

ACTIVITY REPORT

Retrospective 2018-2023



LE GOUVERNEMENT
DU GRAND-DUCHÉ DE LUXEMBOURG
Ministère de l'Éducation nationale,
de l'Enfance et de la Jeunesse

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ACTIVITY REPORT 2022-2023

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Preliminary remarks

All first names used in the testimonials are fictitious.

By their very nature, cases reported to the SMS are contentious. The picture painted by the activity report, even if it highlights flaws in the system, does not therefore reflect the overall functioning of the school system in Luxembourg. It is important to bear this in mind when reading these pages.





Preface by the School Mediator

“five intense years”

The Service de médiation scolaire (SMS, School Mediation Service) opened its doors in September 2018. At the time of writing, we have just celebrated its fifth anniversary. Five years is certainly not yet the age of reason! However, we have already grown considerably and, above all, learned a great deal!

This anniversary encourages us to look beyond the past school year and sketch a portrait of what is to come.

Let's face it, we had a somewhat complicated start: the Service de médiation scolaire was like a black box to our interlocutors. Since then, relations with school and non-school partners have taken a turn for the better. We are now – for the most part – perceived as a service that offers a different perspective and a different dynamic when faced with deadlock or misunderstanding. It's goodbye to the Housekeeper, the bogeyman we mentioned in our first activity report.

However, some people's perception of the SMS remains somewhat mixed, or at least vague, which is undoubtedly linked to our unique position. We like to present ourselves as an atypical mediation service. This atypicality has raised questions about the way we operate. Over the past five years, I have sometimes heard people say that the SMS supports parents “too much”. The legislator has indeed conferred on us the mission of supporting pupils and parents of pupils in their procedures (Article 3(2)). For us, this does not necessarily mean agreeing with them. We understand this support as providing guidance, guidance that also involves accepting a situation that can sometimes be painful. This can take time – time that is essential if we want to work peacefully with the various stakeholders.



“The Service de médiation scolaire listens and tries to make fair decisions for the well-being of the child; the main objective is the well-being of the child”.

father of Chloé, 9 years old

The SMS is not intended to give out good or bad marks, or to criticise parents or professionals, but to facilitate an agreement so that pupils can continue their educational path in the right conditions. This is the message we try to convey to the various people involved in a complaint: if something went wrong at some point, well, these things happen. Our intervention marks a new moment, focused on the future and concrete solutions.

Over the past five years, our environment has changed. On the one hand, especially since the COVID-19 crisis, we are facing conflicts that are more emotionally charged and therefore more delicate and time-consuming to resolve. On the other hand, we can welcome the promises of improvement brought about by the laws that have recently come into force:

- the streamlined procedure for supporting pupils with special needs as part of the creation of the *Service national de l'éducation inclusive* (SNEI, National Service for Inclusive Education);
- organised monitoring of foreign pupils with the creation of the *Service de l'intégration et de l'accueil scolaires* (SIA, School Integration and Welcome Service), which takes into account several of our recommendations;
- strengthened support for pupils' well-being with the creation of educational and psychosocial departments in secondary schools;
- the announced roll-out of a child protection concept in schools with the creation of a child protection officer, who will be our point of contact for cases of violence and harassment brought to our attention.

"Without the intervention of the Service de médiation scolaire, my son's life, and consequently mine, would have been filled with depression and paediatric psychiatric care".

mother of Sacha, 9 years old

Beyond these encouraging projects, and in the wake of our recent but intense experience, two considerations seem important to me for the future of our pupils and the development of the education system.

Almost every day, we are conscious of the urgent need for each of us, as professionals involved at one stage or another in a pupil's bumpy journey, to learn to step outside our comfort zone and our strict professional field in order to cooperate more with other professions working with children.

For, acting in isolation, each professional sees only the tip of the iceberg, such as a teacher faced with a restless teenager who appears unwilling to follow the rules, or a boy who repeatedly falls asleep at his desk. That teenager and that boy have a whole history behind them that explains their behaviour. Seeking the help of other professionals allows us to see a child or young person in a different light, to take a step back, and thus to better help them stay on track.

"Thank you for taking the time to listen to me this morning and for showing such humanity and commitment to my child".

mother of Nico, 11 years old

The mission of schooling in the 21st century calls for pupils to be viewed as individuals in their own right, not just as learners. An interdisciplinary approach should become routine whenever difficulties arise. Many professionals are involved in a child's life, and it can sometimes be difficult to gather and share information. There is still a lack of organised, systematic and fluid coordination.

In this cooperative approach, teachers play a key role, as they interact with pupils on a daily basis. Of course, they cannot do everything, but their vigilance is crucial: it enables them to alert parents and seek the services of professionals who can investigate the issue further and support the child with kindness and discretion.

As it is, we regularly find that pupils would benefit from closer teacher-parent relationships, again in a spirit of cooperation. Teachers should not hesitate to talk to parents, offering them advice and help. Without judging them. Even if that is difficult – and it is difficult to overcome this human reflex we have to judge others.

