

**Appeal n° 24/41**

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**COMPLAINTS BOARD OF THE EUROPEAN SCHOOLS**

(2<sup>nd</sup> section)

**Decision of 11 November 2024**

In the case registered at the Registry of the Complaints Board under No 24/41, concerning an action brought on 18<sup>th</sup> of June 2024 by Dr ■■■■■ seeking annulment of the decision of the Secretary General of the European Schools of the 10<sup>th</sup> of June 2024 removing her from her post of seconded teacher for the ■■■■■ with immediate effect.

The Complaints Board of the European Schools, 2<sup>nd</sup> section, comprising:

- Ms Brigitte Phémolant, President of the 2<sup>nd</sup> section,
- Mr Pietro Manzini, member,
- Mr Mark Ronayne, member and rapporteur,

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

having regard to the written observations presented by the applicant as well as by Me Muriel Gillet, advocate at the Brussels Bar, on behalf of the European Schools,

having heard, at the public hearing of the 26<sup>th</sup> of September 2024, Mr Ronayne's report as well as the oral arguments of Me Panayiotis K. Georgountzos for the applicant and Me Gillet, M. VAN DAAL, Mme Carmen BERMUDEZ and Mme Johanna GOUTEUX for the European Schools,

delivered on 11 November 2024 the decision in respect of which the reasons and grounds and the operative part thereof appear as follows.

### **The facts**

1.

The applicant, Dr [REDACTED], was seconded by the [REDACTED] [REDACTED] (hereafter “the School”) for two years with effect from September 2021. Her initial placement was as a support teacher in the [REDACTED]. By decision of the 4<sup>th</sup> of February 2023, her secondment was extended for a further period of three years following a successful evaluation.

On the 4<sup>th</sup> of July 2023, the applicant was moved from her position of support teacher to that of [REDACTED] class teacher and assigned the [REDACTED] class. She lodged an appeal against this decision which was rejected by a decision of the Complaints Board of the 4<sup>th</sup> of March 2024 (case 23/50).

The applicant was on sick leave from the 29<sup>th</sup> of September to the 27<sup>th</sup> of October 2023 and then again from mid-November 2023 onwards. Because of her sick leave, her pay was reduced with effect from the 16<sup>th</sup> of April 2024 in accordance with Article 41(1) of the Regulations for Members of Seconded Staff of the European Schools (hereafter “the Staff Regulations”).

The applicant was the subject of two disciplinary procedures.

2.

- The first disciplinary procedure

By letter of the 10<sup>th</sup> of July 2023, the Director of European School [REDACTED] (hereafter “the Director”) informed the applicant of his decision to take disciplinary proceedings against her on account of two emails which she sent on the 5<sup>th</sup> of July

2023, one to the [REDACTED] and one to the assistant Director responsible for the [REDACTED] (hereafter “the assistant Director”). The Director considered that, in sending these letters, the applicant acted against the school management and brought the good name of the school into jeopardy by disrespecting her duty of discretion and loyalty towards the institution.

Following a hearing on the 1<sup>st</sup> of September 2023, the Director informed the applicant by letter of the 21<sup>st</sup> of September 2023 of his decision to impose the disciplinary penalty of a written warning for minor misconduct. The applicant introduced an administrative appeal against this decision on the 3<sup>rd</sup> of October 2023 and this appeal was rejected by decision of the Secretary General of the 5<sup>th</sup> of December 2023.

3.

- The second disciplinary procedure

By letter of the 12<sup>th</sup> of December 2023, the Director wrote to the applicant informing her of his decision to open new disciplinary proceedings against her following the receipt of allegations of mistreatment of children in the classroom and inviting her to obtain a copy of the disciplinary file and attend a hearing on the 8<sup>th</sup> of January 2024.

Three annexes were attached to this letter: the text of an email from an educator to the Deputy Director (annex 1), e-mails from the parents and parent representatives of the [REDACTED] (annex 2) as well as the report of the class visit of the 10<sup>th</sup> of November 2023 by the assistant Director (annex 3).

