



**The Complaints Board  
of the European Schools**

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**ANNUAL REPORT FOR THE YEAR 2016 OF THE CHAIRMAN OF THE  
COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS**

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**BUDGETARY COMMITTEE**

Meeting on 7-8 March 2017 – Brussels

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**BOARD OF GOVERNORS OF THE EUROPEAN SCHOOLS**

Meeting on 4-6 April 2017 – Berlin

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## **The Complaints Board of the European Schools**

### **ANNUAL REPORT FOR THE YEAR 2016**

For the Complaints Board, the year 2016 was marked by:

- the appointment of a seventh member (I - 2)
- a removal (II)
- a higher visibility (III)
- a slight reduction in the number of appeals (IV – 1)
- ... and in the number of annulments (IV – 2)
- confirmation of new areas of jurisdiction (V)

#### **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.

2.

A seventh member was appointed, 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 School, by the Board of Governors, meeting in Copenhagen in April 2016: Mr **Aindrias Ó CAOIMH**, a former judge at the Court of Justice of the European Union.

Mr Ó CAOIMH took up his post at the Complaints Board on 1 May 2016, for a period of five years, this term of office being tacitly renewable. As soon as he was appointed, he made his expertise and services available to the Complaints Board.

The taking up of his post by this seventh member allowed not only strengthening of the human resources of the Complaints Board but also introduction of the internal referral system, for which there is now provision under Articles 40a and 40b of the Rules of Procedure of the Complaints Board, to take effect in practice.

3.

The other members are still Mr Andreas KALOGEROPOULOS, Mr Mario EYLERT, Mr Paul RIETJENS and Mr Pietro MANZINI. Their terms of office, like those of the Chairmen, end in April 2019.

The seven members of the Complaints Board are assigned to one or other section in rotation, so as to prevent any compartmentalisation between the two formations.

4.

Ms PEIGNEUR still holds the post of Registrar and is assisted by Ms FERRARIN in her post of administrative assistant. They work on a full-time basis, exclusively and in total hierarchical independence in relation to the Office of the Secretary-General of the European Schools, in the Board's service.

## **II – A removal**

During summer 2016, the Office of the Secretary-General of the European Schools (OSGES) moved to new premises, located at rue de la Science 23, 1040 Brussels.

This move provided an opportunity for the Registry (located on the Garden Floor of the building) to be physically separated from the different units of the OSGES (located on the second floor).

This separation of the offices further increases the real autonomy and independence of the Complaints Board in relation to the Office of the Secretary-General.

## **III – Higher visibility**

The Complaints Board is now known not only in the legal system of the European Schools and in that of the European institutions but also on the same basis as most of the other international administrative courts and tribunals.

Testimony to this is the fact that it features prominently in a major publication: *Le droit des agents internationaux à un recours effectif, vers un droit commun de la procédure administrative internationale*, (The right of international agents to an effective remedy, Towards a common law of international administrative procedure) by Anne-Marie Thévenot-Werner (published by Brill-Nijhoff, Leiden/Boston, 2016).

This study compares the organisation and case law of some twenty administrative courts and tribunals of international organisations, not just European ones but also global ones: the European Union's administrative courts and tribunals for the civil service, the administrative tribunal of the Council of Europe, the administrative tribunals of the UN, the ILO, NATO, etc.,

including the Complaints Board of the European Schools. Many passages relate to the Complaints Board, to the texts governing it, its case law and its prospects.