By being less judgemental, it is easier to resolve conflicts in a positive way. The resolution must be lasting, so that the pupil can continue his or her school career in peace. I like to quote the French writer and politician André Malraux, who is credited with saying: "Before judging, one must understand, and once one has understood, one no longer wants to judge."

Simple communication failures are often at the root of conflicts, whether involving information that is incomplete or insufficiently clear to parents. Cultural and linguistic misunderstandings are also common. The Ministry provides intercultural mediators to assist parents and the school community. They are a real asset to our education system. We need to raise awareness of their existence still further.

"On behalf of my husband, our children and myself, we would like to say a BIG thank you to you all for your service, the professional work you have done, and the time you have taken for us. You were the only competent service after my husband and I came to you to have the matter resolved. We felt understood and supported by you. We wanted to let you know that, despite the difficult times our sons experienced at school, our children will be entering the classical secondary school in September".

mother of Lucas and Léo, 11 years old

**"And now it's official: Missi has passed the exam.
We are immensely happy and proud of her, and thank you for believing in Missi".**

parents of Missi, 19 years old

Looking ahead to tomorrow, we already know that more cases await us. Cases that are increasingly linked to acts of violence or harassment. From December 2023, a new colleague who is an expert in this field will join us. She will be able to advise our team, parents, and the (secondary) schools affected. In 2023-2024, we will be working on a revision of our law, based on our experiences and the need to bring it into line with various international and national legislative texts. We therefore intend to make it possible for pupils who are minors to refer to and access the SMS. The international Convention on the Rights of the Child stipulates that children have the right to freedom of expression, which includes the freedom to seek and receive information of all kinds, in oral, written, printed or any other form of their choice (Article 13). In the same spirit, the new Luxembourg Constitution, which came into force on 1 July 2023, enshrines the best interests of the child (In any decision concerning the child, his or her best interests shall be taken into consideration as a primary consideration. – Article 15) and the free expression of the child's opinion.

We have always been supported by the Ministry of Education, Children and Youth in our growth, and we appreciate the fact that the 2023-2028 coalition agreement provides for our expansion. We will need ongoing reinforcement to cope not only with the increase in complaints, but also with the case file processing times. This increase is linked to more extreme emotions and the growing number of parties involved.

I would like to thank the Minister, Claude Meisch, for having had the courage to set up this service and for providing us with the necessary administrative, organisational and infrastructural support, while allowing us the independence that enables us to demonstrate impartiality and work confidently with families. I would like to thank the various ministerial, institutional and associative partners for their collaboration. I am grateful to the members of my team who, despite apprehensions, reluctance and complications, never lose heart.

I hope you enjoy reading the 2022-2023 Activity Report of the *Service de médiation scolaire*.

Lis De Pina
School Mediator

“

Dear Madam De Pina,

I would have loved to be able to communicate personally,
but given the fact that I am preparing for a job interview, it won't be possible.

Nevertheless, I want to take this opportunity to thank you once more for all the help you
provided and the faith you put in me during my situation with my studies.

I am also excited to inform you that I finished my studies. On October, I will officially
receive my bachelor's degree in [...].

Since the beginning of September, I've been applying for jobs here in Luxembourg as a
[...], while still searching for opportunities in the [...]industry and working on my own
project that I hope to be able to sell someday.

I just wanted to give you an update and let you know that I will never forget what
you've done for me and that I hope to repay that debt someday.

Yours faithfully

Filip, 21 years old

”

Foreword by the Minister

“an essential role in the educational landscape”

It has already been five years since we created the *Service de médiation scolaire*, and the effort has been well worth it. The Service now plays an essential role in the educational landscape and has become indispensable, exemplifying the fundamental principles of retention in school, inclusion and integration.

Education, as a vast and complex system, is inevitably prone to conflict, hence the importance of addressing differences with a resolution-oriented approach. The creation of an independent body dedicated to managing disputes within the school, with mediation at the heart of its work, was therefore necessary.

Mediation promotes open and constructive communication between parties in conflict and facilitates dialogue by ensuring that each party can express themselves freely and be heard. It allows parents and pupils to participate actively in resolving their differences. In schools, it often aims to preserve or restore lasting relationships, which is particularly important.

These five years of service fall to be measured not only in terms of duration, but also in terms of their impact on many lives. The *Service de médiation scolaire* has made an invaluable contribution by helping pupils, parents and education stakeholders to resolve their conflicts.

As Minister of Education, Children and Youth, I am deeply proud of the Service’s achievements in this area. Together, we have worked tirelessly to create safe learning environments where all pupils have the opportunity to flourish, express themselves and grow. This is a commitment that does not fade with time, but endures and continues to positively shape the future of our society.

I would like to express my gratitude to the entire team, led by School Mediator Lis De Pina, as well as to all those who have supported the *Service de médiation scolaire* over the past few years. Your contribution has been key to its success. I am confident that the Service will continue to flourish in this dynamic environment in the years to come, contributing to the ongoing improvement of our education system.