The applicant declined invitations to attend hearings on the 8<sup>th</sup> of January, the 19<sup>th</sup> of February and the 8<sup>th</sup> of April 2024 on the grounds that she was on sick leave and unable to attend for health reasons.

In a letter of the 19<sup>th</sup> of March 2024 inviting the applicant to a hearing on the 8<sup>th</sup> of April 2024, the Director offered her the option, should she be unable to attend in

person, of being represented by a lawyer, of attending by videoconference (with or without her lawyer) or of submitting observations in writing. He also informed her that in the absence of a hearing or of written observations, the School would consider that she had waived her right to be heard.

In her reply of the 28<sup>th</sup> of March 2024, the applicant informed the Director that she would be unable to attend the hearing on the 8<sup>th</sup> of April for health reasons and emphasized that she did not wish to remain silent on the case and would “*provide all the documented answers through testimonies of the parents and teachers ... (she has) worked with all this time, as soon as ... (her) state of health ... allows it*”.

By letter of the 25<sup>th</sup> of April 2024, the Director requested the Secretary General to envisage the possibility of imposing the disciplinary sanction of removal from post in view of the very serious nature of the facts alleged against the applicant and the fact that this was the second disciplinary procedure taken against her.

A proposal to remove the applicant from her post was approved by the Board of Inspectors ( [REDACTED] ) by means of a written procedure which was initiated on the 23<sup>rd</sup> of May 2024 and ended on the 6<sup>th</sup> of June 2024.

4.

By letter of the 10<sup>th</sup> of June 2024, the Secretary General informed the applicant of his decision to remove her from her post in the following terms:

“ ...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5.

**The forms of order sought by the parties**

In her application, the applicant requests that her appeal be examined and accepted by the Complaints Board *“in accordance with Article 80 of the Regulations for Members of the Seconded Staff of European Schools”* and specifies : *“I do not wish to receive any sum of money for the legal costs of this appeal, nor for the European Schools to be sentenced to any kind of monetary compensation, due to the deprivation of my salary from 10 June 2024. My only goal is that justice be served, and an illegal and insufficiently reasoned decision be reversed, which grossly offends me as an educator and as a human being.”*.

6.

The Schools ask the Complaints Board to declare the appeal inadmissible and unfounded and to order that the applicant contribute to the Schools' legal costs to an amount set, ex aequo et bono, at 1 200.00 €.

7.

In her reply, the applicant further requests that the European Schools assume the following financial consequences:

1. The estimated amount to be paid for her removal from the European School [REDACTED] (3.930,53 euros).
2. The monetary benefits from the salary to which she is entitled according to the decision renewing my posting until August 2026 (110.864,52 euros).

In her reply, the applicant also asks the Complaints Board

*« To order the European Schools to pay the legal costs of the applicant: i.e. the amount of 3.000 €.”*

## **The arguments of the parties**

### ***On the admissibility,***

8.

Noting that the applicant concludes her application with the words “*I do not wish to receive any sum of money for the legal costs of this appeal, nor for the European Schools to be sentenced to any kind of monetary compensation, due to the deprivation of my salary from 10 June 2024. My only goal is that justice be served, and an illegal and insufficiently reasoned decision be reversed, which grossly offends me as an educator and as a human being.* », the Schools argue that her appeal should be dismissed as inadmissible for want of interest in the outcome of the proceedings.

In support of their argument, they cite case-law of the General Court of the European Union to the effect that the admissibility of an appeal is subject to the existence of a legal interest in bringing the proceedings, which presupposes that the appeal must be liable, if successful, to procure an advantage to the party bringing it (judgement of the 12<sup>th</sup> of May 2010, Commission / Meierhoffer, T-560/08), and of the Complaints Board which has rejected an appeal as inadmissible in a case where it considered that : « *The annulment of the contested act would be a measure without real consequences and merely theoretical*” (decision 23/22, *SI Ecole européenne de Bruxelles II*).

9.

In her reply, the applicant highlights the negative effects of the contested decision on her good name and reputation and argues that the annulment of this decision would remove the moral harm that this engenders, and that its effect would therefore not be merely theoretical.

