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Proposal to extend the definition of ‘vulnerable’ pupils of the European Schools in relation to COVID-19

Joint Teaching Committee

For Decision

Meeting of 8-9 October 2020

1. Background

At its meeting of 5 June 2020, the Joint Teaching Committee (JTC) discussed the document ‘Consequences of COVID-19 – Follow-up of the Board of Governors and Preparation of the 2020/21 school year’¹ and mandated the Office of the Secretary-General *“to set up a ‘task force’ composed of representatives of the Inspectors, Directors, Directors of the European Accredited Schools, EU Commission, ISTC and Interparents, which (was) supposed to provide the Board of Governors by the end of the 2019/20 school year with a risk assessment and concrete proposals to mitigate these risks for the 2020/21 school year.”*

The analysis and proposals² of this Task Force were completed in July 2020 and presented to the Board of Governors (BoG) at its extraordinary meeting on 31 August 2020 which took note of the document, making some amendments, including to the mention of age in the definition of ‘vulnerable’ staff.

The now-approved document suggested, *“for its risk analysis and for the planning of the common school year”, application of “the same definition (where applicable) to pupils and inspectors without prejudice to stricter national rules applicable to them”* and schools were *“requested to establish also an inventory of ‘vulnerable’ pupils.”*

2. Introduction

As described above, the definition of ‘vulnerable’ members of the school community was drawn up by the Task Force in June/early July 2020 for the purposes of analysis and planning for the school year 2020-21 and did not preclude the possibility of the application of stricter rules as necessary. Since then, pupils have returned to school, enabling theory to be put into practice, in terms of the measures designed to protect the school community from the risks of COVID-19. We are now seeing how these measures work in reality. Since the last meeting of the Task Force on 14 July 2020, the pandemic situation has evolved rapidly in all countries hosting European Schools. Moreover, scientific understanding of transmission involving children has developed further, even since the August meeting of the BoG. Considering these new factors and the detailed information which is emerging about European School families at particular risk from Covid-19 and about EU Institution treatment of staff whose households include such ‘vulnerable’ members, InterParents is strongly in favour of now extending the definition of ‘vulnerable’ to include those pupils who live with household members in possession of a medical certificate for physical health reasons.

This would ensure the physical, psychological, social, and cognitive well-being of pupils by empowering families with members who are medically-certified as vulnerable

¹ Doc. 2020-05-D-25-en-1.

² Doc 2020-07-D-9-en-2

to make the right decision for their family regarding whether to send their child to school during a pandemic (duty of care and legal certainty).

Such an extension of the definition would avoid potential liability issues for the European Schools in the event that pupils obliged to attend school 'in situ' bring home the virus to medically-certified vulnerable household members, who then risk hospitalisation or worse.

Extending the definition of 'vulnerable' would also remove the lack of alignment that currently exists between the person-based definition of vulnerability followed by the European Schools and the broader definition of vulnerability followed by many European institutions and organisations (cf. Commission, Parliament, EIB, the Council, ECB).³

Furthermore, there is a duly justified need for educational continuity for pupils who must stay home because they belong to a risk category. It is essential, in the interest of all such families, to organise distance learning and allow pupils of medically vulnerable households to continue their education, just like their peers, without any risk to their promotion.

InterParents requests the JTC (as the body which mandated the Secretary General to create the Task Force for planning the start of the school year) to initiate steps to safeguard as quickly as possible pupils of the European Schools who are vulnerable by reason of one or more of their household members being medically certified as vulnerable, pending the outcome of an urgent process to update the formal definition of 'vulnerable,' and lastly, to put into development a longer term strategy to support all vulnerable pupils through appropriate measures and existing structures. (See specific proposals at the end of this document.)