Claude Meisch

Minister of Education, Children and Youth



Foreword by the Deputy Director of ALAN

“concrete solutions”



For 25 years, ALAN Maladies rares Luxembourg ASBL has had a vision of building an environment that enables people living with rare diseases to reach their full potential through greater recognition, equal opportunities and an improved quality of life.

Our consultation service offers psychological support, as well as administrative and social assistance to inform, guide and assist those affected in several areas, including access to healthcare, administrative procedures, social rights, education, work, family life and social inclusion. Through our work, we meet many pupils with special needs and very specific requirements due to their medical condition. Their life journey is impacted by their illness, with numerous repercussions in several areas of their daily life. In some situations, the healthcare journey is so complex that many difficulties arise in the child's schooling. To name but a few: regular or long-term absences, lack of accessibility to certain premises, medical care during school hours, fatigue, multiple therapies to manage, multiple caregivers, etc.

One of the major challenges is the lack of coordination between the various stakeholders. Yet, given the complexity of life trajectories and the number of professionals a family may have to deal with, it is essential to structure and simplify care provision. Significant progress has been made in recent years to promote the inclusion of children with special needs, but there are still many barriers to truly offering all children and adolescents a pathway that is genuinely adapted to their special needs. The evaluation report on the inclusive education system in Luxembourg has shown this, and we can only support its recommendations.

Over the past few years, we have had the opportunity to work with the team of the *Service de médiation scolaire*, and we have learned several things from this experience. The families, and above all the children and teenagers we referred to your Service, came away with concrete solutions. They were listened to in relation to their very special situations and felt relieved to be supported in their school careers. This attentive listening and mediation work has enabled many children and young people to continue their school lives with greater peace of mind. The support received from your *Service de médiation scolaire* is essential, as they already have many challenges to deal with as a result of their condition.

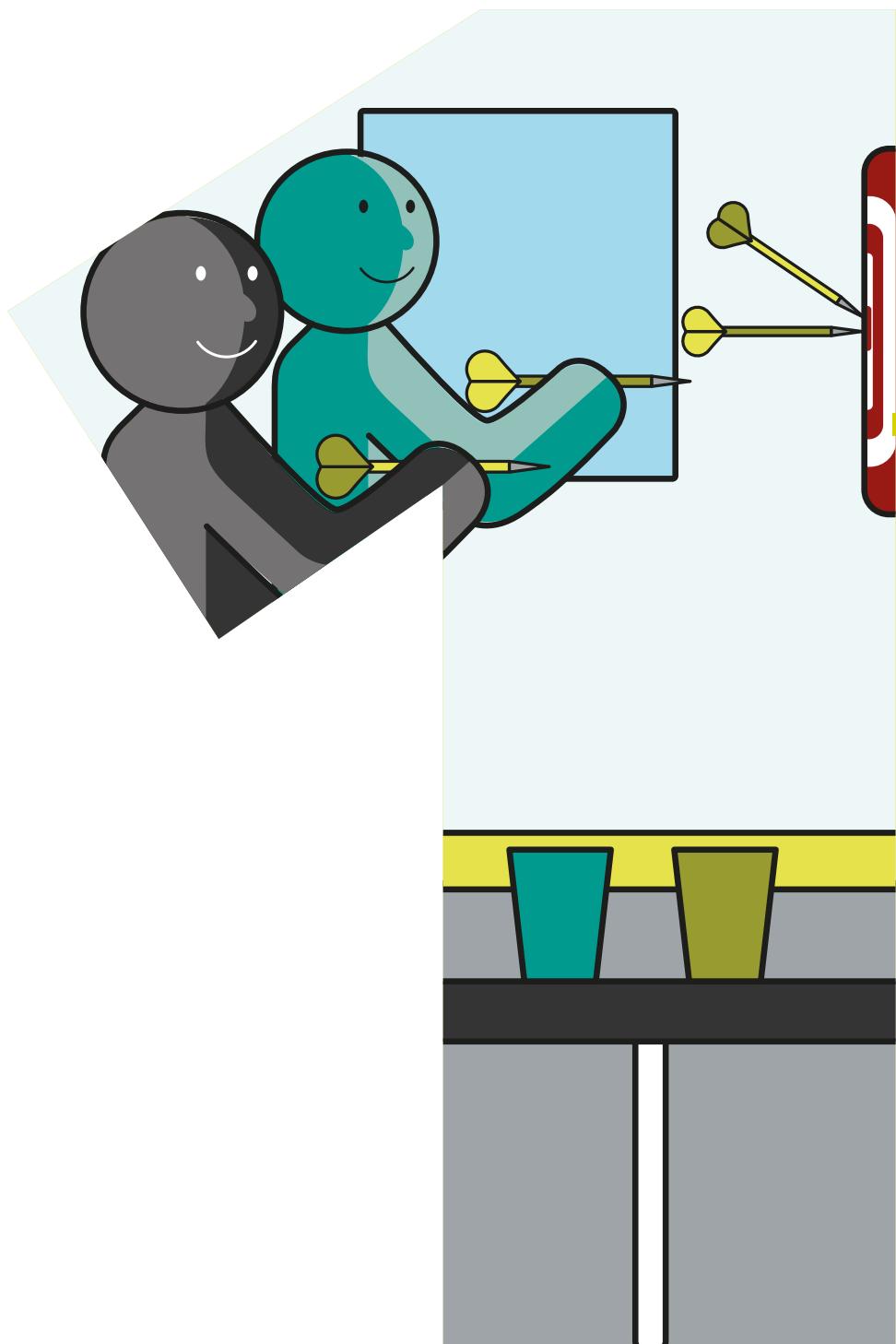
We would therefore like to warmly congratulate you and each member of your team for their dedication and professionalism. Your Service has quickly proven its usefulness and its place in the school system. We are convinced that it offers genuine added value for the children and their families, as well as for those working in the field. We would also like to thank you for the successful collaboration over the past five years.