She also seeks to enlarge the scope of the form of order sought in this action in her reply to include the estimated amount to be paid for her removal from the School

and the the salary to which she would be entitled following the extension of her secondment until August 2026.

10.

In their rejoinder, the Schools contest the applicant's broadening of the scope of her case at the reply stage recalling the terms of Article 18 (2) of the Rules of Procedure according to which "*no submission of a new plea in law may be introduced in the course of proceedings, unless it is based on matters of law or of fact which have come to light in the course of the procedure*" as well as previous caselaw of the Complaints Board on this question (decision 13/12, H.L. c/ Ecole européenne de Luxembourg).

***On the substance,***

11.

The applicant puts forward two grounds for annulment: first, that the School acted illegally in pursuing the disciplinary procedure while she was on sick leave and unable to attend the hearing and, secondly, that the finding that she mistreated children is not supported by the evidence.

**First ground for annulment:** the School acted illegally in pursuing the disciplinary procedure against the applicant while she was absent on sick leave

12.

The applicant contends that she was unable to defend herself during the disciplinary procedure in accordance with Article 75(6) of the Staff Regulations, because she was unwell and on long term sick leave from the 13<sup>th</sup> of November 2023 onwards. It was the incapacity resulting from her illness that prevented her from attending a hearing on any of the three proposed dates. She recalls that she wrote to the Secretary General and the [REDACTED] inspector on the 28<sup>th</sup> of March 2023 informing them of this and of the fact that she did not wish to remain silent on the case and

would “provide all the documented answers through testimonies of the parents and teachers ... (she has) worked with all this time, as soon as ... (her) state of health ... allows it”.

She states that she never received a satisfactory answer from the School regarding the legal provisions which allowed the School to proceed with the disciplinary procedure while she was on sick leave.

She declares that according to European labor laws, it is generally not permissible for an employer to launch disciplinary actions against an employee while they are on sick leave.

She cites states the European Union's Working Time Directive, as well as the [REDACTED] and [REDACTED] labour codes, according to which, she states, employees who are on sick leave are not allowed to participate in any work-related activities or actions in order to ensure that they have the necessary time to rest and recover fully.

She also considers that launching of disciplinary proceedings against an employee who is on sick leave amounts to unfair treatment and is potentially discriminatory.

She recalls that in an email of the 20<sup>th</sup> of October 2023, the Director requested her not to become involved in School matters whilst on sick leave.

She also rejects as unfounded and tantamount to playing with words the Schools' contention that the fact of being on sick leave does not prevent a member of staff from participating in other activities related to employment.

Finally, in presenting her arguments on this point, she incidentally contests the use by the Schools of her personal medical data.

13.

The Schools argue that since the applicant took no action on any of the proposals offered for the organization of her hearing it must be considered that she deliberately waived her right to be heard.

They contest the applicability and the relevance of the provisions of EU, [REDACTED] and [REDACTED] law cited by the applicant and argue that, on the contrary, Belgian and French case-law would tend to support the hypothesis that the fact of being on sick leave doesn't prevent the pursuit of disciplinary proceedings.

Citing case-law according to which possible infringement of due process rights must be examined on a case-by-case basis, taking account of the nature of the act at issue as well as the context in which it was adopted and the applicable legal provisions, they consider that by twice postponing the hearing and by proposing alternative arrangements such as videoconferencing, or the possibility of drafting written observations, or of being represented by her lawyer, the School struck a fair balance between the need to accommodate the applicant's right to be heard, on the one hand, and the need to take disciplinary action within a reasonable timeframe, set by Article 75(5) of the Staff Regulations at six months, on the other (M. / European School of Brussels II, decision of December 20, 2021, appeal 21/42, exhibit 38).

They observe that in the present instance, the applicant's long-term incapacity for work did not prevent her from:

- leaving her home, as the medical certificates produced expressly state that going out is not medically contraindicated,
- taking part in a non-mandatory distance learning course by webinar on the 6<sup>th</sup> of December 2023,
- lodging an appeal with the Complaints Board on the 11<sup>th</sup> of December 2023,
- sending reasoned requests for information on the disciplinary procedure to the Secretary General on the 20<sup>th</sup> of March 2024,
- sending a letter to the Management of the School on the 28<sup>th</sup> of March 2024 justifying her refusal to attend hearings,

- drafting and submitting the present appeal on the 18<sup>th</sup> of June 18.