3. Considerations

3.a) Duty of care and legal certainty

In all actions concerning children undertaken by public institutions, the best interest of the children will be a primary consideration (Article 3(1) of the Convention). Current research clearly indicates that children can both be infected and infect others with COVID-19. As such, not empowering vulnerable families to decide for themselves whether they take a physical risk and send their child to school during a time of heightened community and school transmission in most Member States undermines the safety of the family unit and thus the well-being of the pupil. **No pupil should feel that they must choose each day between attending school and possibly infecting a household member with a virus that may lead to major illness or**

³ "We advise Administration to also take into account the situation of staff members who have a vulnerable person (child, spouse, other) in their household (i.e. living under the same roof) or for which they are the primary caregiver. The medical advisor can look into the individual situation and advise on a case-by-case basis." (Interinstitutional Medical Board Risk Prevention and Management from 27-04-2020).

worse. This form of *presenteeism*⁴—the pressure to attend school or work despite illness, injury, anxiety, etc.—serves neither the student nor the school, since students under such stress are likely to lack the motivation and concentration required to learn and succeed in the classroom. While there are physical limitations to what can be achieved to establish and maintain social distancing in schools where the pupil population exceeds the theoretical maximum and multiple regroupings of pupils in Secondary are unavoidable, the European Schools’ duty of care to the most vulnerable members of its community can and should still be fulfilled.

3.b) Potential liability issues

There is now a clear body of evidence indicating that school children can become infected, carry and transmit the COVID-19 virus to others. Indeed, school transmission is a proven fact in multiple countries. Moreover, the structure and size of the European Schools poses a problem for vulnerable pupils and pupils with vulnerable household members. On the one hand, the regular mixing of classes in all of the schools increases the possibility of viral exposure and transmission among students. On the other hand, overcrowding in the classrooms, corridors, staircases, recreation areas, canteens and school buses at many European schools makes the minimum national social distancing rules quite difficult to follow. Since only vulnerable pupils themselves are offered the choice to remain home while the pandemic lasts, pupils who live with family members who are medically certified as vulnerable currently have no recourse but to attend school and risk bringing the virus home to vulnerable members of their household. Should this occur, the household(s) in question may experience serious short- and long-term health complications from the virus as well as a loss of income and/or the ability to work. These are situations for which the European Schools could be held liable, particularly if it can be proven that transmission occurred as a result of less diligent school policies or practices. As things stand now, the obligation to attend school in situ 100%, the structure and size of the European Schools, and the definition of pupil vulnerability currently in place leave vulnerable families with no means to proportionately curtail their risk.

3.c) Non-alignment of vulnerability definitions

From an inter-institutional point of view, the person-centered definition of vulnerability in force at the European Schools versus the more flexible definition followed by many of the European institutions is highly problematic on two fronts:

First, this lack of alignment undermines the purpose of the broader definition of vulnerability in place at other European institutions: to curtail COVID-19-related health and safety risks for its vulnerable staff members as much as possible in an ongoing pandemic. The success of such a policy is diminished when the children of staff who are medically certified as vulnerable are obliged to attend schools at which viral transmission is a strong possibility. Increased transmission risk via the European schools may in turn lead both to serious illness as well as the diminished work capacity of affected vulnerable EU staff. Indeed, in extreme cases, this may impede the very

⁴ The concept of *presenteeism* comes from a growing body of literature on organisational behaviour in the workplace and at school.

functioning of the institutions of the European Union, especially in fields where particular language skills or a particular nationality are paramount and where vulnerable civil servants affected by the virus cannot simply be replaced ad hoc.

Second, this non-alignment of vulnerability definitions places pupils and their vulnerable family members in a state of undue stress as they must manage, on a daily basis, the risks entailed in this contradiction between work and school norms regarding COVID-19. A small group of vulnerable families has already reached out to InterParents to express their worry and frustration about having to live with this contradiction on a daily basis and the negative effect this is having on the well-being of their children and the family as a whole.