Gwennaëlle Crohin

Deputy Director of
ALAN *Maladies rares*

OUR MISSION

serving the interests of the pupil,
using a mediation approach

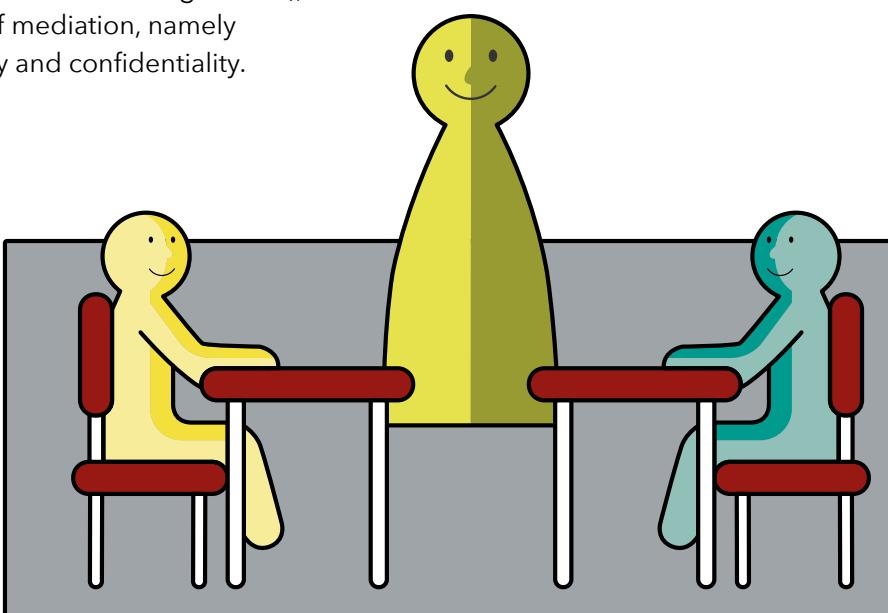


The mission of the *Service de médiation scolaire (SMS)* is to help find solutions when a pupil's chances of academic success appear to be compromised due to a conflictual situation. Created with a view to helping reduce school dropout rates, it pays particular attention to the rights of immigrant pupils to integration and the inclusion of pupils with special needs.

Attached to the Ministry of Education, Children and Youth, the SMS nevertheless operates independently.

A mediation approach

The SMS favours amicable settlements of disputes. It aims at promoting communication between the parties concerned as much as possible, providing them with the listening, information or understanding that may have been lacking. It uses mediation tools whenever possible: listening, rephrasing emotions and needs, questioning, exploring the needs and interests behind positions, seeking a solution acceptable to all parties involved, etc. It is guided in its actions by the Code of Ethics and Professional Conduct for Mediators of the *Chambre professionnelle de la médiation et de la négociation* (French Professional Chamber of Mediation and Negotiation), and by the fundamental principles of mediation, namely independence, impartiality, neutrality and confidentiality.



¹ See <http://www.edulink.lu/pgwp>

The tools of a human rights defender

That said, the law also gives the SMS a role similar to that of a school ombudsman, acting in the interests of the pupil.

The School Mediator is not a mediator in the strict sense of the term, whose sole function is to facilitate communication between the parties without intervening on the content. The interests of the pupil and compliance with the legal framework are an integral part of the SMS's concerns. To that end, the law creating the SMS provides for two powerful instruments of intervention: investigation and recommendations.

INVESTIGATION

Following a complaint, the SMS may request from the school or service concerned any information it deems necessary to deal with the matter. Professional secrecy or confidentiality cannot be invoked against it.

RECOMMENDATIONS

If the mediation process does not result in a solution, the SMS may make recommendations to the service or school concerned. This is what we call an individual recommendation, linked to a specific case. Individual recommendations are confidential and are therefore not published in the activity reports.

If the primary or secondary school or service concerned refuses to take the recommendation into account, the Service de médiation scolaire may inform the Minister of Education, Children and Youth.

If, in the course of its work, the SMS identifies gaps in legislation or inconsistencies in the functioning of the education system, it may also make general recommendations to the Minister of Education, Children and Youth.

