsibilities for maintaining and operating schools were divided between the Klebelsberg Institution Maintenance Centre (hereinafter referred to as the KLIK following the Hungarian abbreviation) as the maintaining institution and municipal governments as the operators. Since 1 January 2017, with the entry into effect of *Government Decree No. 134/2016. (VI. 10.) on the public bodies involved as maintaining institutions in the performance of state-provided public education functions, as well as on the Klebelsberg Centre* – both the maintenance and operator functions were united in the newly established school district centres, which assumed the KLIK's previous responsibilities and functions. In light of the fact, therefore, that in the context of numerous public education functions the actual responsibilities (e.g. the employment of special needs educators or speech therapists) previously lied with the KLIK, but were transferred to the regionally competent school district centre as of 1 January 2017, in many cases the responsibilities of both, the institution maintenance centre and the school district centre were affected in cases involving the provision of special needs education for children with special needs. Moreover, similarly to the cases involving kindergarten care, the responsibility of the pedagogical assistance service that operates the regionally and professionally competent expert committee may also be reviewed and assessed in cases concerning school education.

In case No. **EBH/60/2016** the parent complained that her autistic special needs child, who had been treated with medication and had been under psychiatric supervision for years, did not receive the proper care necessitated by his condition at the school designated for him. Subsequently, the child's legal representative also asked that in addition to the school, the Authority also launch proceedings against the pedagogical assistance service because despite the parent's request to conduct an unscheduled control examination,

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four months later the assistance service still had not arranged for the performance of the review and was thereby delaying the provision of proper care for the child.

Already in September the child began to exhibit severe integration and behavioural problems at the school complained against, which had been designated as the institution he was to attend in order to comply with his obligation to enrol at an educational institution. The teachers and the institution assessed that the child's psychological state was in disarray, that he was aggressive and a threat to the safety of his peers and of the teachers. The school informed the institution operating the expert committee about this in early November, and the expert committee immediately drew up a detailed report about the case for the pedagogical assistance service. For most of the academic year in question, the child did not attend the school, and as soon as he attempted to do so, the problems immediately surfaced and the school found itself unable to manage them. The school indicated this to the expert committee that had designated the school for the child as well as to the pedagogical assistance service. The experts, the school and the parent all agreed that the child needs a boarding school, but they could not find an appropriate institution except for one which was full and unable to enrol any more students. Thus, the next academic year began without a solution in sight. With the consent of the parent, in early September the school turned to the pedagogical assistance service in a letter, in which it described the circumstances and asked for an unscheduled control examination of the child, and also requested that the child be placed at another appropriate institution. It emphasised that the child "humiliates his fellow students in an unacceptable tone, occasionally even physically assaults them", and "may cause severe physical damage or a tragedy at any moment." The letter pointed out that both the parent and the institution agree that the child attend a school during weekdays. Furthermore, the letter contained a note saying "Urgent!!!", which was underlined, as well as an attached pedagogical assessment. At this time, the child typically only attended the school on Fridays. Finally, the child was examined on 13 January of the next year and the expert opinion was released in March of that year.

In its decision, the Authority rejected the complaint against the school because as soon as the latter perceived that it was unsuitable for providing proper care for the child, the educational institution immediately indicated this to the appropriate public bodies. It took the action it could be expected to take in such a situation in order to ensure that the special needs child would be able to continue his studies at an other appropriate institution, while at the same time it also took action to ensure its own capacity to provide the necessary education and special needs education to the best of its abilities. The Authority's view of the situation was also reinforced by the fact that despite numerous requests by the EBH, the parent did not submit a statement clarifying which of the responsibilities mandated by the expert opinion the school had failed to comply with. Furthermore, the child, the parent and the school were all in agreement that the school complained against was not the appropriate institution for the child because it specialised in providing care for children with intellectual disabilities, while the child in question did not suffer from an intellectual disability but from a psychiatric condition.

The Authority affirmed the complaint concerning the pedagogic assistance service, however. The pedagogic assistance service had namely acknowledged receiving the school's letter – in which it asked the pedagogic assistance service for urgent action and described the severe and untenable situation of the child at the school – on 21 September. Yet a review of the child's condition only took place on 13 January of the following year, even though based on previous indications the pedagogic assistance service had been aware of the problem long before that. The expert opinion based on that unscheduled examination, along with the designation of another educational institution, was only completed on 16 March. The Authority's position was that by failing to take timely action to ensure that the child could continue his studies at an appropriate educational institution, the pedagogic assistance service had violated the principle of equal treatment with respect to the child. The pedagogic assistance service appealed the Authority's decision in court; the case is still pending.

In the cases reviewed below, which were all concluded by settlements, the Authority conducted procedures against both the school and the institution maintenance centre.

In case No. **EBH/309/2016**, the legal representative of a child with special needs resulting from his autism spectrum disorder – who was being home-schooled to satisfy the requirement of compulsory education – filed a complaint against the school that had been designated by the pedagogic assistance service's expert committee on the assessment of learning abilities and against the maintenance centre that operated the educational institution. In the petition, the parent complained that since March of the foregoing year the child's special education as specified in the expert opinion had been provided inadequately, and that from September on he no longer received any special education. During the hearings held in the case, both parties, that is the representatives of the school and of the maintenance centre on the one hand, and the child's parent at the other, concluded a settlement. As part of the settlement, the institution maintenance centre committed to provide five weekly class hours of special needs education for the child, in line with the requirements set out by the expert opinion, by involving a specialist with the appropriate qualification. The elementary school undertook to ensure the material conditions and the

physical space needed at the school in order to provide the child with the required special needs education. Furthermore, the parties also agreed unanimously in writing that the directives in the relevant expert opinion, which posited that – in light of his status as a home-schooled student – based on Section 27 (7) of the Nktv the child ought to receive 10 class hours each week of subject-specific education in an integrated setting with other students, is not appropriate for the child because he is autistic and does not speak. In light of the aforementioned, the school and the child's parent agreed that they would jointly ask for an unscheduled expert review, since the directive concerning 10 weekly subject-specific class hours was practically impossible to attain. The child's attention span can only be maintained for few minutes at a time, and because of his autism he could only have started to learn specific subjects with the help of a special assistant.

A year after the Authority's decision affirming the settlement, the child's legal representative submitted another petition to the Authority because the unscheduled review had still not been performed. The Authority's procedure showed that the review had not taken place since the school district indicated in a statement submitted to the expert committee that it no longer felt that such an examination was necessary. Upon receipt of this notice, the school district deleted the request for a review from its computer records. As a result, the expert opinion that remained effective was the same one that had been used in the previous EBH/309/2016 case, based on which the child was to be provided with 10 hours each week of subject-specific classroom education, as well as 5 weekly class hours of special needs education. In case No. **EBH/225/2017** the parent complained, however, that as of the second semester of the academic year the school district made the special education teacher for the child available only for four hours a week, while on account of the lack of the specialist (teacher, special education teacher) necessary to this end, the 10 class hours each week of subject-specific classroom education had never been offered to the child during the academic year up to the point when the petition was filed. In line with the terms of the settlement concluded in the case No. EBH/309/2016, during the first semester of the year the child had received the special needs education classes prescribed for him, as a result of which he made such progress (it became possible to focus his attention for a much longer time and his communication also improved substantially) that he would have been able to participate in the 10 hours of subject-specific classes. In the agreement concluded between the parties, the school district centre committed to provide 15 hours

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each week of habilitation and subject-specific classes (of which 5 hours would be special needs education/habilitation and 10 hours would be subject-specific classes) during the next academic year, with the involvement of a specialist with the qualifications set out in the expert opinion and of the EGYMI mentioned in the settlement.

Procedure No. **EBH/403/2016** also resulted in a settlement between the school, the school district and the petitioner. The legal representative of the special needs child turned to the Authority because starting with the date designated in the complaint, the child did not receive the special needs education that had been prescribed for him. The petition also complained that in February of the academic year in question the teacher "began to steer the public mood against the child", which is why none of his peers wanted to sit next to him. As of mid-February, the child had to perform his classroom work in a separate room. The parent's position was that by failing to properly provide for the special needs education of the child, the school designated for him had discriminated against the minor. Moreover, by allowing an uncomfortable environment to emerge surrounding the child as a result of the teacher's actions, and by virtue of the fact that subsequently the child was only allowed to participate in classroom work while he was physically separated from his fellow students, the school had harassed the student. The Authority launched proceedings against the elementary school and the school maintenance centre responsible for the school, and subsequently the parties concluded a settlement. The school undertook to secure the services of an expert who would give the school's faculty a presentation about the particularities of the situation of children who need special treatment; the potential conflict situations that can emerge in this context, and the remedies in such situations; the legal regulations concerning the educational care and special needs education of children with special needs, including the legal obligations of teachers; and the communication with parents. The institution maintenance centre promised to ask the Authority to make a staff member available who could give a presentation to the school's faculty about the importance of equal treatment; the methods for promoting equal opportunity; cases involving violations of equal treatment; the rules concerning its enforcement; the effective protection of rights, and the relevant case-law. The Authority's staff member gave the presentation in question.

