

## Legal fact sheet n ° 1: Class councils - Repeats - Change of L1 and L2

### Class councils - legal framework & case-law

Each parent has heard of class councils, which decide on the transition to a higher class, but also - in the European schools - on the change of L1 and L2.

The legal framework applying to class councils in matters of repeating is provided by article 18 of the [General Rules](#) (GR) of the European schools, which details their mode of operation, amplified by chapter IX entitled “ASSESSMENT OF PUPILS - RULES FOR PROMOTION TO THE YEAR ABOVE” (articles 55 to 58 cover the primary cycle and Articles 59 to 62 the secondary cycle). The rules vary in the secondary depending on the level - specific rules apply from S1 to S3 (article 61.C GR), and from S4 to S6 (article 61.D GR). The rules for S7 can be found in the [Regulations for the European Baccalaureate](#) (RBE) and the [Arrangements for Implementing the Regulations for the European Baccalaureate](#) (RARBE) - the class council of S7 does not determine the marks of the European Baccalaureate and therefore plays no role in awarding this diploma.

The class council is made up of all teachers of the subjects taught to the students in a class. Only the teachers actually teaching a pupil have the right to vote on their promotion to the year above (cf. article 18.3 RG). The end-of-year class council, which determines the promotion to the year above, is chaired either by the Director, or by the competent deputy director, or possibly by a teacher appointed by the Director but who does not teach in this class (article 17 paragraph 3 RG). The vote to promote a pupil to the year above is made by a simple majority of the members of the class council (article 18.3.e RG), and its debates are confidential (article 18.5 RG). Parents, however, have the right to receive a copy of the class council minutes, upon request made to the Director (article 18.4 RG). There are no student or parent representatives present on the class council. Parents can, within 8 days of notification of the the class council's decision, request an interview with the Director and access copies of the B-tests of the second semester of S5 and S6 and the semester exams of S7 (article 18.7 RG ).

Decisions of the class council imposing a repetition of the school year can be the subject of an administrative appeal and then a contentious appeal before the [Complaint Board of the European Schools](#) (CBES). The administrative appeal must be brought no later than seven calendar days from the end of the school year (article 62.2 RG). Such an appeal can only be based on the invocation of a procedural irregularity (“*vice de forme*”), defined in article 62.1 paragraph 2 RG as “*any infringement of a rule of law pertaining to the procedure to be followed for promotion to the year above, such that if it had not been committed, the Class Council's decision would have been different*”, or of . The new fact is defined in the same article (paragraph 5) as “*any element which would not have been brought to the attention of the Class Council because it was unknown to all - teachers, parents, pupil - at the*



*time of its deliberation and which could have been influence the direction of his decision"*. Article 62.1 paragraph 3 RG explicitly rules out two circumstances - the lack of assistance in the form of integration of the pupil into educational support programs (SEN) as well as the practical organisation of the exams – from the procedural irregularities entitling to a right to appeal.

Be mindful of deadlines: the administrative appeal must be brought within seven calendar days from the end of the school year (article 62.2 paragraph 1 RG). The original of the appeal must be sent by registered mail to the General Secretariat of the European Schools (SG) (article 62.2 paragraph 1 RG) or by email (article 14 paragraph 2 of the CBES Rules of Procedure - RP), an electronic version of the appeal being sent to the Director of the school (article 62.2 paragraph 3 RG). The SG's decision must be taken no later than August 31 (article 62.2 paragraph 4 RG). If the SG rejects the administrative appeal, the contentious appeal before the CBES must be filed within two weeks from the notification of the rejection decision (article 67.4 RG).

Draft your administrative appeal carefully: the factual and legal arguments developed in the administrative appeal cannot be changed during the administrative procedure (article 62.2 paragraph 2 RG) or during the contentious appeal before the CBES (article 18.2 RP).