The general recommendations or a summary thereof are included in the SMS's annual activity report.

Around 50 recommendations have been made since 2018, including 10 individual recommendations.

See pages 30 to 69 for details of the recommendations.

AN ACCESSIBLE, STRAIGHTFORWARD PROCEDURE

Parents, pupils of legal age or professionals of the national education system may contact the SMS when a specific situation at school or within a service of the education system appears to be deadlocked and jeopardising a pupil's schooling. Such referral must be preceded by an attempt to resolve the disagreement at the level of the school or service involved.

The *Service de médiation scolaire* examines each complaint as quickly as possible. If it is not competent to deal with it, it explains the reasons to the complainant and directs the latter to the service that can respond to the request. If it is competent, it offers the complainant a meeting at its offices or online (video-conference). It then contacts the primary or secondary school or service concerned. It gathers relevant information, provides clarification, offers advice and suggests solutions.

If it thinks it would be helpful, it brings the two parties together.

A considerable amount of time is often spent explaining each party's attitudes and choices, taking time that school staff often lack. The SMS may accompany parents for several months in order to gain their trust and help them reach a decision that they could not initially resolve to make.

THE CHALLENGE

Through legislation, grassroots projects and the recruitment of trained staff, the Ministry of Education, Children and Youth has for several years now been committed to implementing inclusive and integrative policies, such as combating school dropout. By receiving complaints, the SMS ensures that this commitment is effective.

The past five years of experience have shown that there is a real need for a body that allows parents and pupils to be heard, sometimes at length, in their requests, to understand what has happened in a procedure and where the matter stands. The SMS has grown as a listening forum, able to help parents and pupils in a targeted manner and, by extension, teaching staff - because every conflict that is resolved also benefits the latter.

A MULTIDISCIPLINARY TEAM



Our team has gradually grown. The three legal experts from the early days have been joined by two psychologists. Where possible, they work in tandem, bringing their complementary perspectives to bear on the situation.

In 2022-2023 specifically, the team was expanded to include a second psychologist, and we created a new position, that of internal and communications coordinator, in order to strengthen the management of the Service and relieve the mediators and Mediator's assistants of essential but time-consuming administrative tasks.

As of 1 December 2023, the Service de médiation scolaire (SMS) consists of 11 people.



Left to right: Vanessa Reis, Claire Russon, Max Buchler, Moreno Rosafio, Carla Oliveira, Lis De Pina, Almina Skrijelj, Eva Emmerling, Yves Marchi, Steven Pia, Martine Kleinberg

The mediation team

Complaints are handled by the School Mediator and her team of mediators, consisting of the Deputy School Mediator and four assistants to the School Mediator.

Lis De Pina

School Mediator

Lis De Pina has held various positions in the Luxembourg civil service since 2000. She was deputy secretary of the Council of State. A legal expert and political scientist, she specialises in children's rights. She has been an accredited mediator in civil and commercial mediation and in criminal mediation with the Ministry of Justice since 2015 and a member of the Advisory Commission on Human Rights since 2015.

Lis was appointed School Mediator in September 2018 for a renewable seven-year term.

Carla Oliveira

Deputy School Mediator

Carla Oliveira has worked as a legal expert in various public administrations since 2006. She trained in mediation at the Centre de médiation civile et commerciale in 2018.

Carla joined the SMS in October 2018 and was appointed Deputy School Mediator in August 2022.

Yves Marchi

Assistant to the School Mediator

Yves Marchi, a legal expert by training, was an advisor to the secretariat of the Council of State for 13 years. He trained in mediation at the Centre de médiation civile et commerciale in 2019 and 2020, and is currently pursuing a master's degree in mediation at the University of Luxembourg. Since 2013, he has held political office as a municipal councillor.

Yves joined the SMS in November 2019.

Max Buchler

Assistant to the School Mediator

A psychologist specialising in clinical neuropsychology, Max Buchler worked for ten years in primary education, first as part of a multi-professional team in special needs education and then as part of a support team for pupils with special needs in a directorate for primary education. He trained in mediation at the Centre de médiation civile et commerciale in 2023.

Max joined the SMS in November 2022.

Claire Russon

Assistant to the School Mediator

A qualified psychologist trained in systemic psychotherapy, Claire Russon worked as an HR consultant in the private and public sectors for six years and spent 26 years as a school psychologist in Luxembourg's secondary education system, working in a secondary school and, primarily, at the Centre psychosocial et d'accompagnement scolaires (Psychosocial Counselling and School Support Centre). In this role, she advised and supported young people and their families and contributed to the development of educational and psychosocial professions in schools. She brings her expertise in the areas of retention of pupils in school and violence in schools.

Claire joined the SMS in December 2023.

Vaneissa Reis

Assistant to the School Mediator

A psychologist by training, Vanessa Reis worked in primary education and then in residential units for pupils. She is currently taking courses to obtain the Grundlagen der Systemischen Pädagogik certificate.