14.

The applicant answers these arguments in her reply, pointing out that the medical authorization to leave her house merely reflects the non-contagious nature of her illness, that her participation in the webinar amounted to no more than listening and that she had legal assistance for the various legal procedures mentioned but could no longer afford this for the hearing following the reduction in salary.

**Second ground for annulment:** the finding of serious misconduct isn't supported by the evidence

15.

The applicant argues that the alleged facts relied by the Secretary General in support of his decision are untrue and unsupported by the evidence.

She points out that the allegations made against her emanate from a very small number of witnesses: an educator who didn't know the children but overheard a conversation amongst them, a very small number of parents, two of whom were married, and the Deputy Director who had been antagonistic towards her over several months.

As regards, first, the document set out at annex 1 of the letter of the 12<sup>th</sup> of December 2023, the applicant argues that the author, who did not teach the children but looked after them during lunch, made a deliberate untrue statement because she is a close associate of the Support Coordinator. She notes that the message was presented without the usual details at the top (date, name, sender, etc.), meaning its authenticity is questionable, and states that she strongly believes « *that it was written subsequently and upon order from the Directorate* ». She considers that this report, a secondhand account, is beset by an unacceptable lack of detail and that the facts it relates are manifestly untrue; she never hurt a child, she took

them out for their break almost every day, the children are not afraid of her but are affectionate towards her. On those very limited occasions where there was a partial deprivation of recess for certain students, this was in line with the School's behaviour policy.

As regards the emails set out in annex 2, she states that they are untrue, that they emanate from only three parents, a married couple who have been making allegations against all the teachers and staff since their first day at the School, and a close friend of theirs, that they and are irrelevant to the findings held against her in the contested decision.

She criticizes the unscientific nature of the report by the Deputy Director contained in annex 3 and notes the absence of any report by the psychologist. She also highlights the absence of any observer representing her rights sitting in on the Deputy Director's class visit.

She also alleges that the School administration engaged in a consistent pattern of behavior from March 2023 onwards which was designed to remove her from the School despite the excellent evaluation she received in January 2023 and the many testimonies of support from parents.

Finally, the applicant submits a series of letters and emails from parents and other documents commending the quality of her teaching.

16.

The Schools argue that, contrary to the applicant's assertion, the decision to dismiss her was based on consistent elements of proof, namely complaints relayed by the pupils to an educator, complaints made by the parents' representatives, two specific complaints from the pupils' parents and the report of a class visit by the Deputy Director.

The fact that the applicant obtained a favorable evaluation report in February 2023 or that she received e-mails of satisfaction from certain parents does not detract from the probative value of these elements.

### **Findings of the Complaints Board**

#### ***On the admissibility,***

17.

#### ***The applicant's interest in seeking the annulment of the disciplinary penalty***

Article 77(2) of the Staff Regulations provides that “a *contentious appeal may be lodged with the Complaints Board established pursuant to Article 27 of the Convention defining the Statute of the European Schools against: ... any disciplinary action taken by the Board of Governors or its Secretary- General.*”.

Despite this specific right of appeal, the Schools argue that this action should nonetheless be dismissed as inadmissible on the grounds that the applicant renounced any material remedy in her application and therefore has no real interest, but only an abstract, theoretical interest in the outcome of the proceedings.

The Complaints Board considers that a former member of seconded staff has a manifest interest in contesting the validity of a disciplinary decision removing them from their post even if reinstatement is not a viable remedy in their case and they have not sought financial compensation for the damage suffered.

This interest flows from the very nature of this disciplinary penalty and from the serious, lifelong and irrevocable consequences that the fact of having been removed from one's post can have on one's professional reputation and employment prospects in the future.

The Schools' arguments that the action for annulment of the contested decision should be dismissed as inadmissible, for want of interest in the outcome of the case, must therefore be dismissed.