According to the relevant legal framework and international standards, the Authority must fundamentally and primarily always pursue the best interests of the child in all cases in which the rights or interests of a minor were potentially violated. Correspondingly – in the interest of ensuring that the child received the necessary special needs education and care that he/she is entitled to – it is the Authority's consistent practice to reject attempts by subjects of the procedure to defend themselves or to try to discharge their burden of proof by arguing that they could not meet their obligations due to a lack of financial funds or the unavailability of specialists. The Authority investigates individual cases and its review focuses exclusively on the question whether the child fully received the special needs education and care mandated for him/her by the expert opinion.

The transportation of children with special needs

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The Authority's case-law has thus far included several cases concerning the transportation of children diagnosed with autism spectrum disorder to the institution of public education that had been designated for them to attend. In some cases, children with autism cannot be transported by way of public transportation, and thus alternative arrangements must be found to help them get to the kindergarten or school. Making sure that these children can attend their designated institutions of public education is of course vital in terms of exercising their rights – which were discussed in detail in the previous chapters – to education, care, and special education in compliance with the relevant provisions of the Ebktv and the Fot. It is at the same time also of crucial importance in terms of helping them develop their social skills, which poses a greater challenge for them than for their healthy peers, as well as to properly involve them in social activities.

Case No. **EBH/36/2016** involved children who suffer from autism-spectrum disorder and a certain degree of intellectual disability. They could not be transported by means of public transportation and there was no educational institution in the area covered by the local school district that would have been suitable for enrolling the children. As a result, the children attended a school in Budapest that had been designated by the expert committee. During the previous academic year, the local school district had arranged their transportation by means of a minibus, but starting with the following academic year it no longer made this mode of transportation available. The parents' position was that by failing to transport the children with autism and intellectual disabilities to the educational institution designated by the expert committee, the institution maintenance centre had violated the principle of equal treatment in its treatment of the children with respect to their disability.

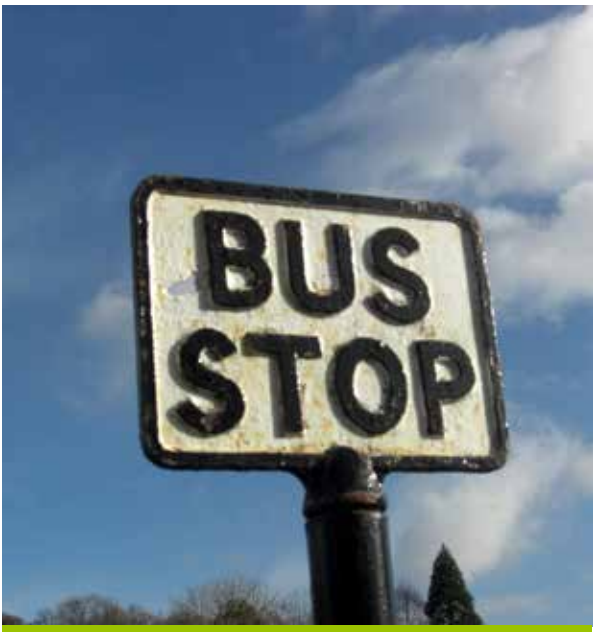
During the proceedings, the institution maintenance centre argued that pursuant to Section 47 (2) of the Nktv, the parents had selected the educational institution for their children – based on the opinion of the expert committee. According to Section 50 (6) of the Nktv, the school in question does not qualify as an institution that is obliged to enrol students in a given geographic area, in other words it is essentially not part of a school district. The school maintenance centre's position was that the Nktv's Section 76 (7) (Section 74 (5) since 1 January 2017) does not apply to such situations, in other words

in the given context the maintaining institution is not obliged to arrange transportation to school.

According to Section 74 (5) of the Nktv, the regionally competent municipal government in the municipality where the child's permanent address is registered – or, in the absence of a registered permanent address, the place where he/she resides – provides reimbursement for travel costs to the kindergarten that is under obligation to enrol the child and, if necessary, also arranges for a person to accompany the child if the kindergarten is outside the municipality and the municipal government does not itself arrange for transportation to the kindergarten. The controlling institution provides for transportation to the school that is obliged to enrol the child.

During the proceedings, the Authority turned to the deputy state secretary at the Ministry of Human Resources. In his response, the deputy state secretary noted that children/students with special needs may not be disadvantaged in their education as compared to their peers who have no special needs, and they or their families may not be subject to disproportionate burdens stemming from the child's education. The ministry's position was that as a principal rule, the child must be cared for/educated in the given school district, whenever possible in the municipality where he/she resides. If for any reason the responsible institution cannot realise this, then it must ensure that the student is not subject to additional burdens – "thus, in the specific case at hand, it must arrange for their transportation." The deputy state secretary also pointed out that special institutions that provide care for children with special needs also have district boundaries.

In its decision concluding the proceedings, the Authority emphasised that insofar as the children's educational care cannot be provided in the municipality where they reside, it is incumbent on the municipal government to ensure that the student and the family are not subject to additional burdens; in other words, the municipal government must arrange for the children's transportation. The Authority also explained that even though Section 47 (2) of the Nktv indeed stipulates that the "parent chooses", it is nevertheless of vital importance to consider that not every municipality has an institution that can provide proper care for severely autistic children with intellectual disabilities, as the number of such institutions across the country is limited. Hence in such cases the parents often have no real choice when deciding in which educational institution – and in which municipality – they want to enrol their children. If namely the municipality where the family raising a severely autistic and intellectually disabled child with special needs lives does not offer the appropriate educational care or special needs education, then the children with such families have no alternative but to enrol their children in an institution in another municipality than the one where they live. As a result, they are entitled to enrol their child in a given institution even if their place of residence is outside the institution's district boundary. This was the situation of the families raising the affected children in this case and, in addition to the above, another consideration was that – according to the medical certificates provided – neither of the children could be transported by means of public transportation.



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Based on the above, the Authority concluded that the statutory obligation of the school's controlling institution to arrange for the children's transportation must necessarily also apply to the situation of severely autistic children with intellectual disabilities who cannot be transported by means of public transportation. The controlling institution is just as much under obligation to arrange for their transportation as it is in the case of their healthy peers. The Authority held in its decision that the public body that maintains the institution has an obligation to ensure the transportation of these children to the educational institution that has been designated to enrol them. Yet – based on the documents available – it only satisfied this obligation after 10 October, while the academic year was already ongoing. During the period between 1 September and 2 October it failed to arrange for the transportation of the children to the school. The Authority held in its decision that the public body that maintains the school had violated the principle of equal treatment with respect to the children by failing to arrange for their transportation between 1 September and 10 October to the education institution that had been designated for them by the expert committee.

The law requires that the public body that maintains an educational institution which is under obligation to enrol children with special needs who cannot be transported by means of public transportation must arrange for the transportation of the respective children to the kindergarten or the school. A failure to comply with this obligation constitutes discrimination.

In light of the statement by the children's representative suggesting that even though the children's transportation had been arranged after 10 October, their accompaniment was not clarified in the agreement concerning the transportation of the affected children, the Authority also investigated in its proceedings whether the arrangement for transportation by the public body that maintains the educational institution also includes an obligation to ensure the presence of a person to escort them. In this context, the Authority alluded to the statement by the deputy state secretary for public education at the EMMI. The statement made clear that the

responsibility to arrange the transportation to the school, which is incurred by the public body maintaining the school, does not extend to an obligation to also arrange for a person to escort them. With regard to escorting the children, the Authority held that – in contrast to the obligation to arrange for transportation – there is no statutory provision on the basis of which the public body maintaining the educational institution is also obliged to arrange for escort personnel. Thus, the Authority could not make a determination that the institution maintaining the school had violated the principle of equal treatment by failing to arrange for a person to escort the children. Hence it had to reject this aspect of the petition. The parties did not exercise their right of appeal against the Authority's decision that affirmed the petition in part.

At the same time, the Authority's decision also pointed to further issues arising from the effective regulations if the school's operator only needs to provide for a person escorting children in the case of transportation to a kindergarten (in some cases, and only if the controlling institution is a municipal government), while such an obligation does not obtain in situations involving transportation to school. In this context, we noted that the public body's responsibility to arrange for escort personnel may be incurred in situations in which a failure to provide this would effectively hollow out the substantial content of the obligation to provide transportation, for example in the case of severely autistic children or children with multiple disabilities. Situations may arise when on account of the child's health condition the lack of an escort personnel may have the result that transportation cannot be arranged for, and that the child does not receive the special needs education or care he/she is entitled to because he/she cannot get to the institution that provides these. However, any decision in this context must be rendered by the Authority on a case-by-case basis, following an examination of all the circumstances.

In case No. **EBH/129/2016**, which resulted in a settlement between the parties, the Authority performed an investigation concerning the transportation of an autistic child to kindergarten. A mother raising two autistic children filed a complaint against the municipal government. She submitted that the children attend a private kindergarten funded by the municipality in order to receive the necessary special needs education. The parent complained that despite its earlier promise to buy a minibus for the ensuring the smooth transportation of her children, the municipal government failed to transport the children after 1 September because the vehicle was defective. Though the mother concluded an agreement with the support services division of the municipal government in the nearest major town, the service was not continuously provided, it did not transport the children every day of the week. The kindergarten care and special needs education of the children was not adequately provided for because they were not able to attend kindergarten every day. The parties concluded a settlement during the hearings. As part of the settlement, the municipal government undertook to transport the children to the kindergarten as of 15 March on the days when the support services that were in a contractual relationship with the mother could not arrange for transportation. The Authority approved the settlement in a decision.