#### **IV – Judicial activity of the Complaints Board in 2016**

##### **1) Number and categories of appeals registered**

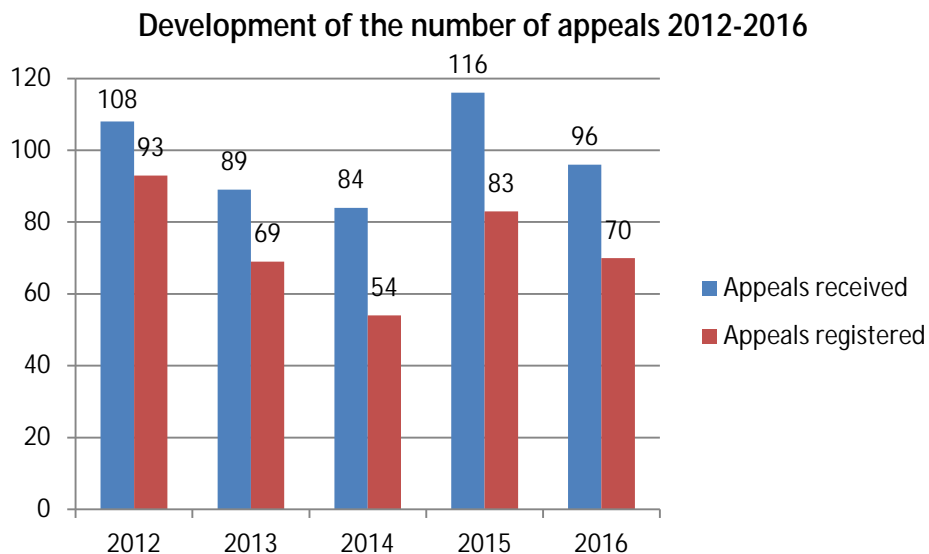
1.

The year 2016 was marked by a **slight reduction in the number of appeals** lodged with the Complaints Board.

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 70 appeals (including 8 in summary proceedings) were thus registered and submitted to the Complaints Board for consideration.

The graph below illustrates the pattern of development of the number of appeals over the period 2012-2016 (the difference between appeals ‘registered’ and appeals ‘received’ being those which were dealt with without being formally registered, following an exchange between the Registry and the applicant, given their manifestly inadmissible and/or unfounded nature) :



2.

This slight reduction in the number of appeals is probably attributable to the following factors:

- The Complaints Board’s case law, which is increasingly well developed, settled and accessible via the **database**, on which the organs of the European Schools can draw (the bodies of the European Schools learn lessons from the decisions delivered by the Complaints Board) and which applicants can scrutinise before lodging an appeal in order to evaluate their chances of success.
- Applicants’ fear of having to pay the **legal and other costs** of proceedings: this issue had already been raised in previous reports. It should be reiterated here that the contentious procedure is 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; in so far as the amounts claimed by the European Schools as legal and other costs are comparatively large (between €700 and €1000), the Complaints Board needs to remain vigilant with respect to this question of costs, so that they are not a constraint on the lodging of an appeal or a reason for discontinuance.
- **The number of administrative** appeals has itself fallen (for more details see the Annual Report of the Secretary-General to the Board of Governors of the European Schools for the year 2016).

3.

The table below shows the breakdown of appeals over the period 2012-2016:

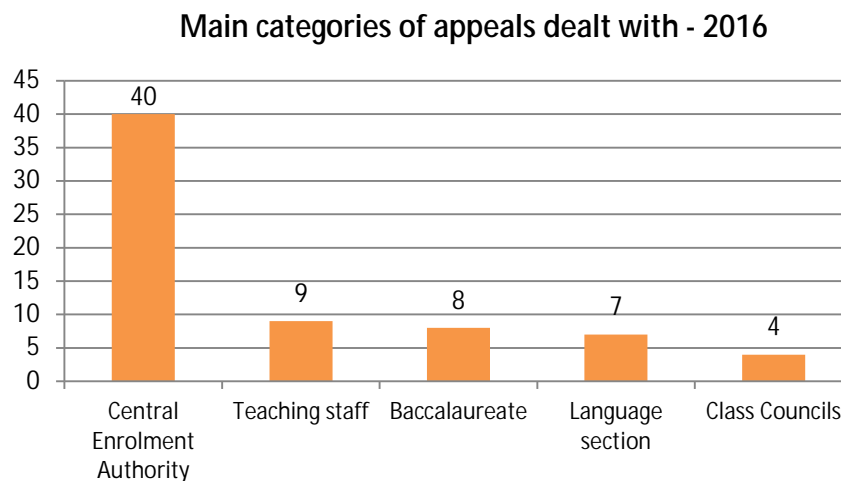
	2012	2013	2014	2015	2016
<b>Appeals received</b>	<b>108</b>	<b>89</b>	<b>84</b>	<b>116</b>	<b>96</b>
<b>Appeals registered</b>	<b>93</b>	<b>69</b>	<b>54</b>	<b>83</b>	<b>70</b>
<b>Incl. in summary proceedings</b>	<b>12</b>	<b>4</b>	<b>3</b>	<b>10</b>	<b>8</b>
CEA appeals	32	26	26	36	40
Teaching staff appeals	27	15	11	18	9
Class Council appeals	4	2	3	12	4
Language section appeals		3	2	5	7
Baccalaureate appeals	7	0	4	4	8
Appeals seeking revision/review	2	6	3	3	0
Disciplinary appeals	2	3	1	2	1
Cat. III school fees appeals		2		1	1
Cat. III enrolment appeals				1	0
Other	19	12	4	1	0
<b>Total</b>	<b>93</b>	<b>69</b>	<b>54</b>	<b>83</b>	<b>70</b>