18.

***The new requests introduced by the applicant in her reply,***

In her reply, the applicant sought to extend the scope of her action by requesting that the European Schools be also ordered to pay damages reflecting the costs of her removal from ██████████ to ██████████ and unpaid salary to which she would have been entitled if her secondment had run its full course.

As the Schools observe in their rejoinder, Article 18 (2) of the Rules of Procedure prohibits the introduction of new pleas in law in the course of proceedings unless they are based on matters of law or of fact which have come to light in the course of the procedure.

As the new pleas in law introduced in the reply are not based on matters which only came to light during the procedure, they must be dismissed as inadmissible.

***On the substance,***

- **First ground for annulment:** the School acted illegally in pursuing the disciplinary procedure against the applicant while she was absent on sick leave

19.

The applicant argues, first, that the School acted illegally in even initiating disciplinary proceedings against her whilst she was absent on sick leave and that general principles of law common to various national employment laws prohibit this. The Complaints Board finds no evidence for the existence of a general principle of law prohibiting the launching of disciplinary proceedings against employees whilst they are on sick leave. Circumstances sometimes warrant the opening of

disciplinary proceedings against members of staff who are on sick leave, and, in these cases, employers must balance their duty of care towards the member of staff concerned with their responsibility of ensuring the timely completion of disciplinary matters.

In the present case, the School did not act unreasonably in deciding to open disciplinary proceedings against the applicant in the light of the information it had concerning her state of health, on the one hand, and the seriousness of the misconduct alleged against her, on the other.

20.

The applicant also argues that the School acted in breach of her right to be heard by proceeding with the disciplinary procedure while she was on sick leave and unable to attend a hearing.

Pursuant to Article 41(2)(a) of the Charter of Fundamental Rights of the European Union (hereafter “the Charter”), everyone has the right to be heard before any individual measure which would adversely affect him or her is taken.

Where disciplinary proceedings are taken against teachers seconded to the European Schools, the right to be heard is implemented by Article 75(6) of the Staff Regulations which provides that “*the member of staff charged shall be given a prior opportunity to state his views and shall have access to all relevant papers in the file*” and that “*he shall have not less than fifteen days from the date of initiation of the proceedings to prepare his defence and may be assisted by a defence counsel of his choice*”.

The Complaints Board considers that whilst the right to be heard ideally includes the right to participate at an oral hearing, in those cases where the member of staff is unable to attend a hearing in person, including on medical grounds, the essential requirements of Article 41(2)(a) of the Charter and Article 75(6) of the Staff Regulations can be met where he or she is offered the opportunity of submitting written observations and being represented at the hearing by a lawyer.

The Complaints Board recalls, also, that in the comparable context of disciplinary proceedings taken against officials of European Union institutions, the Court of Justice and the General Court have ruled, in an established line of case-law, that the failure to hear the person concerned does not entail the annulment of the decision imposing a disciplinary penalty if this failure is attributable to him or her and that the institution is not obliged to postpone indefinitely the date of the final hearing until the official concerned is able to attend ; on the contrary, in the interests of both the official and the institution, the decision ending the disciplinary procedure cannot be delayed without justification (see points 36 and 37 of the Order of the Court of Justice of the European Union of the 29<sup>th</sup> of September 2022 in case C-71/22 P, CX / Commission, and the case-law cited therein).

However, the Complaints Board considers that disciplinary proceedings should be suspended in those cases where, for reasons of medical incapacity, the member of staff concerned is unable to understand the nature of the case against them or to exercise their right to be heard.

In such cases, in accordance with the principles governing the burden of proof, it is for the member of staff concerned to demonstrate the existence of the medical incapacity which he or she is invoking. The production of a medical certificate merely justifying sick leave does not suffice to this end. The member of staff must produce a medical report proving specifically that he or she is affected by a physical or mental incapacity preventing them from understanding the scope of the communications sent by their employer relating to the disciplinary proceedings or from effectively exercising their right to be heard, including, if necessary by mandating a lawyer to act on their behalf (see, in the comparable context of disciplinary proceedings taken against officials of European Union institutions, judgement of the Court of First Instance of the 5<sup>th</sup> of December 2002, T-277/01, Stevens/Commission, points 55-56).