Meals for children

In many cases parents raise complaints regarding the compliance of kindergartens and schools with their responsibility to provide children with a diet that agrees with their health condition. According to the effective laws, this obligation is primarily incumbent on the municipal government or any other institution responsible for operating the educational institution. In cases involving school or kindergarten meals for children, the Authority can investigate whether the institution complained again has satisfied its legal obligations, in other words whether the municipal government has provided the children with meals based on the special diet prescribed for the children.

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1. The regulatory setting concerning meals for children

In previous years the Authority could only rely on the relevant provisions in the Nktv, on *Act CLIV of 1997 on healthcare* (hereinafter referred to as Eütv based on the Hungarian abbreviation), and on *Act XXXI of 1997 on the protection of children and guardianship administration* (hereinafter referred to as Gyvt pursuant to the Hungarian abbreviation), in addition to the Ebktv, of course. Pursuant to Section 46 (3) (g) of the Nktv, the child or student has the right to receive special care that reflects his/her condition and personal characteristics. According to Section 50 (3) of the Eütv, meals provided in the framework of public meals – especially public meals provided at institutions for children – have to be of appropriate quality to satisfy biological needs and need have appropriate nutritional value. According to Section 41 (1) of the Gyvt, as part of the public daycare services for children, age-appropriate meals must be arranged for those children who live in families in which the parents, guardians or caretakers cannot provide for their care during the day because they are working; because they are enrolled in programmes or trainings meant to promote their participation in the labour market; are ill; or for another reason. At the same time, we can look at the Emmi Decree No. *37/2014 (IV. 30) on the nutritional/health provisions concerning public meals* (hereinafter referred to as EMMI Decree No. 37/2014) as seminal change – specifically progress – in this context. According to Section 15 (1) of this decree, all persons who require a special diet, as verified by a specialist

physician, must be provided with a diet at the educational institutions they attend that reflects their special dietary needs. This regulation establishes clear guidelines for institutions providing public meals with respect to the obligation of the latter to offer a diet that matches the children's health condition. It is important to note, however, that the parent (legal representative) must present the document in which a specialist physician or dietitian verifies the child's special diet meals to the kindergarten or school, as well as the municipal government or other institution that operates the respective educational institution, since the child's special diet meals can only be provided on the basis of these documents.

2. Who is obliged to provide special diet meals for children?

According to Section 21/A (3) of the Gyvt, the *municipal government* is responsible for providing a hot lunch and two smaller meals (a mid-morning and a mid-afternoon snack) on kindergarten days and on school days at the nurseries, crèches and kindergartens it operates; at the non-boarding institutions of public education in its municipal area that are operated by the school district centre and the institutions operated by the public body responsible for state vocational/technical training and adult education. Meals at non-boarding educational institutions operated by *ecclesiastical or other non-state affiliated private institutions* must be provided by the ecclesiastical or other non-state private entities, while at other state-operated non-boarding institutions the *body operating* the respective educational institutions must do the same. In other words, the operator of a private kindergarten or school, and the churches, too, are potential obligants of the responsibility to provide special diet meals to children who are entitled to this. The operator of a private kindergarten may thus be held accountable for the failure to provide a diet meal or for its inadequate provision just as a church may be held accountable for the same failure by an ecclesiastical institution that it operates.

Source: flickr.com

In kindergartens and schools, the responsibility for providing three meals a day generally rests with the municipal government, but in the case of ecclesiastical, non-state or other state-operated institutions it is incumbent on the operating body.

In case No. **EBH/304/2016** the parent turned to the Authority with the complaint that the municipal government had failed to provide gluten-free meals to his children at the kindergarten and at the local school, respectively. He submitted that his children had been diagnosed with gluten sensitivity in October and November, respectively. In November that year, already prior to the receipt of the specialist medical opinion, the parent indicated to the municipal government that he would like his children to be provided with gluten-free meals at the local kindergarten and at the local school. The mayor asked the parent to submit an official certification showing what ingredients the provider of public meals in the municipality (a local public kitchen) may use in preparing meals for the children, and what ingredients it ought to avoid. In this context, the children's legal representative submitted that the paediatric hospital that had diagnosed his children and had drafted the relevant medical opinion would not issue an official document as requested by the mayor, nor does the medical chart contain such directives, it merely states that the children must follow a gluten-free diet.

During the proceedings, the municipal government stated that it operates its own kitchen which provides meals for the local kindergarten and school. Several parents indicated in September and October of the year in question that their children require a special diet due to a chronic condition (gluten or lactose intolerance, diabetes). The municipal government determined that its kitchen does not comply with the required personnel, material and technical conditions for the preparation of such meals, and as a result it turned to several providers of public meals, but neither of those proved willing to supply the special diet meals to the municipality, even though the municipal government even offered to have the prepared meals collected. The municipal government asked the Ministry of Human Resources to state is position on this issue. In its response, the EMMI explained that in order to ensure the provision of special diet meals, the municipal government may conclude – at the expense of the central budget – a corresponding agreement with in-patient healthcare institutions. Alternatively, it may involve the public kitchens of other municipalities by concluding a corresponding agreement with their respective municipal governments. Insofar as the special diet meals are provided by the parents, the municipal government can provide financial or in-kind support in return. Following the EMMI's response, the municipal government turned to the mayors of several nearby municipalities and to hospitals in the region, but these efforts, too, proved fruitless. It became apparent that it must resolve the problem of providing special diet meals on its own, and as a result the chef working at the local kitchen was enrolled in a course to train as a diet chef, which she successfully completed. The municipality also promised to remodel the entire kitchen to create the necessary material and technical conditions for the preparation of such meals, while they also extended financial support to the family of the two minors.

In its decision, the Authority did not accept the municipal government's defence arguing that it had done everything it could to secure special diet meals for the children and only came up short because the public meal providers and the hospital were not willing to provide the requested meals. The municipal government is namely obliged by law to provide special diet meals just as it provides regular meals. Nor did the Authority

accept the municipal government's reasoning that it receives no dedicated budget funding for these purposes and that, correspondingly, providing special diet meals for children is exclusively its own burden. After all, pursuant to Section 89 (4) of the Nktv as it was effective at the time, the operator of an educational institution or the municipal government received financial support for its effort to arrange low-price meals for children. Nor could the Authority accept the municipal government's argument that they had begun to remodel the public kitchen operated by the municipality after the conclusion of the academic year, since EMMI Decree No. 37/2014 that made the provision of such meals obligatory already starting on 1 September 2015. Based on the above, the municipality should not have excluded the children from the provision of school meals at the point when their need for special meals was first registered, that is essentially from the beginning to the end of the academic year. In its decision, the Authority held that the municipality had realised direct discrimination in connection with the children's health condition (gluten intolerance) by failing to provide gluten-free meals from 20 October on at the local kindergarten and from 10 November on at the local school. The Authority barred the municipal government from future manifestations of the infringing conduct and ordered it to remedy the ongoing violation by the start of the next academic year at the latest. Finally, it also ordered the public display of its decision on the websites of the municipal government and of the EBH for a period of 30 days. Neither party appealed the decision in court.

The municipal government's failure to provide gluten-free meals was also the subject of a parent's complaint in case No. **EBH/146/2016.** According to the petition, the municipal government did not provide gluten-free meals at the school even though such a diet had been prescribed for the students.

The municipal government stated that it was constantly trying to provide gluten-free meals, and had issued several calls for tenders to find a public meal provider who could do so, but neither of the tenders had been successful. The municipal government's position was that they lack the technical preconditions for complying with the requirements set out in Section 15 (1) of EMMI Decree No. 37/2014, and thus the municipal government was unable to satisfy these through no fault of its own. While the procedure was ongoing, the municipal government found a public meal provider whose price quote they accepted.

In its decision concluding the procedure, the Authority took into consideration that the municipal government itself did not dispute its obligations set out in Section 15 (1) of EMMI Decree No. 37/2014 concerning the provision of special diet meals that are compatible with the children's health condition; it merely pointed out that it disagrees with the cited statutory provision and that it cannot comply with it through no fault with its own. The Authority emphasised that in the case at hand it was only authorised to examine whether the municipal government had complied with the legal requirements that it was obliged to observe. In this context, the Authority had no margin of appreciation to consider what kind of burden the compliance with the relevant provisions would imply, for the EBH has no power to exempt anyone from compliance with requirements set out in law, no matter how onerous these burdens may be. The Authority also could

not accept the municipal government's argument that it had tried to comply with the statutory requirements and had issued tenders to secure the appropriate special diet meals, for the law defines the provision of the proper diet as an obligation, and an actual failure to comply with this obligation cannot be justified by arguing that the municipal government had sought a solution and had issued several tenders to this effect. The Authority was also mindful of a ruling by the Budapest Court of Public Administration and Labour in a similar case (No. 22.K.34131/2015/10), which posited that "a repeated and ongoing issuance of tenders – unsuccessfully – cannot be regarded …as a reasonable justification considering that long effective statutes have obliged the plaintiff to provide appropriate meals for minors. This obligation has been reaffirmed by the new statutes, which have also further specified the substance of the obligation (EMMI Decree No 15)."