She joined the SMS in December 2021.

The coordination and administration team

Martine Kleinberg

Assistant to the School Mediator, internal coordination and communication

Martine Kleinberg worked in the private sector before becoming a teacher in 2003. In 2009, she joined the Ministry of Education, Children and Youth, where she set up and managed various projects. She trained in conflict prevention and management as well as in mediation (master's degree in mediation from the University of Luxembourg). Since March 2023, she has been a certified mediator in civil and commercial mediation and in criminal mediation with the Ministry of Justice.

Martine joined the SMS in May 2023.

Almina Skrijelj

Administrative coordinator and telephone receptionist for complainants

Almina Skrijelj studied administration and business, during which time she gained her first professional experience in a secondary school. She developed her diverse skills and abilities during two years with the Luxembourg Red Cross.

Almina joined the SMS in November 2018.

Moreno Rosafio

Administrative assistant, budget manager

Moreno Rosafio worked for over 30 years in the private sector before bringing his extensive experience and management expertise to the civil service.

Moreno joined the SMS in November 2020.

Eva Emmerling

Administrative assistant, administrative manager for complaint files

Eva Emmerling has extensive experience in the private sector.

Eva joined the SMS in February 2023.

Steven Pia

Receptionist and infrastructure manager

Steven Pia worked for over 12 years in the private sector, where he developed his organisational skills. In 2018, he joined the Service technique, accueil et réception (Technical, Welcome and Reception Service) of the Ministry of Education, Children and Youth, where he took on various technical and logistical tasks.

Since November 2022, Steven has been seconded to the SMS on a full-time basis.

Training undergone by the team since 2018

Since October 2018, team members have been regularly undergoing training, either individually or collectively, in the form of conferences, supervision or continuing training, with a view to enhancing both their knowledge of their fields of expertise and their interpersonal and mediation skills.

Here is a topical overview of the training undergone between October 2018 and September 2023.

MEDIATION TOOLS AND THE STANCE ADOPTED BY THE MEDIATOR

- Non-violent communication – a tool for resolving conflicts, Association luxembourgeoise de la médiation et des médiateurs agréés
- Mediation in dealing with citizens, *Institut national d'administration publique*
- World Mediation Forum, University of Luxembourg and University of Montreal
- Children in mediation, Bee Marique
- The law and landscape of mediation in the Grand Duchy, Luxembourg Bar
- The landscape of mediation in the Grand Duchy, CMCC
- Fundamentals, techniques & processes of mediation, CMCC
- Creativity techniques, CMCC
- Negotiating by focusing on interests, CMCC
- Role and stance of the intermediary in a conflict, CMCC

- Communication techniques focused on interests, CMCC
- Structure of the mediation process, CMCC
- Law, ethics and professional conduct, CMCC
- Visualisation - mediation skills, CMCC
- Settings in mediation, CMCC
- Supervision and quality management, CMCC
- Children in mediation, *Service de médiation scolaire*

INCLUSION

- Rights to education and health in the Greater Region for children with disabilities, Wallonia-Brussels Federation
- German sign language, City of Luxembourg
- Presentation of the Child Welfare Reference Framework

INTEGRATION

- The future of unaccompanied migrant children in Luxembourg, Lëtzebuerger Flüchtlingsrot / Collectif réfugiés Luxembourg, European Migration Network Luxembourg
- Presentation of the study on racism, *Centre d'étude et de formation interculturelles et sociales*
- Conference: The place of education and culture in the fight against racism, LISER, CEFIS, Ministry of Family Affairs and Integration

MEDIATION AND SCHOOL

- Mediation and school, *Association luxembourgeoise de la médiation et des médiateurs agréés*

RIGHTS AND PROTECTION OF THE CHILD

- Hearing and discerning of children before the family court judge, Lille Catholic University
- Child protection, OKaJu
- Summer seminar – Children's Rights in Luxembourg, OKaJu
- Committee on the rights of the child, Lille University
- The initial applications of the Juvenile Criminal Justice Code
- Transgender children
- Intersexuality
- Sexual violence against children
- Children and sects
- The child's voice in court, Service droits de l'enfant (Children's Rights Service) (MENJE) and UNICEF Luxembourg
- Presentation of annual reports of OKaJu
- Attachment theory as a tool for protecting children, Luxembourg Red Cross
- Prevention of child sexual abuse in cycle 3 of primary education, *Institut de formation de l'Éducation nationale* (National Education Training Institute)

RETENTION IN SCHOOL

- Today's teenagers: new pathologies, new treatments, *Centre psychosocial et d'accompagnement scolaires* (Psychosocial Counselling and School Support Centre)
- Young people dropping out of school, Catholic University of Louvain
- Preventing bullying at school
- Supporting young people who are dropping out or struggling at school
- Webinar on online gaming
- Lessons from the pandemic: how can we reinvent ourselves for the well-being of our young people? IFEN
- The health crisis
- Attention deficit/hyperactivity disorder (ADHD)
- Mental health first aiders