As in previous years, appeals lodged direct against decisions of the Central Enrolment Authority for the Brussels European Schools remained the most numerous.

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

- ∅ appeals lodged by members of the teaching staff (seconded or locally recruited teachers);
- ∅ appeals involving 'school disputes':
  - ones concerning application of the specific rules of the European Baccalaureate;
  - ones concerning determination of the language section;
  - ones against Class Council decisions;
- ∅ appeals in the disciplinary area;
- ∅ appeals against decisions relating to enrolment or school fees of category III pupils.

The graph below illustrates the main categories of appeals dealt with in 2016:



4.

Some observations can be made here about the 2016 appeals:

- ∅ a source of disputes was confirmed: determination of the **language section**, either at the time of enrolment or during schooling, and the conditions in which the language tests, provided for by Article 47(e) of the General Rules of the European Schools, are conducted, and the conclusions drawn from them by Directors;

- Ø several disputes related to **parental authority** were brought before the Complaints Board;
- Ø for the first time in 2016, **pupils of Accredited European Schools** (the Manosque and Strasbourg ones) brought cases before the Complaints Board (see below: decisions 16-44 and 16-52);
- Ø there was only one appeal in the disciplinary area;
- Ø finally, it should be noted that there were no **appeals seeking revision/review** in 2016.

5.

It should be emphasised, moreover, 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, relating in particular to the case law of the Court of Justice of the European Union.
- 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, responds to a large 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:** this represents a substantial workload – which cannot be seen from the figures and statistics – for the Registry and the members of the Complaints Board concerned and involves checking and correcting translations to ensure clarity and coherence. 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. This question, already raised in previous annual reports, is still more than ever an issue.

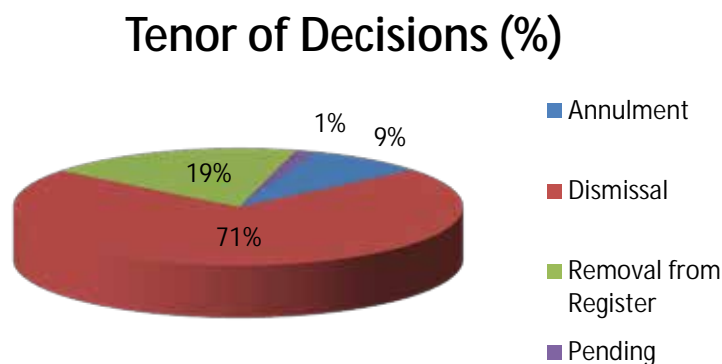
## 2) **Decisions delivered by the Complaints Board in 2016**

- a) In accordance with the provisions of the Rules of Procedure of the Complaints Board, the 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 or orders without the submissions of the parties, by interim orders or by orders to remove cases from the register.

In 2016, the Complaints Board held **three hearing sessions** (over four days), during which it considered **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) The graph below illustrates the proportions in which appeals were **allowed** (annulment of the decision adversely affecting the applicant(s)), **dismissed or removed from the register** following a withdrawal or a negotiated solution which had made the appeal devoid of purpose:



The figures for 2016 show a **percentage of annulments of 9%** (compared with 20% in 2015 and 14% in 2014).

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 during the year 2016, some deserve to be mentioned.

Ø **Amongst the decisions resulting in annulment:**

. In its **decision 16-14 of 1 September 2016**, the Complaints Board allowed, as admissible and well founded, an appeal against the decision taken, on a trial basis (and hence not definitively), and at the instigation of the Director alone, to **change a pupil's language section** when the

change was not justified by compelling pedagogical reasons, duly established by the Class Council and on the initiative of one of its members, and in the absence of any comparative tests. As the decision's illegality had been established, the contested decision was annulled.