3.d) Educational continuity

Given that ‘vulnerable pupils’ already (and rightly) have to be accommodated educationally, with provisions to ensure the continuity of their education and opportunity for promotion, this request for an extension of the definition does not require a major ‘step change’ for schools. Thus, pupils with vulnerable household members not only deserve the same treatment and equality of opportunity as pupils who have a personal certified vulnerability to COVID-19, but this can easily be provided within existing arrangements and those coming into operation imminently, whether that be assignments to be completed at home or use of passive streaming of lessons, etc..

4. Actions to be taken

Actions	Time frame	Deadline	Priority	Actor
Ensure that all pupils <u>currently</u> absent from school due to a medically-certified vulnerability—their own or that of a household member—are treated as ‘justified absences’ for a temporary period (pending the outcome of an urgent review of the definition of ‘vulnerable pupils’), as a gesture of humanity and understanding of the extreme situation of some families.	With immediate effect		1	OSGES
Approve an expanded definition of ‘vulnerable pupils’ to include household members with medically certified physical vulnerability to COVID-19 for enduring use throughout the pandemic	Short term		2	BoG
Using the extended definition of vulnerable pupil, conduct an inventory of vulnerable pupils at each school to ascertain the maximum numbers in each school that might need special consideration.	Short term		3	Schools under aegis of an Inspector or WG

In order to ensure educational continuity for vulnerable pupils, develop a robust plan and set of measures for the continued support of these pupils to enable them to learn and gain promotion, as their peer group is able to do.	Longer Term		4	Existing WG to be assigned
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5. Conclusion

The Covid-19 pandemic is once again accelerating across many Member States in Europe, which means that the challenge of care for pupils with household members who are medically certified as ‘vulnerable’ will remain an issue in the foreseeable future. For the many reasons outlined above, it is therefore InterParents’ strong conviction that the European Schools should act now to extend the definition of ‘vulnerable’ pupils to include those pupils living with vulnerable household members in possession of a medical certificate for physical health reasons. Such an extension would empower vulnerable families to make the right decision for their family regarding whether to send their child to school during a pandemic. **It should be noted that many vulnerable families may choose not to exercise this option and continue instead to keep their children in school because they deem the current level of risk bearable in their situation. In any case, the continued lack of such an extension puts all vulnerable families in a most untenable position since it offers them no viable way to curtail their risk proportionately during an ongoing pandemic. This is a situation that can and should be remedied.**

6. Proposals

The JTC is invited to:

a) express a positive opinion on the expansion of the definition of ‘vulnerable’ to include vulnerable household members with a medical certificate issued for physical health reasons and to invite the Board of Governors to approve this updated definition by expedited written procedure.

b) request the Secretary General to draft a memorandum to Directors announcing that, effective immediately as a temporary measure, pupils, whose household includes a member whose physical health renders them ‘vulnerable’ to COVID-19 (as certified by a doctor) may, at the request of their legal representative:

i) not attend school in situ until an expedited decision by the Board of Governors can be taken and for their absence during this period to be registered as ‘justified’

ii) receive assignments from their teachers during this period (as per pupils in quarantine)

c) propose the most suitable forum to monitor issues relating to the needs of ‘vulnerable pupils’ and, specifically, within whose scope it would be appropriate to:

i) conduct a survey of schools (as was originally called for in the analysis and proposals of the Task Force⁵) to ascertain how many vulnerable pupils exist in the European Schools, according to the wider definition which includes vulnerable household members with a medical certificate issued for physical health reasons.

ii) develop a plan for the continued support of all pupils who are designated COVID-19-vulnerable, drawing on the support of the IT-ped WG as necessary in relation to distance-learning aspects of the plan, as envisaged in the remit of that group.⁶

⁵ 2020-07-D-9-en-2

⁶ 2019-08-D-11-en-3: IT-Ped WG remit includes: “Propose models for IT use for pedagogical purposes, including for children with special educational needs” and “Put forward recommendations for the pedagogical use of environments for education and training, including remote ones.”