The Authority determined that by failing to provide – despite its legal obligation to that effect – the gluten-free diet that had been prescribed for the minors by the medical opinion, the municipal government had treated the children in question unfavourably when compared to other children in connection with their health condition (gluten intolerance) and had thereby directly discriminated against them. As a sanction, the Authority barred the municipal government from future manifestations of the infringing conduct; ordered that remedy the ongoing violation by the deadline designated in the decision and to publicly display the Authority's decision.

There have also been cases in which parents wanted to ensure that the school complained against provides the age-appropriate quantity and specially composed diet meals that their diabetic child needed for his healthy development; their view was that the diet meals brought from the kitchen of the neighbouring nursery were not appropriate, neither in composition nor in quantity. The Authority informed the petitioner that it could only examine whether as part of the public meal programme their child had been provided with the medically prescribed special diet. The Authority is not competent to examine the amount, quality or composition of the special diet meals provided for the child. In this context, it also pointed out to the parents that the law does not contain a provision that the municipal government must provide meals in the amount, quality or composition specified by the parents, nor can the parents' request be regarded as being tantamount to a medical prescription in this context. Since the parents failed to respond to a request by the Authority to amend their petition, the Authority terminated the proceedings.

The Authority can only examine whether the obligant legal entities (municipal government or other controlling body) provide the physician-prescribed special diet meals as part of their public meal programme. At the same time, municipal governments or the controlling entities of educational institutions cannot be held accountable for their failure to comply with parents' own specific requirements concerning the quantities, qualities and composition of meals.

Care for chronically ill children at educational institutions

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The Authority has received numerous complaints over the past years concerning the kindergarten or school care for children with chronic health conditions, usually diabetes. A typical category of complaints in this class of cases pertained to the provision of special diets meal at kindergartens and schools, and the deficiencies thereof. We discussed this broader subject in the chapter entitled *Meals for children,* primarily in the context of EBH cases involving the provision of gluten-free meals. The problem of meals for diabetic children will be discussed in this chapter because – as will become apparent below – in the case of diabetic children the issue is one of complex care, only one aspect of which is the provision of a special diet. In addition to concerns about the provision of meals, the complaints reviewed in the present chapter often pertain to the failure of educational institutions (also including kindergartens) to accommodate children's special needs arising from their diabetes (e.g. measuring blood glucose levels, administering insulin, etc.), or the parents' perception that these are not properly provided, and the fact that in some cases these lead to a failure or refusal to provide kindergarten care or school education. What is at issue in these cases is not that the institution or the public body that operates it do not provide care for diabetic kindergarten or school students, but that the child with the chronic condition cannot avail him/herself of the care provided because the institution does not offer proper care for him/her while he/she is at the institution. In such cases, the Authority generally tends to launch a procedure against the educational institution, but if the issue also concerns the responsibility of the controlling legal entity (because it fails to ensure that the necessary preconditions prevail for providing the appropriate care), then the Authority also initiates proceedings against the latter (in the case of kindergartens, this typically concerns the municipal government; in the case of schools, previously the responsible entity was the school district, whose functions have been assumed by the school district centre since 1 January 2017).

We should note that this problem can arise in the case of any child suffering from a chronic condition, but the Authority generally received such complaints with respect to children who are diabetic, which is why we emphasise this particular set of cases in the present publication. It should also be noted with regard to the Authority's application of the law that the problem manifests itself chiefly in the context of kindergarten care, because when they are of school age, diabetic children are mostly capable of performing themselves the chores related to managing their condition. In the following, we will review in detail three of the relevant cases investigated by the Authority, which illustrate what

factors the EBH considers in rendering its decisions, and how seemingly similar cases can potentially turn out differently.

In case No. EBH/84/2014, the parents turned to the Authority with the complaint that the district kindergarten and the municipal government do not provide kindergarten care for their insulin-sensitive diabetic child. The child had been diagnosed with the condition at the age of two, and already at the time the parents inquired at the kindergarten about the future possibility of their child attending the kindergarten and about her being properly cared for at the institution. They stated that the kindergarten cannot provide special care for their child, and they were referred to the municipal government. At the age of two and a half years, they enrolled their child at the so-called "family daycare" centre in the neighbouring municipality, which – in addition to providing the child with the special diet she required – also cared for her health needs, with the involvement of a kindergarten teacher. Thus, the parents also enrolled the child's older sibling at the daycare centre. This solution proved successful, though it imposed a financial and organisational burden on the family. The parents – or rather the children – were entitled to and received various forms of support in light of the child's chronic condition (higher family allowance, state-subsidised public healthcare and a child support benefit paid to the mother until the child's tenth birthday). In the meanwhile, another child was born in the family, and the mother received six months of pregnancy/maternity allowance after the new child. Apart from this period, the mother – according to her own statement – worked continuously. The diabetic child attended a family daycare centre for a year, but at that point the kindergarten teacher who performed her care at the daycare centre quit. Thereafter, the child was cared for at home, with the mother hiring the kindergarten teacher who had previously worked with her child as a "household employee." According to her statement, she also hired another household employee to provide for the child's special meals. The care for the older sibling – who is also of kindergarten age – and the younger sibling was also provided at home, by relying on the aforementioned employees.

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A few months later, the parents turned to the mayor's office and – referring to their request from a few years earlier – asked the municipal government to issue a written statement on how it could arrange for the care of the child. The parents informed the municipal government about the child's health condition, about the countless daily chores, uncertainties and risks resulting from her insulin sensitivity. They noted that if the municipal government cannot provide appropriate daycare for the child at a kindergarten, they would continue to care for her at home, relying on private employees. However, they noted that the family cannot keep up with the costs of this arrangement.

In his response – which focused primarily on the request for financial assistance from the municipality – the municipality's registrar informed the parents about the possibilities of

receiving financial assistance and benefits, and made clear that in the absence of express authorisation in a relevant statute they could not fund the salaries of private employees. With regard to kindergarten care, he asked the parents to turn to the kindergarten's head teacher for information.

Upon receipt of the response by the registrar, the parents filed their complaint with the Authority, and the latter initiated proceedings against both the kindergarten and the municipal government.

The kindergarten invoked that it had never denied kindergarten care to the child. It emphasised that even though the parent had informed the municipalities about the difficulties concerning their child, and had inquired about possibilities in terms of providing kindergarten care for the child, she never requested that her child be enrolled at the kindergarten, and instead preferred to have her cared for at home, with financial support from the municipal government. The kindergarten also complained that the parents failed to provide any medical documentation on the basis of which the educational institution could have determined what conditions needed to prevail to provide kindergarten care for the child. In the absence of these documents, the kindergarten could not even begin to provide care for the child since pursuant to Decree No. 26/1997 (IX.3) *on the provision of healthcare in education* (hereinafter referred to as NM Decree No. 26/1997), in the case of a child with a chronic condition, the medical opinion of a school doctor must be obtained before kindergarten care can commence. This opinion sets out the conditions that educational institutions must meet to provide care for children with chronic conditions. The kindergarten also invoked that the child's care must be arranged and provided by the municipal government.

The municipal government invoked that in other cases they had always managed to solve the care of children with special needs in cooperation with the parents. It emphasised specifically that the parent's cooperation is necessary in resolving such problems. It also noted that the parent had unequivocally stated in person that she wishes to arrange for the child's care at home, and asked for the municipal government's support in paying the two household employees. That is why the municipal government informed the parent about the available options based on the effective laws. The municipal government also invoked that the information at their disposal suggested that the mother was on maternity leave, in other words, she, too, was able to take care of the child. The municipal government further submitted that it continuously provides a paediatrician, a school doctor, a district nurse, the institution providing kindergarten care (where the staffing levels and qualifications comply with the relevant legal requirements), and public meals for children. It always ensures that the conditions specified by the doctor are met, but it cannot accommodate requests that exceed the legally established requirements,

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which are "unique, excessive." The municipal government complained that the parents' petition was contradictory on several points. The municipal government argued that the parents construed the situation as having had to hire two employees to care for their diabetic child, while in reality they also have two other small children, one of whom is barely one and a half. The parents submitted that they themselves work, which is why presumably the employees take care of the family's other children as well. The municipal government emphasised that the parents could not present a single rejected claim or municipal decision or letter that would have supported their complaint. It noted that many children with special needs or special dietary needs attend the municipality's educational institutions, and that they had always been properly cared for with the involvement of appropriate experts. However, the municipality cannot satisfy excessive, orally conveyed individual requests.

The parties tried to find a solution to the situation by outlining the potential terms of a settlement based on providing kindergarten care to the child in question, and in so doing they proceeded based on the parents' requests. They held several discussions, exchanged letters, and the municipal government's assembly also debated the issue. Several appliances and other instruments were purchased (gas cooker, microwave oven) and job descriptions were expanded to provide care for the child. The child began to attend kindergarten while the Authority's procedure was ongoing, and during the first weeks the mother and the aforementioned family employee took turns to stay with the child at the kindergarten, to instruct the kindergarten teachers about the chores that needed to be performed in connection with the child's health condition. Subsequently, the mother – using the mobile phone she had left at the kindergarten to communicate with the staff – gave the kindergarten staff ongoing instructions concerning the treatment of her child. The chores related to the child's condition were generally performed by a pedagogic assistant, while the child's meals were prepared at the municipal government's kitchen (which is where the meals consumed at the kindergarten were prepared in any case), based on the mother's specific instructions, with the parent providing some special ingredients and supplements (e.g. coconut milk, salami, rye bread).