In this case, the applicant produced medical certificates justifying her sick leave but no specific evidence proving her medical incapacity to exercise her right to be heard. Also, throughout her period of sick leave, she participated actively in administrative and legal proceedings concerning her and communicated with the

School in a manner such that the School was entitled to assume that she could indeed exercise her right to be heard.

In these circumstances, in postponing the hearing twice over a period of three months and by informing the applicant of the various alternative options open to her to ensure her right to be heard if she couldn't attend in person – such as submitting observations in writing, being represented at the hearing by a lawyer or participating by video link – the School struck a fair balance between its obligation to conclude the disciplinary proceedings promptly and its responsibility to safeguard the applicant's right to be heard under Article 41(2)(a) of the Charter and Article 75(6) of the Staff Regulations.

21.

The first ground for annulment must therefore be rejected as unfounded.

- **Second ground for annulment**: the finding of serious misconduct is not supported by the evidence

22.

The Complaints Board must determine whether the facts alleged against the teacher during the disciplinary proceedings are proven and constitute misconduct justifying the imposition of the disciplinary measure, bearing in mind that the applicant enjoys a presumption of innocence, by virtue of Article 48(1) of the Charter, and that the burden of proof consequently lies with the School.

The Complaints Board recalls that the decision to remove the applicant from her post is contained in a letter of the Secretary General to the applicant of the 10<sup>th</sup> of June 2024, cited *in extenso* at point 4 above.

The Complaints Board notes, first, that it appears from this letter, and the Schools confirmed at the hearing, that the allegation of physical violence against a child

mentioned in the letter of the 12<sup>th</sup> of December 2023 opening the disciplinary proceedings was not invoked as one of the grounds for the finding of very serious misconduct.

The Secretary General found that *“pupils were mocked, insulted and threatened by ... [the applicant] and that there was a harmful atmosphere in the [REDACTED] class”* and considered that this constituted very serious misconduct within the meaning of Article 75(3) of the Staff Regulations sufficient to justify the disciplinary penalty of removal from post.

The Secretary General justifies the finding of very serious misconduct by reference to *“the written testimony appearing in Appendix 1 of the letter dated 12 December 2023”*, which he described as *“especially appalling and worrying”*, and *“other documents in the disciplinary file”*. The Complaints Board will therefore examine the elements of the disciplinary file placed before it – that is to say the letter of the 12 December 2023 and its three annexes and the letter of the 10<sup>th</sup> of June 2024 - to ascertain whether they establish the facts necessary to support the finding of very serious misconduct.

Annex I of the letter of the 12<sup>th</sup> of December 2023, cited in part by the Secretary General in his letter of the 10<sup>th</sup> of June 2024, contains what the Schools say is the text of an email sent by an educator, Ms [REDACTED], to the Deputy Director recounting the content of a conversation she had with some pupils from the class in question at lunchtime on the 9<sup>th</sup> of November 2023. As the applicant observes, the document submitted to the Complaints Board doesn't contain the usual indicators identifying author, recipient and date and time of the transmission. However, this evidence was supplemented by a signed statement by Ms [REDACTED] submitted by the Schools with their rejoinder which substantially confirms the content of annex I.

The extract of this text cited by the Secretary General in his decision makes the following specific allegations, recounted by the children to Ms [REDACTED] regarding the conduct of the applicant on the morning of the 9<sup>th</sup> of November 2023:

- that she told them *“that they are rotten children like their parents, and that they are not allowed to tell their parents what happens in class”*;

- that she *“punished them and would not let them go to the bathroom and also kept them in at break and would not let them go out to play.”*;

Ms [REDACTED] also states also that the children that they believed that the applicant would be very angry with them if she found out they had spoken to her and that they were scared of the applicant.

