



**Complaints Board
of the European Schools**

**Ref.: 2016-03-D-6-en-1
Original version: FR**

**ANNUAL REPORT FOR THE YEAR 2015 OF THE CHAIRMAN OF THE
COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS**

BUDGETARY COMMITTEE

Meeting on 15th and 16th March 2016

BOARD OF GOVERNORS OF THE EUROPEAN SCHOOLS

Meeting on 12-14 April 2016 – Copenhagen



Complaints Board of the European Schools

ANNUAL REPORT FOR THE YEAR 2015

As far as the Complaints Board is concerned, the year 2015 was marked by:

- stability in terms of its composition, its organisation and its operation (I)
- a schedule made hectic by the 2015-2016 Enrolment Policy (II)
- a marked upturn in activity (III – 1)
- a larger number of annulments (III – 2)
- the first steps towards major changes (IV)

I - Composition, organisation and operation of the Complaints Board

1.

The Complaints Board is still organised in two sections, the first chaired by its Chairman, Mr Henri CHAVRIER, and the second by the section chairman, Mr Eduardo MENÉNDEZ REXACH.

The other members are still Mr Andreas KALOGEROPOULOS, Mr Mario EYLERT, Mr Paul RIETJENS and Mr Pietro MANZINI. They are assigned to one or other section in rotation, so as to prevent any compartmentalisation between the two formations.

2.

Ms PEIGNEUR holds the post of Registrar, assisted by Ms FERRARIN in her post of administrative assistant. They work on a full-time basis, exclusively and in total hierarchical independence, in the Board's service.

II – A schedule made hectic by the 2015-2016 Enrolment Policy

For different external reasons, the 2015-2016 enrolments calendar was subject to major delays. As a result, ‘CEA enrolments’ direct appeals had to be:

- investigated in shorter time periods, obliging the lawyers, the Central Enrolment Authority and the translators to work in difficult and more restrictive conditions than usual ;
- heard at a hearing held not in July, as is usually the case, but on 17 and 18 August, obliging the members of the Complaints Board to give rulings in very short time periods, in time for the beginning of the school year. In that connection, it was very useful to be able to give notification in advance of the operative part of decisions, as now allowed by Article 26.2 of the Rules of Procedure.

The Chairman would draw attention here to the fact that the members of the Complaints Board and of the Registry showed their willingness to provide a full service and to take on an exceptionally heavy workload during that period, thus enabling the Complaints Board to fulfil its mission and to respect the principle of continuity of public service.

III – Judicial activity of the Complaints Board in 2015

1) Number and categories of appeals registered

1.

The year 2015 was marked by an appreciable increase in the number of appeals lodged with the Complaints Boards: 116 appeals (as compared with the 84 appeals lodged with it in 2014).

As in previous years, the Complaints Board continued to make use of the practice adopted in 2011 for the administrative handling of appeals prior to their registration, which enables formal registration of a number of appeals with no chance of success to be avoided.

Ultimately **83 appeals (including 10 in summary proceedings)** were submitted to the Complaints Board for consideration (as compared with the 54 appeals, including 3 in summary proceedings, which were lodged with it in 2014).

As in previous years, **appeals lodged direct** against the decisions of the Central Enrolment Authority for the Brussels European Schools remained the most numerous: 36 appeals (including 3 in summary proceedings), as compared with 28 appeals (including 1 in summary proceedings) in 2014.