The child attended the kindergarten for a period of roughly a month and a half, with several smaller and longer interruptions (public holidays, sickness), and the parties regularly informed the Authority about their experiences in that context. The parent raised several points of complaint. She complained, for example, that the kindergarten teachers are not willing to help manage her child's condition, and that the related responsibilities all rest with the pedagogical assistant; if the assistant were absent, the child's health treatment at the kindergarten would not be provided for. A similar problem arose when they wanted

to take the child to the kindergarten early or pick her up after the assistant's scheduled work hours. They also took exception to the fact that the child's kindergarten care was not provided for during the kindergarten's 3-4 weeks of summer break and during the Christmas period. After roughly a month and a half of kindergarten attendance, the child became sick, her blood glucose levels deteriorated massively (often with oscillating, critically low and high values), and as a result she was not returned to the institution.

Despite several draft settlements and the Authority's efforts at promoting an agreement, the parties could not agree on the terms and thus the Authority had to render a decision on the merits.

In rendering its decision, the Authority was mindful of the fact that based on the information available the parents had not submitted a formal request – neither to the kindergarten nor to the municipal government – asking for kindergarten care for their child, or for the possibility to enrol the child at the kindergarten before the Authority's procedure was launched. The communications of the parents with the municipal government and the kindergarten suggested that the parents preferred to take care of the child at home with financial support from the municipal government. With respect to the childcare at the kindergarten, they focused on the problems, difficulties, uncertainties and risks rather than the solutions. The Authority's impression was that the parents were more interested in trying to talk the educational institution and the municipal government out of caring for their child, deterring them from doing so, rather than trying to persuade them of the opposite; it was only during the Authority's procedure that they made an unequivocal request that their child be cared for at the kindergarten. In addition to discussing their child's health condition and the related responsibilities, the parents did not submit – neither to the kindergarten nor to the municipal government – professional opinions or other documentation by either medical experts or dietitians.

In addition to standard kindergarten care, the parents also expected the kindergarten staff to care for their child based on their previously provided, standing written and oral instructions, as well as whatever current ongoing instructions they might give at any time over the phone; practically they requested daycare in excess of eight hours a day each day. At the same time, however, the medical documents they attached to their petition did not support this request, for apart from the diagnosis itself these contained only a few instructions regarding the child's medical treatment at home. They did not include any information or instructions on how daycare should be provided for the child in a "community", at the kindergarten, nor did they refer to any of the special instructions issued by the parents. In this sense, the medical documents did not support the parents' requests regarding the medical treatment of their child during the day.

On several occasions the public bodies complained against proposed the need for a consultation with the school doctor, an "independent physician" and the district nurse, with the goal of asking them for their professional opinion concerning the child's kindergarten care and treatment. However, the parents strictly ruled out the possibility of involving medical professionals, as well as any notion of obtaining a professional opinion concerning the child's kindergarten care and medical care, and to implement the child's care on the basis of such an opinion. They insisted that the kindergarten perform precisely those respon-

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sibilities concerning they had outlined, strictly according to their unique instructions. In terms of the child's meals, they also ruled out the option proposed by the kindergarten's head teacher, which was to arrange for the child's diabetic diet by ordering the appropriate special diet meals from a food delivery company. The parents strictly insisted that their child's meal always be prepared according to their own unique instructions, at the municipal government's kitchen or at the kindergarten.

It is undeniable that the provision of *kindergarten* care, basic *healthcare* and *meals for children* at the kindergarten are all the municipal government's responsibility. Nevertheless, by consulting the relevant statutory provisions, the Authority concluded that the kindergarten and the municipal government – within the scope of their responsibility to provide kindergarten care, basic healthcare and meals for children – are not under obligation to provide these services for the child based on the parents' special and unique conditions, which are not supported by relevant medical documents. In its decision, the Authority also emphasised that neither the kindergarten nor the municipal government had excluded the child from kindergarten care, they did not refuse to enrol him/her at the kindergarten. They cooperated with the Authority during the proceedings in the interest of being able to actually provide kindergarten care for the child, and sought to satisfy the parents' requests concerning both, the child's daycare at the kindergarten generally and her meals specifically. Finally, the parents themselves decided to no longer send their child to the kindergarten since her condition deteriorated, which they attributed to deficiencies in care provided by the kindergarten. In light of the above, it was not possible to make a determination that the kindergarten complained against or the municipal government had violated the principle of equal treatment, and as a result the Authority rejected the petition. The parents did not appeal the decision in court.

The legal entities (generally municipal governments) obliged to provide kindergarten care, basic healthcare and school/kindergarten meals for children must provide the level of care mandated by law. The kindergarten or the municipal government are not required – neither in the context of kindergarten care nor with respect to basic healthcare or school/kindergarten meals – to provide care for children in accordance with special and unique needs formulated by the parents which are not appropriately backed by medical documents.

In case No. **EBH/212/2015** the parents of another diabetic child filed a complaint against a kindergarten and the municipal government that operates the latter. The diabetic child attended the kindergarten complained against practically throughout the entire school year, while contact with the parents was continuously maintained through a mobile phone provided by the mother specifically for this purpose. The special responsibilities related to the child's condition were handled by one of the kindergarten teachers and a pedagogical assistant with a health degree. The pedagogical assistant also had responsibilities in other kindergarten groups, however, and from the parents' perspective the responsibilities related to the child's condition were not performed continuously, which they complained about at the kindergarten and at the municipal government that operates the kindergarten. As the end of the academic year approached, the kindergarten informed the parents that the employees who had taken care of the child would no longer be willing to take on this extra responsibility, which is why the kindergarten would not be able to receive the child during the summer period and during the next academic year. The municipal government recommended that the child be enrolled at a private kindergarten that also offers care to children with special needs; the municipal government would cover the related costs. The parents decided, however, that the institution recommended by the municipal government was not appropriate for their child and searched for a kindergarten themselves. Ultimately, the kindergarten care for the child was arranged for. The Authority determined in this case that both the kindergarten and the municipal government had violated the principle of equal treatment with respect to the child when they excluded her from kindergarten care because of her health condition (her diabetes) and failed to duly cooperate with the parents in the interest of providing her with the appropriate care. The parties did not appeal the Authority's decision in court.

Finally, we will review a third case in which the Authority rejected the parents' complaint (**EBH/492/2015**), though in this case the parents appealed the decision in court. The court set aside the Authority's decision and obliged the latter to conduct a new procedure. In the new procedure, the Authority had to examine the case based on the criteria specified in the court's judgment, and based on the latter it concluded that the principle of equal treatment had been violated (**EBH/174/2016**).

This case involved an autistic child with mild intellectual disability who was of school age and suffered from both Tourette's syndrome and diabetes. The parents filed a complaint against the child's school, the municipal government that operated the school and the institution that maintained it (the regionally competent school district of the National Institution Maintenance Centre) because these institutions failed to ensure that

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their child could pursue her mandatory education by attending the school, despite the fact the fact that the expert opinion of the Committee on the Assessment of Learning and Speech Abilities had recommended that she exclusively attend that school to satisfy the requirement of compulsory education. The child was compelled to continue her studies as a home-school student – despite the expert recommendation – and as a result she received neither special needs education nor school meals. The parents reported the problem both to the school district and the municipal government, but no solution was implemented. In light of the child's unusual health condition, the school designated by the expert commission would have simultaneously provided both, the care and the special needs education that had been prescribed for the child, with the exception of the responsibilities concerning her diabetes. For that reason, she was ultimately unable to attend the school.

In its proceedings, the Authority examined whether the institutions complained against had violated the principle of equal treatment in their treatment of the child by failing to arrange for her care at the designated educational institution, thereby effectively compelling her to comply with the obligation of compulsory school education as a home-schooled student. Concomitantly, she also did not receive special needs education or a diabetic meal at the institution in question.

In its decision concluding the case, the Authority held that as compared to her peers in a comparable situation – in other words children who have a mild intellectual disability and autism but are not diabetic – the child had suffered a disadvantage as a result of the fact that she had to study as a home-schooled student and could not participate in the life of the student community, which would have been especially important for her because of her autism. Consequently, the child was subject to a disadvantage as a result of her diabetes, in other words her health condition, as a result of the fact that her compulsory school education had to be provided in the form of home-schooling rather than by attending a school. In connection with the child's health condition, the Authority's decision also pointed out that it can be regarded as a special, complex condition on account of the fact that her diabetes manifests simultaneously with autism, as well as because of her intellectual disability. Since the causal relationship between the protected characteristic and the disadvantage suffered was demonstrable, based on Section 7 (2) of the Ebktv the Authority examined whether there were any reasonable explanations for the differential treatment that were somehow connected to the nature of the underlying legal relationship and which would stand up to the scrutiny of an unbiased evaluation.

