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Pedagogical Development Unit

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Creation of a Working Group on mediation at the European Schools

Joint Teaching Committee

Meeting on 10 and 11 October 2019

CONFLICT RESOLUTION IN THE EUROPEAN SCHOOLS

Background

The European Schools have put in place a system to solve legal conflicts. Either the Complaints Board or the National Courts ultimately provide a legal remedy.

However, European Schools are lacking of any formal conflict resolution system and there is no Ombudsperson-like system in place either.

Conflict resolution

Conflict resolution can be defined as the methods and processes to allow the ending of a conflict in a peaceful manner.

It notably refers to the mediation but other methods, as arbitration, are also possible.

In any organisation as the European Schools conflicts arise between the different participants, i.e. directors, teachers, other staff, students and parents.

Interparents have the perception that there is a tendency to escalate some conflicts that easily lead to disciplinary actions, appeals and other legal proceedings.

However, some conflicts may possibly be better solved through less drastic methods, the so-called Alternative Dispute Resolution methods.

While court proceedings are formalised and claim-oriented, Alternative Dispute Resolution methods may offer a more flexible approach to a conflict.

Alternative Dispute Resolution methods include:

- Mediation
- Arbitration
- Intervention of an Ombudsperson

As explained, in Interparents' view those alternative dispute resolution methods have not sufficiently been explored by the European Schools.

Mediation

Mediation is one of the procedures that may be used to solve a conflict.

Mediation can be defined as a structured process, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator.

An intermediary, without decisional powers, facilitates communication between the parties with the aim to enabling them to solve their dispute.

It is based in the following core characteristics:

- Confidentiality of the procedure

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- Voluntary participation of the parties.
 - Neutrality of the mediator

Mediation may allow a cost-efficient and faster dispute resolution compared with other methods of dispute resolution.

It also contributes to preserve a good relationship between the parties, an important feature in an educational community, where all parties have the common goal of acting on the best interest of the children.

Another advantage of mediation is the procedural flexibility, which allows the mediator and the parties to adapt the procedure to the needs of the individual case.

Compared to arbitration, mediation does not usually replace the judicial remedy in case of failure of the mediation, but is rather an attempt to find a friendly solution between the parties without needing to have recourse to a judicial procedure.

On the contrary, if there is a settlement agreement, it normally implies that both parties renounce to have recourse to further actions, unless expressly provided in the settlement agreement.

It is worth indicating that the EU has already designed a framework for mediation in other fields.¹

In this context, the European Union has approved a European Code of Conduct for Mediators.²

Arbitration

Arbitration is an alternative dispute resolution with some common features with mediation.

Both parties work out the disputed issue without going to court. An impartial third party, known as an Arbitrator, is chosen by the parties to listen to their case and make a decision.

It is normally quicker, cheaper and less formal than a judicial procedure.

Arbitration can be voluntary for both parties but sometimes, arbitration is compulsory for at least one of the parties, in particular when that party is a public administration or a company supplying to consumers.

The decision made by the arbiter is normally binding for the parties that renounce to have recourse to further actions, unless expressly provide in the arbitration regulations.

¹ In particular, Directive 2008/52/EC of the European Parliament and the Council on Certain Aspects of Mediation in Civil and Commercial Matters.

² ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.pdf

Difference between arbitration and mediation

While both arbitration and mediation are forms of Alternative Dispute Resolution, there are some differences between the two.

The main difference is that an arbitrator decides on the matter and his decision is usually binding whereas the mediator assist the parties in working out a settlement that both can agree to.

Arbitration is used as a way to obtain a binding court-like decision without actually going through the court system.

Mediation, on the other hand, is a non-binding process in which the parties are not obligated to go on with the process, once it has started, nor are they required to agree to a settlement.

Ombudsperson

As the former Commissioner for Humans Rights of the Council of Europe, Alvaro Gil Robles stated: "Through their independence, flexibility and non-conflictual approach to the relations between individuals and the public administration, Ombudsmen have a key role to play in the protection of individual rights."

Article 43 of the EU Charter of Human Rights recognises the right of any citizen of the Union to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union.

However, a similar institution is missing in the European Schools.

The EU Ombudsman, at the present stage, cannot intervene in administrative disputes concerning the European Schools, unless the case specifically refers to the intervention of EU institutions.

This leads, in some cases, to an unnecessary escalation of the conflicts that could be better be solved by the intervention of the Ombudsman, that could provide some guidance to the European Schools on best administrative practices.

It may be explored whether it is possible, under the Convention of the European Schools and EU law, to find a legal solution that would grant the EU Ombudsman the capacity to intervene on EU administrative issues or whether it is more efficient to put in place an ad-hoc Ombudsman institution for the European schools.

Proposal

With regard to what is expressed in the above document, Interparents invites the Joint Teaching Committee to approve the creation of a Working Group on dispute resolution by the Board of Governors with the mandate to propose the necessary modification in the rules to implement dispute resolution procedures and an Ombudsman for the European Schools.

The composition of the Working Group could include:

- the Secretary General or the Deputy Secretary General,
- one Director,
- one Deputy Director for Nursery and Primary,

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- one Deputy Director for Secondary,
 - a representative of the Commission,
 - a representative of the current and next presidencies,
 - a representative of the PAS,
 - a representative of the teachers,
 - a representative of the parents and
 - a representative of the students
 - the possibility to invite external experts.