Annex 2 of the letter of the 12<sup>th</sup> of December 2023 contains four emails sent by parents of children in the applicant’s class to the School administration concerning the applicant’s conduct:

- an email of the 7<sup>th</sup> of November 2023 from a class representative criticizing the tone and content of a communication which the applicant sent to the parents regarding the format of upcoming parent-teacher meetings; the class representative considers that *“the tone of the letter is quite antagonistic, and shows a clear lack of willingness to keep communicating and working together with parents”* and states that several parents share her misgivings;
- an email of the 9<sup>th</sup> of November 2023 from a class representative requesting a meeting with the Director and the Deputy Director and containing the following account of the applicant’s behavior:

*“The most pressing issue of all is that Ms [REDACTED]’s behaviour in the classroom is escalating.*

*She seems to be retaliating against the children and we are not sure why: there are microgressions such as not allowing bathroom breaks, obliging children to miss recess supposedly to complete their homework, threatening them with missing the photoshoot, making them copy exercises by hand etc. She is also verbally aggressive against them, she yells, and there have been at least 2 incidents of her physically manhandling a child.”*

- An email of the 9<sup>th</sup> of November 2023 from a parent of a child in the applicant’s class stating *“after what happened today in the class, we will not send our son to the school tomorrow. Please replace immediately the teacher. Our kids should not be under any form of violence!”*;
- An email of the 10<sup>th</sup> of November 2023 from a parent of a child in the applicant’s class alleging that his son was verbally humiliated by the applicant on the 9<sup>th</sup> of November 2023.

Annex 3 of the letter is a summary account of a class visit by the Deputy Director to the applicant's class, made together with the School psychologist, on the 10<sup>th</sup> of November 2023.

The Deputy Director explains that, following messages received from the parents of the class in question reporting inappropriate attitudes and language on the part of the class teacher, and at the request of the other (support) teachers working in the class, describing a situation in which the pupils were unable to work because they were shocked by what had happened in class, in particular on Thursday the 9<sup>th</sup> of November 2024, he went, accompanied by the school psychologist, to the classroom to listen to the pupils on this subject.

The information relayed by the children spoke of

- a difficult classroom atmosphere, particularly due to the behavior of some disruptive pupils;
- incessant shouting by the teacher;
- an incident in which the class teacher pushed a pupil, who fell as a result;
- insulting remarks along the lines *"you're idiots, and so are your parents. You can tell them I said that to you"* and *"you're the worst class in the school. No teacher wants to be with you. That's why I was asked to have you."*,
- not being allowed to go to recess or to the toilet.

The Deputy Director considered that the pupils were worried and even frightened at the idea of having the applicant as their class teacher.

In addition to the facts mentioned in the three annexes, the letter of the 12<sup>th</sup> of December 2023 also refers to a meeting with the parents of the children in the applicant's class on the 27<sup>th</sup> of October 2023 where, according to the Director, *"the parents expressed their concerns about ... [her] behavior in the classroom, i.e. shouting and threatening the pupils."*

23.

The Complaints Board notes the consistent, corroborative nature of the concerns reported by the children to different adults – Ms [REDACTED], the Deputy Director, parents – and considers that the consistency of this evidence is sufficient to establish that the children in the applicant's class were afraid of her (annex 1, annex 3), that she shouted at them frequently (meeting of the 27<sup>th</sup> of October 2023, annex 3), that she threatened them (meeting of 27<sup>th</sup> of October 2023, annex 2) and, more specifically, that, on the morning of the 9<sup>th</sup> of November 2023:

- she insulted the children and their parents (annex 1, annex 3);
- verbally humiliated a child (annex 2);
- refused to allow the children to use the bathroom or to leave the classroom for recess (annex 1, annex 2, annex 3).

The applicant's argument that the allegations made against her emanate from a very small number of people, some of whom were married and some of whom were hostile towards her, and her criticisms regarding the unscientific nature of the Deputy Director's report in annex 3 and the absence of any report from the psychologist and any observer representing her rights during the Deputy Director's visit to the class are not sufficient to call into question the reality of the specific conduct of which she had been accused in a concordant manner, as stated above.