The other contentious appeals were lodged **after rejection of a prior administrative appeal** to the Secretary-General of the European Schools. They broke down as follows:

18 appeals (including 1 in summary proceedings) lodged by members of the seconded staff (teachers or others), a number higher than the previous year's figure (11 appeals in 2014);

12 appeals (including 4 in summary proceedings) against Decisions of Class Councils on pupils' promotion to the year above (as compared with 2014's 3 appeals) ;

5 appeals concerning determination of the language section (none in 2014) ;

4 appeals (including 1 in summary proceedings) concerning application of the European Baccalaureate's specific rules, as compared with 4 appeals, including 1 in summary proceedings, in 2014 ;

3 appeals (including 1 in summary proceedings) in the form of revision applications, i.e. the same number as in 2014 ;

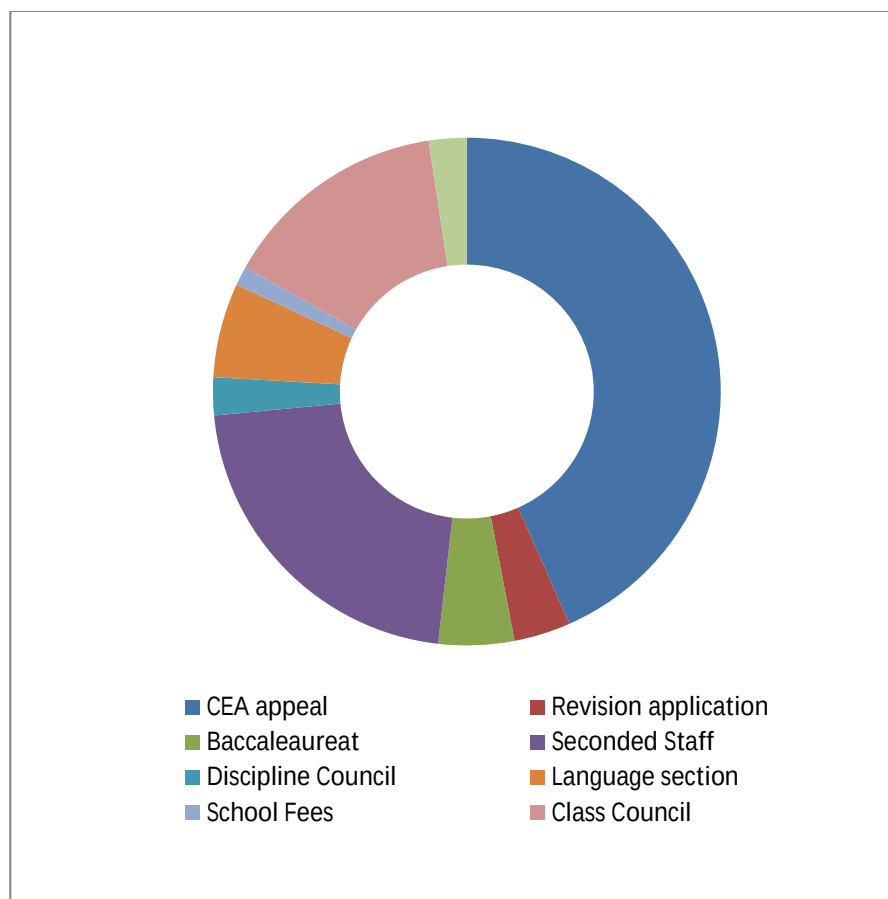
2 appeals in the disciplinary area, as compared with 1 appeal in 2014 ;

1 appeal against a decision concerning the school fees payable for category III pupils ;

1 appeal against a category III pupil's enrolment in a non-oversubscribed language section ;

1 appeal against a decision on a choice of philosophical option.

The above figures are illustrated by the following table:



2.

This marked upturn in the number of appeals (main appeals but also appeals in summary proceedings) is probably accounted for by the following reasons:

- The 2015-2016 Enrolment Policy no longer guaranteed the (re)grouping of siblings when brothers and sisters were in different cycles (nursery and primary / secondary); as a result, many appeals were lodged by parents whose children (members of the same group of siblings) had been offered places in different schools.
- The increase in the number of appeals lodged in summary proceedings is attributable on one hand, to the delays to which the 2015-2016 enrolments calendar was subject (see point II above) and on the other, to the increase in the number of appeals against decisions of Class Councils (1 out of 3 duplicated by an appeal lodged in summary proceeding).
- A source of disputes has been confirmed : determination of the language section, either at the time of enrolment or during schooling, particularly for SWALS.
- Spanish seconded teachers continued to lodge appeals regarding calculation of their severance grant.