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The Authority determined as a fact that taking care of the child's diabetes (regularly measuring glucose levels during the day; decisions about the time to administer and the amount of insulin or carbohydrates; giving insulin shots; and monitoring and recognising symptoms of excessively low or high blood glucose levels) – especially in light of the child's complex condition resulting

from her autism and intellectual disability – constituted an undertaking that would have necessitated the presence of another assistant in addition to the teachers who were already present in the classroom. The Authority assessed that – in the absence of specific legal provisions to this effect – none of the institutions complained against had an obligation to provide or employ a personal assistant to manage and monitor the child's diabetes in order to facilitate her everyday school attendance. The Authority accepted this as reasonable grounds for the child's differential treatment. With regard to the other disadvantages noted by the child's legal representatives – the special diet or the special needs education that she was entitled to based on the expert opinion – the Authority determined that based on their obligations arising from the relevant statute, the special diet and the special needs education ought to have been provided by the municipal government and the educational institutional complained against. The institutions in question would have complied with this obligation, however, but the parents did not avail themselves of this possibility. Thus, the Authority rejected the petition with respect to all three institutions.

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The parents' legal representatives appealed the Authority's decision in the Budapest Court of Public Administration and Labour. In its judgment No. 6.K.34.497/2015/9, the Court set aside the Authority's decision and ordered it to conduct a new procedure.

With regard to the defence submitted by the institutions complained against, the Court pointed out that based on the Nktv's Sections 3 (6), 4 (s) and 47 (1), a child's right to education is violated if she is not treated in an appropriate manner befitting her condition and as a result she is compelled to be home-schooled and receives a lower quality of education, without the proper pedagogic methods and without access to a school community. According to the court's position – which was confirmed by the expert opinion – the child was entitled to receive special treatment at the school, and consequently any other problem arising from the executability of this right should have been resolved by the agents/institutions in the public education system that were invested with the responsibility to perform the relevant functions. In other words, the requirement that the child be placed at a school that provides special treatment is based on statutory provisions in the Nktv, and the compliance with these cannot be impaired as a result of a situation arising from the failure to monitor the child's diabetes.

The court held that the defence of the elementary school in the Authority's first procedure had been well-founded. However, with regard to the defence submitted by the municipal government and the regionally competent school district of the institution maintenance centre, respectively, the court explained that pursuant to the Nktv's Section 88 (1), the operator and controlling institution of a school is obliged to make the necessary arrangements to allow a child to attend a school on a daily basis, and to thus provide

the qualified personnel to care for her during the day. The court assessed that neither the regionally competent school district of the institution maintenance centre nor the municipal government operating the school had taken the necessary measures to ensure that the child can transition from being a home-schooled student to become a student at the designated educational institution in a way that ensures that her special needs were being met. Both public entities had failed to comply with their respective obligations, and hence their attempts at discharging their burden of proof had been unsuccessful. The Court's position was that the Authority's first procedure had failed to clarify the division of responsibilities between the institution maintenance centre and the municipal government as the entity operating the school. In light of the fact that neither entity had initiated a review of the expert opinion, the school in question was under obligation to take the requisite measures to receive the child, and – once the responsibilities have been clearly delineated – the operating/controlling institution was responsible for ensuring that the necessary preconditions are given. The Court held that "in light of the known expert opinion, and with due regard to the legitimate interests of the child, as part of the renewed procedure funding must be immediately made available for the employment of a permanent assistant already before the start of the academic year, and the Authority must clarify with the involvement of – and based on the statements by – the affected institutions whether this responsibility is incumbent on the school district as the controlling institution or on the municipal government as the operating body of the school."

In the renewed procedure, the Authority had to proceed in accordance with the judicial verdict. The Authority was bound by the judicial directives, and hence it had to clarify whether it was the maintenance centre's or the municipal government's responsibility to ensure that the conditions necessary for the child's everyday school attendance are in place (e.g. the employment of an assistant).

In its decision concluding the new procedure, the Authority accepted the municipal government's reasoning that in the context of school education, its responsibilities fundamentally concern school meals and – pursuant to Decree No. 26/1997 of the Ministry of Social Welfare (abbreviated as NM in Hungarian) – general health issues. As the court itself pointed out in its ruling, the satisfaction of the child's special needs, by contrast, cannot be construed as falling in the range of general health responsibilities and are thus not subject to the scope of NM Decree No. 26/1997. The obligation to provide care for children at schools stems from the Nktv. Based on the law, the municipal government's obligations under this responsibility include the management of the relevant real estate and movable assets, as well infrastructure and facility preservation. Making arrangements for the special needs of children with chronic health conditions, however, does not fall into the range of these obligations. This was also the conclusion drawn by the Authority upon consulting the agreements between the municipal government and the institution maintenance centre. The Authority too determined that the municipal government's responsibilities primarily pertain to the maintenance of the relevant infrastructure, which does not include arrangements for the care of children with chronic health conditions. In other words, performing the responsibilities related to continuously monitoring the child's condition resulting from her diabetes during the school day, as well as providing

the necessary treatment, cannot be classified as falling with the municipal government's range of responsibilities. Based on the above, the Authority assessed that the municipal government's attempt at discharging its burden of proof had been successful pursuant to Section 7 (2) (b) of the Ebktv, since it had provided a reasonable justification for its assessment that it was not responsible for ensuring the performance of the daily chores concerning the child's diabetes in the context of her school attendance. Consequently, the Authority rejected the petition against the municipal government.

In the renewed procedure, the institution maintenance centre emphasised the municipal government's responsibility. It invoked that based on the relevant health laws the municipal government is responsible for ensuring the conditions necessary for the child's proper care while she attends the school, in other words to care for her diabetes during the time she spends at school. It emphasised that the educational institution has no obligation to hire persons with expertise in the treatment of specific health problems; educational institutions and their controlling institutions are responsible for education and special needs education.

With regard to the controlling institution's responsibility, the Authority – proceeding on the basis of the judicial directive – held in the renewed procedure that based on the expert opinion the child was entitled to special care and treatment at school. The problems concerning the child's diabetes must be conceived of as problems concerning public education rather than health, and thus they must be addressed within the framework of the public education system, by the institutions of public education – specifically by the institution maintenance centre in the context of this particular case. By failing to live up to its responsibility, the institution maintenance centre had violated the principle of equal treatment in its treatment of the child. The Authority barred the institution maintenance centre from future manifestations of the infringement. It also obliged the institution maintenance centre to ensure that the necessary conditions prevail that will allow the child to comply with her mandatory school attendance in accordance with the instructions of the relevant expert opinion. The Authority did not specify how this was to be done, and charged the institution maintenance centre with deciding, based on a careful consideration of all the circumstances, how it would choose to comply with its obligations, for example by hiring a permanent assistant or by other means. The Authority also ordered the publication of its decision and instructed the institution maintenance centre to pay a fine.

The institution maintenance centre appealed the Authority's decision in the Budapest Court of Public Administration and Labour. As of the drafting of the current publication, the lawsuit was still pending.

3. Problems concerning the kindergarten and school care of children with chronic health conditions

The previously discussed three cases also show that a lot of issues and uncertainties attach to the care provided by educational institutions for children with chronic health condi-

tions. It is important to note that in the case of children with special needs, expert opinions are drawn up based on the relevant requirement in Nktv. On the one hand, these specify the child's special needs, and on the other hand they set out the specifics of the care that the child needs to receive and also state what kind of expert must be used and which institution must provide it. In the context of chronically ill children, by contrast, there is no legal regulation establishing an obligation to provide care. A diabetic child's health condition does not qualify as a special need according to the Nktv. In the case of a child with this condition, there is no expert opinion specifying what kind of special care he/she must receive at the kindergarten or at school; what special qualifications the person who provides the expert care must possess; and what type of institution is appropriate for enrolling the child.

The child naturally has medical documentation concerning his/her health condition, such as hospital reports and/or medical charts, which generally specify the diagnosis, display his/her current state of health and also prescribe the necessary treatment. Typically, these will include information saying, for example, that the parents have learned the techniques for administering insulin and measuring blood glucose levels, have received the necessary equipment and devices for treating the child at home, and they may even provide further guidance for the parent concerning the care and treatment for the child at home. What these documents do not contain in the Authority's experience, however, are instructions for the care that kindergartens and schools must provide for diabetic children. Incidentally, if the diabetic child is, for unrelated reasons, also a special needs child (e.g. he/she has a disability, is autistic, etc., as in one of the cases discussed above) and an expert opinion is drawn about him/her in connection with this condition, then in the process selecting the appropriate education institution for him/her, and in defining the elements of necessary care, the medical opinion will only consider the child's special needs while it will disregard his/her diabetes. In the case discussed, it was precisely the child's disability, i.e. his/her autism, that encumbered the treatment for diabetes.

The Authority reviewed the entire regulatory framework. Based on the relevant statutes, especially in the Nktv, one can undoubtedly conclude that the child has a right to special care that is tailored to his/her condition and personal situation, but the statutes fail to further specify what documents such an assessment could be based on in the case of a chronic condition, and it also lacks information about who – and in what institutional framework – must provide the aforementioned care. The Authority assessed that the regulatory framework has gaps, as the document lacks detailed regulatory provisions concerning the kindergarten or school care of diabetics or other children with chronic conditions. The Authority notified the Ministry of Human Resources about this on several occasions.

The Authority's opinion is that in the case of diabetic or other children with chronic conditions the drafting and adoption of detailed regulation would be necessary – which would to some extent be similar to the regulation concerning children with special needs. In the case of children with chronic health conditions, an appropriate expert (physician, expert committee) should determine what institutional setting would be most suitable for providing the proper care and education for the children in question;

what specific care and treatment needs to be provided for them; what type of material conditions must be in place; and what kind of qualification the specialist who performs the care must have. The Authority' view is that the decisions, definitions and responsibilities for these cannot be deflected unto educational institutions or their controlling bodies, nor on parents or, as the case may be, on the public bodies that apply the law. And in situations when the child with the chronic health condition is simultaneously a special needs child, a complex expert evaluation is needed that is cognisant of the child's special needs, his/her ability to learn and his/her chronic condition.