The fact that she received an excellent evaluation in January 2023, as well as expressions of support from parents commending the quality of her teaching, some of which were issued several months before the alleged acts, is not such as to contradict the reality of the facts of which she is accused.

The Complaints Board also considers that the applicant has not demonstrated why the children would lie in expressing their concerns to the adults or why the adults would lie in recounting the information received from the children.

In these circumstances, the Secretary General did not err in finding that the applicant had failed in her duties as a teacher. Even in the face of disruptive pupils, frequent shouting, refusing access to the bathroom, insulting children and their

parents, verbal abuse of children and creating an atmosphere of fear are not acceptable conduct for a teacher.

24.

On the question of whether this failing amounted to very serious misconduct within the meaning of Article 75 (3) (c) of the Staff Regulations such as to justify the imposition of the penalty of removal from post, the Complaints Boards recalls that, in accordance with Article 75(2) of the Staff Regulations, *“the seriousness of the offence shall be assessed on the basis of factors such as intentionality, disruption of the service, affront to the staff or the Schools, lack of respect for third parties or repetition of the offence”*.

These factors are indicative and do not preclude taking account of others such as, in this case, concern for the safety of the children. The Secretary General did not err in considering that the *“harmful atmosphere in the class”*, resulting from the applicant’s mocking, insulting and threatening the children, was a factor which could bring her behaviour into the category of *“very serious misconduct”*.

A factor that could have mitigated in favour of the applicant, namely that much of the stated misconduct occurred on one morning, is offset by the repetitive nature of her misconduct in the School since she was moved from her position of support teacher to that of [REDACTED] class teacher. In accordance with Article 75(2) of the Staff Regulations, the Secretary General correctly took into consideration the fact that, on the 21<sup>st</sup> of September 2023, in a separate matter, the Director had imposed on the applicant the disciplinary penalty of a written warning for minor misconduct.

25.

In these circumstances, the Complaints Board considers that the applicant has not established that the Secretary General erred in deciding that the evidence supported a finding of very serious misconduct justifying the disciplinary penalty of removal from post.

26.

The second ground for annulment must therefore also be rejected as unfounded. As the applicant's pleas in law have both failed, her application for annulment of the Secretary General's decision of the 10<sup>th</sup> of June 2024 removing her from her post for very serious misconduct must be dismissed as unfounded.

***On the legal and other costs,***

27.

Article 27 of the Rules of Procedure of the Complaints Board provides: *"The unsuccessful party shall be ordered to pay the legal and other costs of the case if they have been applied for by the other party. However, if the particular circumstances of the case so warrant, the Complaints Board may order the latter party to pay the legal and other costs or may order that they be shared between the parties. Where the parties have come to an agreement on costs, the decision as to costs shall be in accordance with that agreement. If costs are not claimed, the parties shall bear their own costs."*

It follows from these provisions, which are in fact quite similar to those in force before most national or international courts, that the unsuccessful party must, in principle, bear the legal and other costs of the case.

28.

In this case, the applicant was entitled to be critical of the form in which Ms [REDACTED]'s evidence was presented in the file, as an email without the usual details concerning the author, addressee and date and time of transmission (annex 1). This defect, concerning evidence to which the Secretary General attributed particular importance in his decision, was only corrected at the reply stage in the current proceedings before the Complaints Board by the presentation of a handwritten statement signed by Ms [REDACTED] confirming the facts set out in annex 1 and

recognizing that she exposed herself to criminal liability in the event of misstatement of the truth.

Taking account of this aspect, the Complaints Board considers that the award of costs to the Schools can be set, ex aequo et bono, at EUR 600.

**FOR THESE REASONS, the Complaints Board of the European Schools**

**DECIDES**

Article 1: The appeal of Dr [REDACTED], registered under case number 24/41, is dismissed.

Article 2: The applicant is ordered to pay the European Schools an amount of EUR 600 for the legal and other costs of this procedure.

Article 3: This decision shall be notified in accordance with Articles 26 and 28 of the Rules of Procedure.

Brigitte Phémolant

Pietro Manzini

Mark Ronayne

Brussels, on 11 November 2024

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On behalf of the Registry,  
Nathalie Peigneur