. Through its decision **16-22 of 1 August 2016**, the Complaints Board annulled the decision relating to a decision taken on the basis of **Article 47(e) of the General Rules** of the European Schools (GRES), considering in this specific case that *“the language tests were not conducted in such a way as to be able to lead to a true comparison of the results.”* Whilst the Complaints Board acknowledges that the Schools enjoy autonomy with respect to the practicalities of organising language tests, it nevertheless considers that *“the intention of the concept of “comparative language tests”, to which Article 47(e) of the said GRES refers, is that the methods used, even though they do not have to be identical, should guarantee that language skills are tested objectively, in accordance with measurable and comparable standards, so that the results are truly comparative.”*

. Through its decision **16-28 of 19 July 2016**, the Complaints Board pointed out that although the location of the home of the child and/or of his or her parents is not, in principle, amongst the relevant circumstances justifying the granting of a priority criterion in one or other of the Brussels European Schools, *“it is nevertheless important to assess the unacceptable consequences which strict application of the enrolment policy rules might have in the event of the existence of a medical condition and when this location has an impact on treatment of the complaint from which the person concerned suffers (...).”* In this particular case, the evidence in the file shows that *“enrolment of the applicant's son at the European School closest to his home can be regarded as constituting, within the meaning of the aforementioned provisions of Article V.7.4.3. of the Enrolment Policy, an essential measure for treatment of the complaint from which he suffers”*, meaning that the Central Enrolment Authority's decision should be annulled.

. Through its decision **16-25 of 20 July 2016**, the Complaints Board reaffirmed the importance of the principle of the **regrouping of siblings**, which must *“be regarded as aimed essentially at avoiding for families with several school age children exacerbation of the constraints resulting from application of the enrolment policies and more particularly the one arising from the failure to take account, save for some exceptions, of the geographical location criterion (see in particular in that respect the judgment of the Complaints Board of 24 August 2015 on appeal 15/23, point 13).”* It went on to annul the Central Enrolment Authority's decision, considering that *“the parents' choice would have been different if conditions precisely defined during the enrolment procedure had actually been precisely defined at the time when this choice was made. In so far as the said conditions can be regarded as having had a decisive impact on the application submitted by Mr and Mrs [...], they are justified in contending that the contested decision is vitiated by an irregularity, stemming specifically from the lack of the necessary information about those conditions at the time of the application's submission”*, the conditions in question being the opening, during enrolment phase I, of four new primary years 3 and 4 classes in the French language section at the Brussels I School – Berkendael Site.

It is interesting to compare this decision **16-25** with decision **16-15** (below) taken in the same context of opening of new classes during enrolment phase I.

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

. In its decision 16-15 of 25 July 2016, the Complaints Board affirmed that it is the responsibility of the Board of Governors, charged, pursuant to Article 11 of the Convention defining the Statute of the European Schools, with organising studies and sections, to determine which sections need to be created in each school, that the CEA can itself decide on the opening of an additional class in a given school and that this **class opening** cannot be criticised in itself if it is a response to objective considerations, based in particular on the physical impossibility of admitting and accommodating more children in this year group and of this language in the other schools. The Complaints Board went on to examine the possible consequences of opening a new class during enrolment phase I and considered that: “(...) whilst it is true that the creation of this new class on the Berkendael site might theoretically have affected the chances of young [...] being admitted to the Brussels III School, to the extent that places might have been freed up by a shift to the Berkendael site, such a finding could only, in any event, have affected the legality of the contested decision should it have proved actually to have occurred”, which was not the case here.

. Through its decision 16-21 of 9 August 2016, the Complaints Board dismissed an appeal against a decision concerning determination of the language section (Article 47(e) of the General Rules of the European Schools), pointing out that “... the European Schools must always be in a position to check the level of knowledge of the languages known by the child” and that for multilingual children, the principle is education in the language of which the child has the best command. The comparative tests provided for by Article 47(e) “must necessarily be conducted in the language or languages in which the child has been educated, as well as in his or her mother tongue/dominant language. It is the only way of checking of which language the pupil has the best command.” In the case in point “in view of the applicants’ refusal to agree to language tests in the three languages concerned, it was permissible for the European Schools to determine [...]’s dominant language on the sole basis of the information in their possession, i.e. the results of the previous years’ tests and the information provided by the applicants’ themselves.”