- The Complaints Board's higher visibility thanks to its website.
- Particular attention continues to be paid to the question of legal costs, so that they are not a constraint on the lodging of an appeal or a reason for discontinuance. The contentious procedure is and must remain free of charge, subject only to the legal and other costs which the Complaints Board can decide to order the unsuccessful party – or otherwise – to pay, the amount being what it deems most appropriate in the particular circumstances of the specific case.
- The number of administrative appeals has itself risen (for more details see the Annual Report of the Secretary-General to the Board of Governors of the European Schools for the year 2015).

3.

It should also be emphasised that the Complaints Board's activity cannot be reduced to figures or statistics on the number of appeals lodged. Other aspects of its activity need to be highlighted:

- a) The greater complexity of the pleas put forward by applicants in support of their appeals**, in particular if they are assisted by a lawyer: their arguments are increasingly diversified, detailed and complex, something which compels the Complaints Board to carry out substantial analysis and case law research work in order to respond to these lengthy legal arguments.
- b) The Complaints Board also provides a **mediation forum**** through informal requests dealt with outside the registration of appeals. The Registry, in consultation with the Board's Chairman, is responding to a growing number of inquiries. The effectiveness of the system introduced for the administrative handling of appeals which have virtually no chance of success was, moreover, pointed to above.
- c) The revision of translations:** translations still very often have to be reworked for the sake of clarity, coherence and consistency – something which represents not inconsiderable extra work for the Registry and the members of the Complaints Board concerned. The reason is that the translators made available to the Complaints Board are not generally lawyer-linguists and, with exceptions, they do not master the terms specific to the regulations applicable in the European School system. That question, already raised in previous annual reports, was still more than ever an issue in 2015.

2) Decisions delivered by the Complaints Board

a) In accordance with the provisions of the Rules of Procedure of the Complaints Board, these different appeals were **investigated** and **ruled on**, depending on the cases, by decisions delivered in proceedings with the written submissions of the parties followed by a hearing, by decisions delivered in proceedings with the written submissions of the parties, but not followed by a hearing, by reasoned decisions without the submissions of the parties, by interim orders or by orders to remove cases from the register.

As was the case last year, the Complaints Board held **4 hearing sessions** (in May (2 days), July, August (2 days) and November), during which it considered just under half of the cases in which there were full written and oral proceedings (it proved possible for a number of appeals to be considered *without a hearing*, as allowed by Article 19 of the Rules of Procedure, because decisions of principle in similar cases could be used as a benchmark).

b) As regards the **tenor of the decisions** delivered by the Complaints Board, the following can be said:

Of the 36 **direct appeals** (including 3 in summary proceedings) lodged against decisions of the Central Enrolment Authority, 12 resulted in annulment, 15 in dismissal and 9 in removal from the register.

Of the 18 appeals (including 1 in summary proceedings) lodged by seconded staff (teachers or others), none resulted in annulment, 7 resulted in removal from the register and 8 were dismissed, including the one lodged in summary proceedings; 3 decisions are still pending.

Of the 12 appeals (including 4 in summary proceedings) against decisions of Class Councils, 3 resulted in annulment, 5 were dismissed and 4 were removed from the register.

Of the 5 appeals concerning determination of the language section, 1 resulted in annulment, 2 in dismissal (including the one lodged in summary proceedings) and 2 in removal from the register.

Of the 4 appeals (including 1 in summary proceedings) pertaining to the European Baccalaureate, 2 resulted in annulment and 2 were dismissed.