Segregation in educational institutions

In the following pages we will discuss ***segregation*** in the area of education, and we will also provide a ***brief practical guide*** that presents the rules concerning the filing of petitions on issues involving education and the most important information about the Authority's procedure.

According to Section 10 (2) of the Ebktv, any provision that relies on a characteristic laid down in Section 8 of the Ebktv to separate – without express legal authorisation – an individual or a group of individuals from an individual or a group of individuals in a comparable situation constitutes segregation. In its Chapter III, under the heading *Education and Training*, the Ebktv addresses those classes of cases when it is nevertheless permissible to separate an individual/group of individuals based on a protected characteristic (e.g., religious conviction, gender); in order to be lawful, any such separation must be based on conditions expressly specified in law. Otherwise the separation is unlawful as it violates the principle of equal treatment with respect to the persons who are separated.

Section 28 (2) of the Ebktv allows education to be organised on the basis of religious or other ideological convictions – at the parents' initiative and on the basis of voluntary

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participation – at institutions of public education and at institutions of higher education in situations when the goal of the educational programme or its curriculum justify the creation of separate classes or groups. However, the law makes this contingent on certain conditions, specifically that the implementation of such a separation cannot lead to a disadvantage for anyone involved in the given education, and that the education in question must comply with requirements approved, mandated and/or supported by the state. The first clause of the Ebktv's abovementioned provisions, which concerns the parents' initiative and free choice, obviously applies in situations in which the parent, as the child's legal representative, makes the relevant decision about the necessity of separation for his/her underage child, who has limited legal capacity. Consent in such a situation may not result from any type of compulsion, intimidation or false pretences; should it subsequently appear that any of these were present, then the criterion of voluntariness does not obtain in the given case and unlawful segregation may be assumed to apply. The second clause pertains to adult students with full legal capacity. In this case, too, the voluntary nature of consent must be investigated, and if there is any doubt whether students might have been influenced or mislead – for instance by false information – or that they opted for separation in response to duress, threats, then unlawfulness must also be assumed.

In a procedure involving an examination of whether the principle of equal treatment has been complied with, it is always up to the institution complained against to show that the goal or curriculum of the education or training organised in this way necessitates separation, and that the latter does not result in any disadvantage for the students. In this context, disadvantage must be construed as broadly as possible, in other words what must be examined is not only whether the structure, quality and quantity of the teaching materials complies with the requirements laid down or endorsed by the state, but also whether the circumstances under which the students are expected to learn the materials, that is, for example, the classroom equipment, the general infrastructure of the educational institution, its environment and its accessibility create a disadvantageous situation for students. An institution without separation must be used as the basis for comparison.

The Ebktv expressly specifies that any education organised on the basis of religious or other conviction may not result in unlawful segregation based on racial or ethnic characteristics, on skin colour or affiliation with some national or ethnic minority. Correspondingly, a process whereby the right to operate a secular educational institution that is considered segregated is transferred by the state or the municipal government to a church, while the latter preserves the underlying segregation under the guise of providing religiously-based education, may result in discrimination and unlawful segregation. If the school district boundaries do not change in the process, the educational institution's equipment remains largely similar to those of schools that do not provide separated education, the building's infrastructure is also of similarly low quality (e.g. there is no changing room in the gymnasium or there is no gymnasium, no dining hall or language lab, etc.), then this further reinforces the aforementioned impression.

Not all separation is unlawful. At the same time, however, any separation in the realm of education on the basis of a protected characteristic must satisfy a set of substantial conditions – specified in Section 28 of the Ebktv – in order to avoid a violation of the principle of equal treatment and a classification as unlawful segregation. Any type of separation that does not meet these criteria, especially if it realises the provisions of Subsections 27 (3) and (4) of the Ebktv, will lead to a violation of the principle of equal treatment.

Segregation may be realised by unlawful separation between classrooms, school buildings or schools, but also by unduly classifying students as being disabled or having special needs. In the latter case, there is an effort to use expert opinions concerning the assessment of learning abilities to transfer Roma students to so-called special schools, which is justified with the argument that their intellectual capabilities and disabilities make them special needs students who cannot be taught at schools that follow the "normal curriculum." The latter scenario was examined by the European Court of Human Rights in the case *Horváth and Kiss v. Hungary 11146/11*, in which the ECtHR ruled against Hungary because a student was subject to a misdiagnosis in connection with his Roma ethnicity, and the diagnosis was then used to refer the petitioner to an auxiliary school. The Court also noted in this context that beyond the case at hand, the misdiagnosis of Roma students is a systemic practice with a decades-long history in Hungary.

1. An example of segregation between schools

In case No. **EBH/461/2010**, in which an NGO filed the underlying petition as a third-party claimant, the Authority held that the municipal government of a town, in its capacity as the controlling institution of the elementary school, along with the school itself, had violated the principle of equal treatment when they unlawfully segregated – both between schools and at the classroom levels – those students at the elementary school who were affiliated with an ethnic minority. The Authority ordered them to remedy the ongoing violation, along with the publication of its decision for a period of six months. It further gave the school and the municipal government a deadline of six months for drawing up an equal opportunity plan.

In an earlier petition, the same NGO had complained that the municipal government of a town had segregated students of Roma ethnicity in the schools that it operated administratively and financially as schools providing integrated education (**EBH/23/2007**).

The Authority investigated the case with the involvement of an expert. The expert report emphasised that the NGO that acted as the third-party claimant in this case had turned to the Authority with a petition concerning the discrimination and school segregation of Roma students, but the characteristic that served as the basis for the differential treatment – affiliation with an ethnic minority – was defined on the basis of a sociological study. The schools do not record students' ethnicity in any shape or form, which substantially encumbers any type of investigation in this context. Nevertheless,

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it was possible to identify unequivocal results and conclusions when one looked at the situation of the students enrolled at the educational institutions based on two other typical characteristics laid down in Section 8 of the Ebktv, namely social background and financial situation. Based on the report of the state agency responsible for education, it was possible to ascertain that in May 2005 the town's municipal assembly decided to merge the so-called central and member schools (when Hungarian municipalities cannot support the maintenance of schools or cannot support schools that provide the entire range of 8-year public elementary education, they can sign affiliation agreements that distribute schooling responsibilities between them; in such a system, a so-called member school is an elementary school with fewer than eight years of elementary education, which is affiliated with a central school that offers education for students in the years above the highest year available at the member school(s)), and at a 29 January 2007 session of the municipal assembly a recommendation was submitted to modify the district boundaries that delineate the geographical region where a school is required to offer enrolment to local residents who are of school age.

In its decision, the Authority pointed out that with respect to equal treatment – and specifically within the context of unlawful segregation – a determination that a violation has occurred does not necessarily require proactive behaviour; even a *passive attitude* that results in the preservation of a pre-existing situation involving segregation may be sufficient for such a determination. It is a fundamental legislative objective to put an end to any unequal treatment based on social background or financial situation, as well as to any treatment connected to the aforementioned that results in a disadvantage and to any pre-existing situations with the aforementioned effect. The municipal government argued during the proceedings that the district boundaries of the respective institutions had been merged – by way of amending the charters – and all students had a free choice as to which school they wished to attend. Nevertheless, an inspection by the government agency that provided the expert evaluation in the months of April and May of 2007 found that – with the exception of a single institution – the share of students from underprivileged backgrounds as a percentage of all students in the district was higher, and among first graders in the academic year 2006-2007 it exceeded the threshold used to establish the presence of segregation at three of the schools. A determination that segregation prevails in a given situation does not necessarily imply culpability, it does not presume that an action was taken deliberately or in full awareness.

The Authority determined that the municipal government had violated the principle of equal treatment because of the fact that at three of the schools it operates the share of underprivileged students as a percentage of the total student population exceeded

the segregation threshold. The municipal government's 2005 merger of the district boundaries of the schools it operates did not result in a significant change in terms of the distribution among the central and the member schools of students from underprivileged backgrounds; the share of such students was still higher at the member schools. The pedagogic programmes approved by the municipal government did not regulate transfer between parallel classes, while transfers between central and member schools were limited. Through the aforementioned, the municipal government discriminated on the basis of social background and financial situation against those students who were enrolled at the member schools of the designated educational institutions. As a sanction, the Authority ordered the municipal government to remedy the infringing situation at the three member schools, by 1 September 2008 at the latest, as well as to review by the same deadline the pedagogic programmes of the schools it operates. It also instructed the municipality to consult with the head teachers with the objective of ensuring that as of 1 September 2008 transfers between the educational programmes offered by the central and the members schools be possible and facilitated.

2. How can one obtain data about the ethnicity of students who are enrolled at an educational institution?

In its proceedings, the Authority has repeatedly faced the problem of defining what the ratio of Roma students is at a school or in a class, and how to even decide who can be regarded as being of Roma ethnicity. The schools, municipal governments, the state institution maintenance centre, the school districts and school district centres that might be the subjects of the procedure in a given case are reluctant to provide any relevant information in this regard. Typically, they cite the prohibition on collecting such sensitive data, which is why at best they provide estimates; this encumbers the quick resolution of cases.