. Through its decision 16-44 of 26 September 2016, the Complaints Board ruled on an appeal lodged by a student of the Manosque **Accredited European School**. The Complaints Board considered that in so far as students of these Accredited Schools can enter for the **European Baccalaureate**, they must, “like all candidates taking this examination, be allowed to lodge an appeal with the Chairman of the Examining Board, as provided for in Article 12 of the Arrangements for implementing the Regulations for the European Baccalaureate. Pursuant to the combined provisions of Articles 66 and 67 of the General Rules of the European Schools, they must also be allowed to submit a contentious appeal against the decision of the Chairman of the Examining Board to the Complaints Board. It is therefore up to the Complaints Board, the arrangements for the exercise of whose jurisdiction are defined by the implementing provisions laid down in Article 27.2. of the Convention defining the Statute of the European Schools, and in particular the General Rules of the said Schools, and whose jurisdiction in this case is not, moreover, contested, to rule on this appeal, which is the first one lodged by a European Baccalaureate candidate coming from an Accredited European School.”

. That jurisdiction was confirmed in **decision 16-52 of 16 January 2017**: *“As a matter of fact, students and parents of an **Accredited European School** may take their case to the Chairman of the Baccalaureate Examining Board in the case of incorrect implementation of the European Baccalaureate examination regulations, and in the event of rejection of their appeal, they have the legal recourse to appeal to the Complaints Board of the European Schools in accordance with paragraph 9 of Article 18 of the ‘Regulations on Accredited European Schools’.*

. In its important **decision 16-58 of 25 January 2017**, the Complaints Board dismissed as inadmissible the appeal lodged by six locally recruited teachers seeking annulment of the **new Service Regulations for Locally Recruited Teachers which entered into force on 1 September 2016**. The Complaints Board reaffirmed that whilst *“it has jurisdiction in any dispute regarding the legality of an act affecting a member of staff directly and individually, it does not have jurisdiction, in principle, in the case of an appeal seeking annulment of an act of general application. As it has already acknowledged several times, it can only annul individual decisions on account of the illegality, invoked by way of an exception, of the generally applicable standards upon which those decisions are based (see in particular the judgments, delivered by the Complaints Board sitting in plenary session, on appeals 05/04 of 15 September 2005 and 10/02 of 22 July 2010). As is clear from the aforementioned judgment of 22 July 2010, it can be otherwise only when the contested decision, even if it is of general or regulatory application, directly affects a right or a prerogative which, under the Convention defining the Statute of the European Schools, a person, or a clearly identified category of persons, who or which is distinguished from all the other persons concerned, is recognised as having, without its being certain that the said person or category is in a position to lodge an appeal against an individual decision taken on the basis of such a decision. In such a case, the decision must indeed be regarded as constituting an act adversely affecting that person or that category within the meaning of Article 27.2 of the Convention. Now the Complaints Board’s position happens to agree with the general legal definition given by the Court of Justice of the European Union to the concept of act adversely affecting a party in civil service disputes. According to that definition, only measures whose legal effects are binding on and capable of affecting the interests of a person directly and immediately by bringing about a distinct change in his or her legal position and as such may be the subject of an action for annulment can be considered to be acts adversely affecting a person (see judgment of the Court 17/78 of 1 February 1979 and that of the Tribunal T-293/94 of 18 June 1996) and containing the administration’s final position with regard to the applicant’s individual situation (see judgments of the Tribunal T-33/96 of 21 July 1998 and T-35-05 of 29 November 2006).”*

. Through its decision **16-53 of 8 August 2016**, the Complaints Board reaffirmed that a right of access to the European Schools is not guaranteed for **category III pupils**, who can benefit from this education only within the limits set by the Board of Governors. *“(…) in view of the growth in pupil numbers and of the overcrowding in the Brussels European Schools, which justified the introduction of a policy on enrolment in these schools as from the year 2007, it [is] rightfully [a matter] for the Board of Governors to determine the restrictive conditions of access to these schools for category III pupils.”* It went on to explain that these restrictive conditions cannot be regarded as discriminatory, in so far on the one hand, as *“the European Schools were set up for the education together of children of the staff of the European institutions, who constitute*