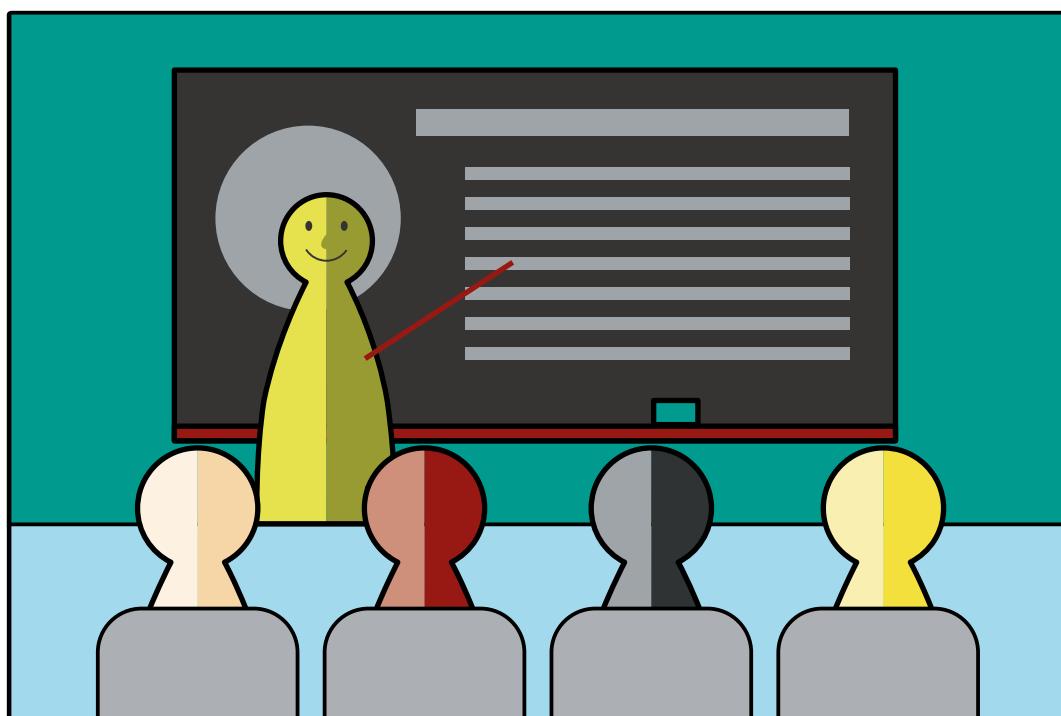
- Well-being at school: perspectives from science and practice, MENJE
- Radicalisation and mental health, IFEN
- Accreditation of prior learning and experience, Maison de l'orientation (Guidance Centre)
- From ChatGPT and Google's mega data to robots - The use of artificial intelligence in school, SCRIPT, IFEN, radio 100,7

In addition to these training courses directly related to their professional activities within the SMS, several employees have developed their knowledge and expertise in areas related to administrative management:

- High-quality physical reception, INAP
- How to promote knowledge transfer within your administration?
- Health and safety management in the civil service
- Safety officer training
- Modelling principles and techniques with Prometa (procedure formalisation tool), INAP