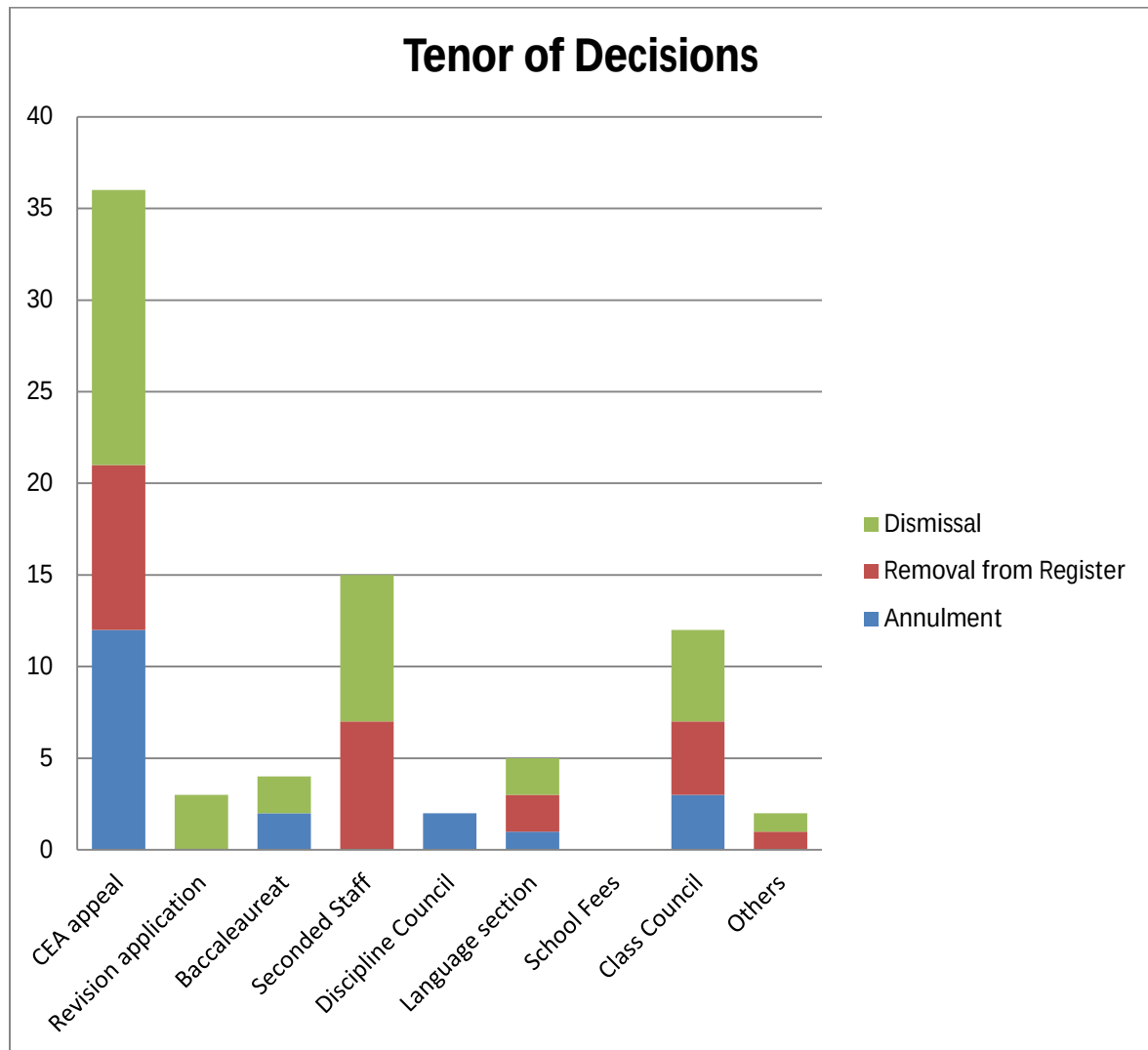
Of the 3 appeals (including 1 in summary proceedings) in the form of revision applications, all 3 were dismissed.

Of the 2 appeals in the disciplinary area, both were dismissed.

In the case of the appeal lodged against a decision concerning the school fees payable for category III pupils: the decision is pending.

The appeal lodged against the enrolment of a category III pupil in a non-oversubscribed language section of a Brussels School was dismissed.