*category I pupils, which necessarily means that category III pupils are not in the same situation as them” and on the other, as “the highly restrictive conditions imposed on category III pupils by the enrolment policy pursuant to the guidelines set by the Board of Governors are [...] justified by objective considerations”, namely the ever increasing overcrowding in the Brussels Schools, which are oversubscribed.*

. Again with reference to **category III pupils**, the Complaints Board reaffirmed, through its **decision 16-39 of 13 December 2016**, that *“the children of teaching staff are admitted as category I pupils for as long as they are children of teaching staff and that they become category III pupils if and when their parents cease to be teachers”* and that *“the children of teaching staff are classed in category I for admission purposes (they are thus guaranteed a right of access to the European Schools) with an undertaking to pay school fees according to the timetable [of the teacher parent]”,* these school fees being *“calculated by reference to the amounts which are required to be paid for category III pupils – fairly logically and necessarily, since there is no provision for school fees to be paid for category I pupils.”*

. Giving a ruling in summary proceedings, the Chairman of the Complaints Board pointed out in his **interim order 16-50 R of 1 September 2016** that as the decision’s legality was not seriously disputed with respect to the pupil’s admission – and as the applicant was even requesting validation of the place offered – *“the condition for ordering interim measures, which requires there to be serious doubts as to the legality of the disputed decision, was not fulfilled, something which was sufficient for the measures requested to be rejected.”* He also went on to say that the applicant must take the case to the national courts, which alone have jurisdiction to settle disputes or rule on decisions involving **parental authority**.

. Through its decision **16-13 of 15 September 2016**, the Complaints Board reaffirmed, on this question of **parental authority**, that *“(...) it is not for either the European Schools (CEA) or the Complaints Board, but for the national court with jurisdiction (i.e. the family court) to rule on the questions raised in the application in so far as they relate to the scope, the interpretation and the enforcement of the judgment [of this national court], the CEA being required merely to find that the enrolment application complies with the regulatory provisions in force, something which it did in this case.”*

## **V - Outlook for the years to come: confirmation of new areas of jurisdiction**

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

Since May 2016, the internal referral mechanism, provided for in **new Articles 40a and 40b** of the Rules of Procedure, has been effective but the parties (whether applicants or the European Schools) have not made use of it.

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

The Complaints Board's jurisdiction to hear appeals lodged with it by locally recruited teachers having been confirmed by the judgment of 11 March 2015 of the Court of Justice of the European Union (case C-464/13), the Complaints Board had to rule on an appeal seeking annulment of the new Service Regulations for Locally Recruited Teachers.

Whilst the Complaints Board dismissed that appeal as inadmissible (see above: decision 16-58 of 25 January 2017), it nevertheless confirmed, in giving judgment on the case, that it does indeed have jurisdiction to annul individual decisions, on account of the illegality, invoked by way of an exception, of the generally applicable standards upon which such decisions are based.

It is therefore to be expected that in the coming months, new appeals will be lodged by locally recruited teachers against individual decisions which will be taken against them on the basis of the new Service Regulations, which entered into force on 1 September 2016.

### **3) Jurisdiction confirmed for appeals lodged by students of Accredited European Schools relating to the European Baccalaureate examinations and certificate**

The Complaints Board's jurisdiction to hear appeals lodged with it by students of Accredited European Schools relating to the European Baccalaureate examinations and certificate having been confirmed (see above: decisions 16-44 of 26 September 2016 and 16-52 of 16 January 2017), it can reasonably be expected that in the coming years, there will be an increase in the number of appeals pertaining to application of the specific rules of the European Baccalaureate, in view of the growing number of students in Accredited European Schools who will be taking the Baccalaureate.

\* \*

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 – and henceforth to Accredited European Schools as far as the European Baccalaureate is concerned – 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 and parents, but also the 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 2016. Their ready availability at all times enables the Board to carry out its mission, with due regard for the principle of continuity of public service.

Brussels, the 6<sup>th</sup> of March 2017

Henri CHAVRIER  
Chairman