Please note: an administrative appeal does not suspend the implementation of the appealed decision (articles 66.3 RG), nor does the contentious appeal (article 16 RP). This obviously poses a problem, as the CBES has six months to decide on a contentious appeal against a decision of the class council (article 67.6 RG), i.e. well after the start of the school year. It is therefore important to submit a parallel request for suspension of enforcement and interim measures, besides the contentious appeal proper (Articles 16, 34 and 35 RP).

Further to this, the class council also has prerogatives in terms of allowing the change of L1 (and thus of language section) and L2.

Regarding change of L1, Article 47.e RG provides:

*"Determination of L1 at the time of the child's enrolment is definitive in principle. A change of Language 1 may only be authorised by the Director for compelling pedagogical reasons, duly established by the Class Council and on the initiative of one of its members"*.

As regards change of L2, section 2.2 of the [Decision of the Board of Governors concerning the organisation of studies and courses in the European Schools](#) provides that a request for change of L2 must be based on clear evidence - established by the school (and not by the parents) - that the pupil will be able to follow the course in the new L2. This request is submitted to the class council for decision, to be confirmed by the Director. Although the Board of Governors' decision does not indicate that a remedy exists against such decisions, the CBES ruled in [case 19/35](#) that parents should be granted the right to appeal against such decisions, this in the name of the principle of parents' right to an effective remedy against decisions affecting the pupil's right to education.



A search in the public database of the Complaint Board shows 36 decisions made public (not all are) on class councils, of which 10 were to the advantage of the plaintiffs, i.e. a success rate of contentious appeals by 28%. It is not possible to indicate the success rate of administrative appeals in the absence of detailed public data. However, the APEEE is aware of successful administrative appeals.

A few general remarks are in order regarding contentious appeals against repetition decisions:

- It is absolutely clear that the best way to help your child not to repeat is to follow his/her schooling closely, and to keep an open dialogue throughout with the teachers as well as with the direction well BEFORE the class council. It is also vital to submit the council factual and objective information on the child's situation which may explain his difficulties - health, family, social or other circumstances;
- The case-law of the Complaint Board is restrictive - only procedural irregularities or new facts give rise to the right to appeal, and these two concepts are interpreted very stringently; the Board refuses to make any assessment of the pedagogical aspects of class councils' decisions, which therefore escape its control and cannot be invoked;
- Remember that the success of a contentious appeal means in principle only that the decision of the class council is annulled by the Complaint Board, and that the decision therefore comes back to the class council, which must rule again; depending on the reason for the cancellation, for example if a teacher who did not teach the student participated in the repetition vote, this may not necessarily prevent the class council from making an identical decision to the one cancelled;
- During the contentious phase before the Complaint Board, it is vital to introduce a request for interim measures at the same time as the contentious appeal proper. The decisions of the Complaint Board with regard to decisions of the class councils must indeed be rendered within six months from the date of lodging an appeal - it is therefore in practice certain that a decision on the main appeal will take place several months after the start of the next school year, hence the need for a request for interim measures pending the outcome of the contentious appeal;
- It is recommended to hire a lawyer for the contentious appeal - this is not obligatory but in practice, as the arguments of the contentious appeal must correspond to those of the prior administrative appeal, it may even be useful to consult the lawyer for the drafting of the administrative appeal;
- There is no legal aid system for contentious appeals: you will pay the lawyer out of your own pocket - unless you have legal insurance - with the possibility of asking the Board for reimbursement of your legal costs if you win - this request must be made and your costs indicated as soon as you file your appeal; in practice, the Board often decides to let each party bear its own costs;
- Regarding the change of L1 or L2, it is recommended to think carefully BEFORE registering the child, because the principle is that the choice of L1 cannot be changed except for a compelling pedagogical

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reason, a concept interpreted in a very restrictive fashion by the Complaint Board. For the change of L2, clear proof is needed, established by the school, that the pupil will be able to follow the courses in the new L2, with a restrictive case-law ;

- Do not hesitate to contact the APEEE EEB4 if you have any questions!

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ANNEX: a summary of all 36 class council-related judgments made public on the Complaint Board website is available in the French version of this information sheet. Until very recently the judgments were only available in French. The summary of the case-law is therefore only available in that language.