The appeal lodged against a decision on a choice of philosophical option was removed from the register following its withdrawal.



The figures show a percentage of annulment of 20% (as compared with 14% annulments in 2014 and 2013).

In addition, there were some removals from the register because there was no need to adjudicate, or sometimes because of withdrawal, in so far as the parties had reached an agreement, implicitly or explicitly, often on the grounds that the European Schools did not wish to set a precedent. Those removals from the register are annulments that are not visible in the figures but are the reflection of an equally favourable outcome for the applicant.

c) Amongst the most **interesting decisions** delivered by the Complaints Board this year, some deserve to be mentioned.

Amongst the decisions which found in favour of the applicants, mention can be made of the following:

. In its decision 15/12 of 29 September 2015, the Complaints Board pointed out, with reference to this particular case of a **disciplinary measure** involving a pupil's expulsion, that respect for the **rights of the defence** constitutes a fundamental principle of Community law applicable in any proceedings which may give rise to the imposition of disciplinary measures. Accordingly, the persons concerned must be able to submit their comments on the charges against them, to receive information about the precise facts and the evidence brought against them and to be entitled to question directly the witnesses (against them), or indeed even to confront them. *"There is a need to proceed, carefully and without prejudging a conclusion – and without one-sidedness – in such a way as to ascertain the facts and find decisive evidence and to establish proof, which is a necessary requirement; exonerating circumstances in the persons' defence must also be sought and established."* Judging that the disciplinary decision was based on facts which had not been established in compliance with those principles, the Complaints Board annulled it.

. Through its decision 15/13 of 24 August 2015, the Complaints Board annulled the decision on determination of the **language section** at the time of enrolment on grounds of disregard of the provisions of Article 47(e) of the General Rules of the European Schools, which requires that in the event of dispute about the language section, *comparative* tests must be organised.

. In its decision 15/23 of 24 August 2015, the Complaints Board ruled on a new provision of the **2015-2016 Enrolment Policy** which no longer guaranteed the **(re)grouping of siblings** when brothers and sisters were in different cycles (nursery and primary/secondary). The Board judged that that new rule introduced unequal treatment between siblings, depending on whether or not they were in the same cycle, and that *"whilst the authority concerned may, in the case of a principle that it itself has introduced into the rules of law falling within its purview, change its scope or even abandon it, there is a caveat in the sense that such a measure must not appear disproportionate in relation to the balance sought between on the one hand, the interests of pupils and their families and on the other, those of the organisation and of the management of the European Schools. In other words, except in the case of exceptional circumstances which may impose it any event, a rule as restrictive as that which undermines the firmness of the guarantee of grouping or regrouping of siblings is only acceptable, given the requirements of the principle of proportionality, if its application allows advantages to be obtained which are manifestly greater than the drawbacks which it entails"* Thus, the Complaints Board judged that the parents concerned were justified in invoking the illegality of this new provision, in the name of the **principle of proportionality**.

. Through its decision 15/37 of 10 October 2015, the Complaints Board annulled a decision of the **Baccalaureate** Examining Board on account of a procedural irregularity, namely the refusal to allow student a special arrangement required by his dyslexia, meaning that he suffered

discriminatory treatment in relation to students without learning difficulties and who thus do not need special educational support.

In its decision 15/38 of 11 February 2016, the Complaints Board first reasserted that “*all disciplinary measures which involve a student’s exclusion – even a temporary one – from a school and which, as a result, have a profound effect on the fundamental link between the school and the student and his or her right to an education, as recognised by Article 14 of the Charter of Fundamental Rights of the European Union, can be submitted for judicial review, pursuant to the principles of the Rule of Law (see Article 47 of the Charter).*” The Board thus had to rule on a **disciplinary measure** for which there is no provision in the General Rules (exclusion from the school trip in S6, organised two years after the occurrence of the events leading to the charges against the student). It declared it to be firstly, illegal in so far as “*such a sanction is manifestly outside the legal framework required by Article 40, which demands that the purpose of any disciplinary should be “to educate and train”* and secondly, disproportionate in this instance.