The Authority is not precluded from obtaining either from the school management or the municipal registrar the names, addresses and other personal data (e.g. mother's maiden name) of students who study at the school that is being investigated. It can also ask the leaders of the local Roma self-government for assistance in determining what the typical Roma names are in the municipality where the educational institution is located, and where the houses, flats or other real estate are located which are widely known to house many Roma families. As the next step, the names of Roma students in a given class or school that is being examined can be anonymised and converted into numbers, which are then used as the basis for assessing whether the students at the school or in a given class receive segregated education.

3. Can segregation be realised with passive conduct?

If we look at the wording of the Ebktv's Section 10 (2), it might lead us to conclude that the word "segregates" involves direct action on the part of the obligants. However, it is

important to consider that when cases of segregation are being investigated, the Ebktv must be construed in its entirety and full complexity. Section 7 (2) of the law also offers guidance on how we can unequivocally determine whether segregation has been realised through passive behaviour. It provides that the "principle of equal treatment is not breached by behaviour, measures, conditions, *omissions*, instructions or practices…" In other words, among the various forms of active behaviour involving some type of action (instructions, measures) that could give rise to segregation, the legislator also included the word *omission*, which thus allows for the examination of behaviours that prevailed in situations in which the institution complained against defended itself by arguing that it did not cause the situation complained about, and that the segregated education of Roma children was rooted in historical tradition, that it stemmed from the freedom to choose schools; that predominantly Roma students remained at the school under investigation; that the given municipality is geographically segregated as well, etc.

The above is also supported by judgment No. 6.P.20.341/2006 of the county court of Hajdú-Bihar County, which stated that a reference to the historical tradition of segregating Roma students at the school of the given municipality did not exempt either the municipal government and the school (which were being sued in this case) from their responsibility for the prevailing segregation. In another case, the county court of Győr-Moson-Sopron County ruled in its decision No. 3.P.20.950/2008/36 that the municipal government can be held accountable for allowing segregation that emerged spontaneously to persist. In its judgment Pf.III.20.004/2016/4, the Pécs Regional Court of Appeal held that by allowing the unlawful segregation of students affiliated with the Roma minority to persist at an educational institution, the regional government office, the municipal government and the competent national ministry had violated the principle of equal treatment. In its decision No. EBH/23/2007, the Authority also referred to the realisation of unlawful segregation through passive conduct.

Unlawful segregation can be realised not only through active behaviour but also through passive behaviour that allows such a situation to persist. A violation of the law in connection with segregation can be determined to apply even in situations involving passive behaviour.

4. What instruments exist for ending segregation?

It is not among the primary goals of this booklet to advise the stakeholders about various solutions that can be used to remedy segregation. If the Authority determines that a violation of the law applies in a case it investigates, then it can of course apply the sanctions set out in Section 17/A 1 of the Ebktv, and it may apply several in parallel. It must always consider, however, that the sanctions must be effective, proportional and deterrent in their impact, otherwise they will fail to realise the underlying objective. At the same time, however, the Authority is not in a position to specify exactly how a subject of the procedure might remedy a situation involving unlawful segregation, what tools it should use to that effect – solutions may include closing a school, modifying district boundaries, using school busses to transport students, etc. In its final, legally binding order

No. **EBH/96/2017/7**, rendered in an enforcement procedure, the Authority stressed the following: "Efforts to end segregation cannot be realised with instruments that violate the human dignity of others. The solution proposed by the party requesting the enforcement, namely that 'randomly' chosen students at the central school be transported to the member school, while a specified number of students at the latter school be in turn transported to the central school, or that certain students are taught in containers set up in the courtyard of the central school while others are taught in the brick building, would have such an impact. In ending segregation, it is important to consider local conditions, circumstances, and the expert study on the subject provides a proper analysis of the situation."

In a situation when the Authority determines that an educational institution has violated the law, its sanctions in the case may include a requirement that the infringing situation must be remedied, but this stipulation will only specify the objective to be realised – in other words the requirement to end segregation – while it will leave the choice of instruments and methods deployed to this end up to the obligants. It is of vital importance, however, that measures taken in the context of ending segregation cannot violate the human dignity of others.

A short guide on how to file petitions in cases involving education and about the Authority's procedure

In the previous chapters we have reviewed the relevant regulatory framework and the Authority's application of the law with regard to the special needs education and transportation of children with special needs; the kindergarten and/or school care of children with chronic health conditions; the meals provided at school or in kindergarten for children who must follow a special diet; unlawful segregation; and we have summarised the main insights we have learned from the relevant cases. In the following, we wish to provide a brief practical guide on how to initiate a procedure with the Authority in a situation when the parents of an affected minor perceive that their child did not receive the special needs education he/she had been prescribed or the proper kinder-

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garten/school care or special diet meals he/she was entitled to. We will also discuss other vital information concerning the Authority's procedure.

In such cases the parent of the kindergarten or school student (his/her legal representatives) must first report the problem to the educational institution that has a legal obligation concerning the education or care of their child. If the parent receives a commitment from the institution to fix the problem but fails to take action within reasonable time, or if he/she receives an answer rejecting the request, then he/she may decide to the turn to the regionally competent school district centre, to the municipal government (mayor, municipal registrar) or other public bodies. At the same time, however, these are not preconditions for filing a petition with the Equal Treatment Authority, the law does not set out such an obligation. It is important to stress that the EBH is only authorised to review grievances that were reported to it within one year of their occurrence, unless the situation complained about continues to persist at the time when the petition is submitted.

In line with Section 19 (1) of the Ebktv, in the Authority's proceedings the child affected must be considered the petitioner, for it is he/she who has suffered the grievance/disadvantage. The underage petitioner is represented before the Authority by his/her legal representative (parent) who may, of course – if he/she considers it necessary –give a lawyer or another person the power of attorney to represent him/her in the proceedings. The effective expert opinion or medical opinion and other medical diagnoses must be attached to the petition filed with the Authority. For one, this will help render the child's protected characteristic (special needs, the need for a special diet) probable, while at the same time in the case of a special needs child it will allow for determining the special needs education prescribed by the expert committee, as well as the designated educational institution. The petition must also include an indication of the institution or institution that the petitioner wishes to file a complaint against. In the event that the responsibility of another institution (of general public education) is potentially implicated in the proceedings, then the Authority will either launch ex officio proceedings – insofar as the given procedure may be conducted ex officio (e.g. when the subject is a municipal government) or, alternatively, it may call on the petitioner to state whether he/she wishes to launch proceedings against the given institution, while it simultaneously informs the institution in question. In addition to the above, the petition filed with the Authority must state precisely what disadvantage the child has suffered, for example which of the special needs education recommendations were not realised or were improperly realised; since when this situation has persisted; and what actions the parents have taken in this context and what impact they had. Finally, a submission must include an express request for the Authority to proceed.

According to Section 19 (2) of the Ebktv, the institution must show during the proceedings that it had complied with the principle of equal treatment with respect to the child, and that it took the necessary measures in order to ensure equal opportunity (for example by arranging for special diet meals or transportation).

Upon receipt of the statements submitted by the parties, as a general rule the Authority will hold a hearing. It only makes an exception to this rule if the assessment of the case is simple, and it can decide the outcome based on the data and documents at its disposal.

The Authority's procedure is therefore adversarial, in other words it is a quasi-judicial procedure involving both parties (the petitioner and the public entity or institution complained against, which becomes "the subject of the procedure" once proceedings have been initiated).

In such cases, the Authority strives especially hard to promote settlements between the parties and to ensure that a mutually acceptable solution concerning the child's kindergarten or school care is found as quickly as possible. In those cases, however, when no settlement between the parties is concluded, the Authority has to decide the merits of the case. This involves a determination as to whether the principle of equal treatment has been violated by the kindergarten, school or municipal government complained against as a result of their failure to provide the appropriate care, treatment or special needs education for the for the child considering his/her condition. The Authority rejects the petition if the discovery of the facts of the case does not allow for a determination that the principle of equal treatment was violated in the institution's treatment of the child. If a determination can be made, however, that in their treatment of the child the legal subjects required to comply with the principle of equal treatment have failed to observe their – above cited – obligations set out in law, then the Authority holds that the law was violated. Then it applies some type of sanction, potentially several in parallel, that consider the particularities of the specific case.

In determining the sanction, the Authority is fundamentally guided by the best interests of the child and focuses on ensuring that the infringing situation be remedied as quickly as possible, and that the child receive as quickly as possible the care and special needs education that he/she is entitled to by law. Insofar as the obligant public entity fails to comply with the Authority's decision, the petitioner can ask the EBH for an administrative execution of the decision. In this context we would also like to note that if a settlement is concluded between the parties during a procedure before the Authority, then the Authority will incorporate the terms of the settlement into its own decision, and thus the commitments made as part of the settlement by public bodies or institutions that were the subjects of the procedure can be enforced administratively in the same way in which obligations determined by the Authority as part of a decision on the merits of the case are enforceable.

Finally, we should note that if either party (be it the petitioner or the public body or institution that was the subject of the procedure) views the Authority's decision as injurious to their interests, they have the right to turn to a court (currently the Budapest Court of Public Administration and Labour, after 1 January 2018 the Budapest-Capital Regional Court) for legal remedy.