. Through its decision 15/40 of 10 October 2015, the Complaints Board annulled a decision of **Baccalaureate** Examining Board on the basis of the **principle of uniformity of examination papers** (derived from the principle of equal treatment) in so far as the English and German versions of the same examination paper showed differences “*of such a nature as to compromise the conditions with respect to equality amongst candidates and the examination’s objectivity.*” The Complaints Board thus pointed out “*that within the meaning of Article 3.1.1 of the AIREB “All written European Baccalaureate examinations will be the same for all candidates, irrespective of the language section to which they belong. (...)” That rule expresses the requirement that candidates be assessed on equal and objective terms in accordance with the principles of good administration and equal treatment which it is incumbent upon the European Schools, as it is on the Member States of the European Union, to uphold* (in that connection, see decision 10/49, point 21). In accordance with the case law of the judges of the European Union, the Complaints Board also considers that the wide discretion enjoyed by the Baccalaureate Examining Board as regards determination of the content of the examinations which candidates are required to take must be offset by scrupulous observation of the rules governing organisation of those examinations (see in that connection judgments *Girardot/Commission*, T 92/01, point 24 (EU:T:2002:220), *Christensen/Commission*, T 336/02, point 38 (EU:T:2005:115) and *CG / EIB*, F-115/11, point 59 (ECLI:EU:F:2014:187)).”

. In its decision 15/57 of 10 February 2016, the Complaints Board reiterated **the obligation to state reasons** which is incumbent upon administrative authorities: “*The obligation to state reasons, as a standard of good administrative behaviour, means that citizens have to be able to understand the reasons for a given decision, which in turn means that the grounds upon which it is based should be set out in the decision of which they are notified. This requirement goes beyond a mere formal statement of the reasons and involves focusing on the quality of the statement: a well-reasoned decision is a comprehensible decision. Consequently, using standard or too general forms of wording is inappropriate and improper. In that connection, it should be remembered that in accordance with settled case law, in both the legal system of the European Union and that of numerous Member States, statements of the grounds on which individual decisions are based must contain the de facto and de jure considerations allowing the persons concerned to assess whether or not they are well founded. It is having regard to those*

considerations that the Complaints Board checks compliance with the obligation to state reasons in the legal system specific to the European Schools.”

Amongst the decisions rejecting the applicants’ claims, mention can be made of the following:

. Through its decision 15/29 of 24 August 2015, the Complaints Board ruled on an application for **transfer of category III pupils** from a school outside Brussels to a school in Brussels. It pointed out first of all that “while it follows clearly from the objectives of the Convention defining the Statute of the European Schools that the children of the staff of the European institutions have a right of access to the education provided in the European Schools, the latter’s mission being specifically, pursuant to the aforementioned Article 1 of the said Convention, being to educate together such children, who constitute category I pupils, there is no such right for category III pupils who, pursuant to that same article, may benefit from that education only within the limits set by the Board of Governors. Now, in view of the growth in pupil numbers and of the overcrowding of the Brussels European Schools, which justified the introduction of an enrolment policy in those schools as from the year 2007, it was rightfully up to the Board of Governors to set restrictive conditions for category III pupils’ access to those schools. It follows that the mere fact that the applicants’ children, who are category III children, were on roll at the European School, Munich during the previous school year gave them not only no right but also no possibility of being transferred to one of the Brussels European Schools”. And none of the arguments put forward in support of the appeal (principles of equivalence and of equal treatment, principle of pedagogical continuity and free movement of workers, people and services) enables that impossibility to be removed. With reference to the latter argument, the Board judged that the impossibility for category III pupils of gaining access to the Brussels European Schools “cannot in any way be regarded as constituting an obstacle to their father’s freedom of movement as a worker, to the freedom of all the members of the family to reside in a Member State other than the one of which they are nationals or to their freedom to be recipients of services on equal terms with nationals. To take the contrary view might lead to its being considered that having failed to set up a school in a Member State to which pupils’ parents might envisage moving, the Board of Governors should be regarded, against all the evidence, as impeding such freedom of movement. In any event, given that only the children of staff of the European institutions have a right of access to the European Schools, the restrictions on access for other people, which are the same whatever the nationality or the place of residence of the persons concerned, have no impact on their freedom of movement. This finding also applies to the services offered by the Brussels European Schools to category III pupils, access to those services being restricted on equal terms for all who are recipients of them as pupils in that category, whatever their nationality or their place of residence.”

. In its decision 15/33 of 24 August 2015, the Complaints Board noted that “whilst the linguistic and cultural richness underpinning the mission which the European Schools are expected to carry out follows from the co-existence of several of the sections corresponding to the different languages used in the Member States, **it is not possible to demand, in view of the increasingly large number of such Member States, the existence in each school of the full range of language sections.** Similarly, whilst a degree of balance amongst the language sections

naturally appears desirable and constitutes, moreover, one of the objectives set by the guidelines adopted by the Board of Governors for the Policy on Enrolment in the Brussels European Schools, account inevitably needs to be taken of the reality of the demand, which leads to the languages most commonly used in Europe having far larger sections and conversely, other languages only with difficulty enabling a section to be formed within a school.” The Board thus dismissed the appeal, whereby the applicants used the argument of an imbalance amongst the language sections of one Brussels School to secure a place in another one.

. In its decision 15/42 of 2 February 2016, the Complaints Board first considered the applicant’s argument based on infringement of the **rights of the defence**, pointing out that *“respect for the rights of the defence in any proceedings which may result in an act adversely affecting a person constitutes a fundamental principle of Union law and must be guaranteed” (...)* *a fortiori* when there are special provisions for that purpose laid down in the regulations in question,” as is the case with the Arrangements for implementing the Regulations for the European **Baccalaureate**. After having deemed the rights of the defence to have been respected (access to the file in particular), the Board went on to consider the other arguments and confirmed the legality of the decision of the Baccalaureate Examining Board regarding the educational support arrangement granted to the student (he had indeed obtained the arrangement that he had requested) and regarding the same Examining Board’s decision to neutralise one question because of an error in its wording (respect for the principle of uniformity of examinations).

. In its decision 15/47 of 15 December 2015, the Complaints Board considered a request for a **change of language section** for a SWALS in mid-schooling. *“Article 47(e) of the GR provides that Language 1 is determined at the time of the pupil’s enrolment and that it is in principle definitive and valid throughout his or his school career. The Director of the school is responsible for determining Language 1 and parents are not free to choose. A change of Language 1 is possible only exceptionally, in the conditions laid down in Article 47(e), paragraph 7 of the GR, i.e. “for compelling pedagogical reasons, duly established by the Class Council and on the initiative of one of its members.” (...)* *“The reasons must clearly bring to light the fact that the change of language is essential or fundamentally necessary for the child’s pedagogical development.”* The Complaints Board dismissed the appeal, judging that these compelling pedagogical reasons had not been sufficiently established in this instance and that *“the mere fact that a pupil now lives in a different linguistic and cultural circle and that he uses this (new) language daily in place of his mother tongue is not sufficient to bring “compelling pedagogical reasons” to light.”*

. In its decision 15/50 of 14 January 2016, the Complaints Board found that the **Regulations for Members of the Seconded Staff** *“do not provide for a system of continuity which would allow service during a previous secondment to be counted for career advancement purposes; that would in fact be equivalent to a renewal, which is prohibited by Article 29(c) of the Regulations.”*

. In its decision 15/51 of 25 January 2016, on a dispute concerning a **change of language section**, the Complaints Board reasserted that *“determination of mother tongue/dominant language involves a pedagogical appraisal of each pupil, which can, therefore, vary even between children who belong to the same group of siblings; the decision on the language section involves consideration on a case by case basis, something which may justify different results, as*

follows from the evidence in the file in this case, in which a change of section was clearly not justified for [...] in the opinions of the English and Lithuanian teachers.”

. Through its decision 15/53 of 5 October 2015, the Complaints Board dismissed the appeal lodged against the decision to refuse the enrolment of a **category III pupil**, when the applicants were requesting *“an exceptional measure based essentially on the fact that the Greek language section is not suffering from overcrowding. With regard to this latter point, it should be noted that whilst the Complaints Board accepted, in a very particular context, that the fact that certain classes in a language section were notoriously undersubscribed might legitimately lead to an exceptional derogation from the enrolment rules (decision of 15 October 2009 delivered on appeal 09/35), the same cannot apply to the mere finding that there is a lack of overcrowding in a given section or class, something which in no way rules out overall overcrowding in the school in question, justifying restrictive measures on access.”*

IV - Outlook for the years to come: the first steps towards major changes

1) The introduction of an internal referral mechanism, combined with the possibility of having rulings on certain appeals given by a single judge

The ad hoc working group set up in October 2013 under the mandate given to the Secretary-General by the Board of Governors at its meetings of 16-18 April 2013 and chaired by the Chairman of the Complaints Board submitted to the Board of Governors concrete proposals as to how to strengthen legal protection in the European School system.

Some of them relate directly to operation of the Complaints Board itself and were adopted by the Board of Governors in April 2015, namely an internal referral mechanism, combined with the possibility of having rulings on certain appeals given by a single judge

This mechanism, which involves the appointment of a seventh judge, will be introduced as soon as the Board of Governors has designated an additional member of the Complaints Board (April 2016 in principle).

2) Jurisdiction with respect to so-called part-time (i.e. locally recruited) teachers confirmed

The Complaints Board has always considered that it has jurisdiction to hear appeals lodged with it by locally recruited teachers, in accordance with its case law, with the judgment of the Court of Justice of the European Union in the Miles case (C-196/09) and with the judgment of the *Tribunal du travail de Bruxelles* (Brussels Labour Court) of 23 April 2012.

This jurisdiction was confirmed by the judgment of 11 March 2015 of the Court of Justice of the European Union (case C-464/13) for disputes relating to the legality of an agreement on limiting

the duration of the employment relationship contained in the employment contract concluded between a locally recruited teacher and the Director of a European School.

Notwithstanding this important decision, no contentious appeal was lodged by a locally recruited teacher in 2015.

3) Changes to the structure and composition of the Complaints Board : taking up of his post by a seventh judge

At its meeting in Prague on 15-17 April 2015, the Board of Governors of the European Schools approved the amendments to the Statute and to the Rules of Procedure of the Complaints Board as proposed: it is essentially a question of setting up an internal referral system, which involves the appointment of a seventh member of the Complaints Board.

Pursuant to Article 27 of the Convention defining the Statute of the European Schools and to Article 1 of the Statute of the Complaints Board of the European Schools, the Board of Governors of the European Schools is therefore invited, at its next meeting in Copenhagen on 12 April 2016, to appoint, from the list compiled for this purpose by the Court of Justice of the European Union, a new member of the Complaints Board, who will take up his post on 1 May 2016, for a period of five years, this term of office being tacitly renewable.

* *

By way of conclusion, attention should be drawn here to the fundamental role of the Complaints Board, the sole tribunal specific to the *sui generis* European School system, whose difficult mission, justifying its legitimacy, involves reviewing on its own the legality of acts of the different organs of the European School system and ensuring respect for the right to effective legal redress.

It ensures, with rigour and independence, effective respect for the rights of litigants (teachers, pupils, parents and European Schools themselves) in the system, taking care to ensure that in all circumstances they are afforded “adequate legal protection”, as intended by the Convention defining the Statute of the European Schools.

In concluding this report, the Chairman of the Complaints Board wishes to thank publicly his colleagues and the members of staff of the Registry for the particular diligence which they showed during the year 2015.

Brussels, the 4th of March 2016

Henri CHAVRIER
Chairman