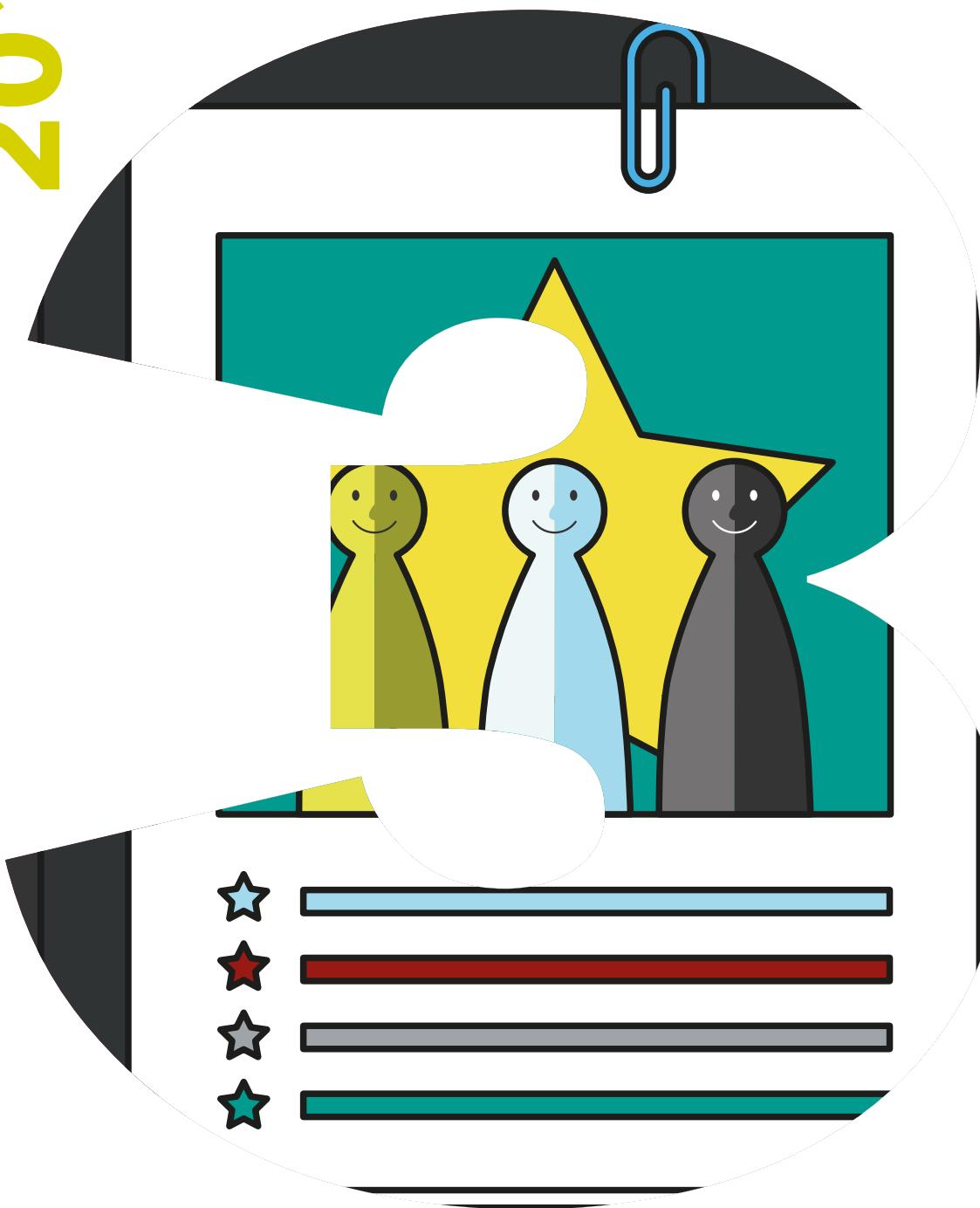
These lists do not include training undergone as part of the induction programme for new civil servants.

Since December 2021, the team has also been attending supervision sessions led by a Belgian psychologist supervisor, for half a day every four to six weeks. These sessions allow mediators to review situations they have experienced with various parties as well as internally. In 2022-2023, seven sessions were organised at the SMS premises.



OVERVIEW OF OUR RECOMMENDATIONS

2018-2023

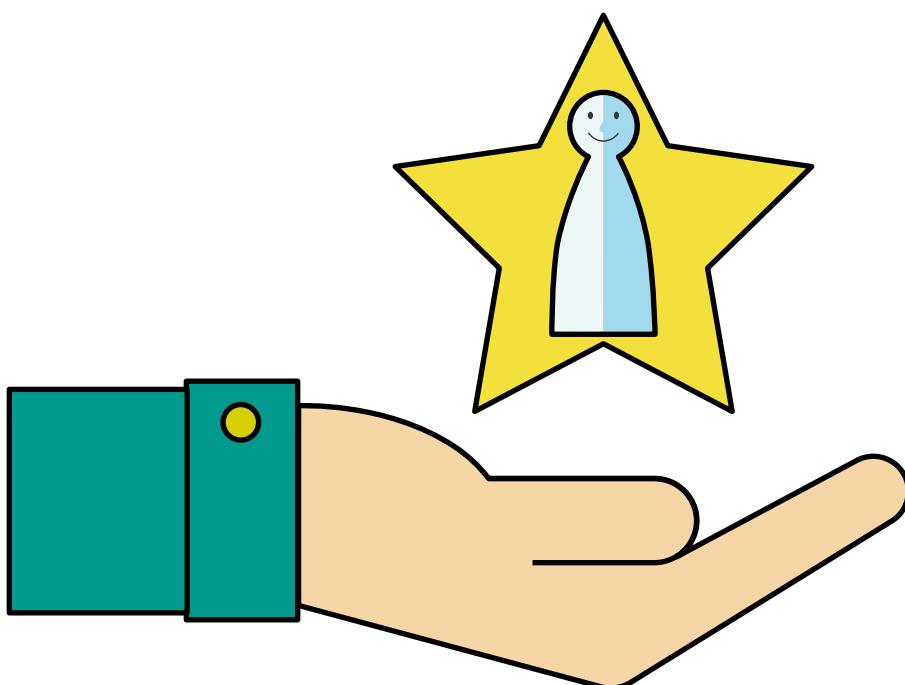


Exceptional nature of individual recommendations

As the SMS always strives to favour amicable dispute resolution, we have only had to issue individual recommendations on ten occasions since 2018, including two in 2022-2023. In some cases, these were drafted in favour of the school, with a view to supporting it in its dealings with the relevant authority.

The individual recommendations covered a wide range of topics: promotion decisions, refusal of enrolment in a secondary school, the situation of a pupil enrolled in a distance learning programme, recruitment by a school of staff to handle "inclusion" files, participation of a pupil in an extracurricular activity, etc.

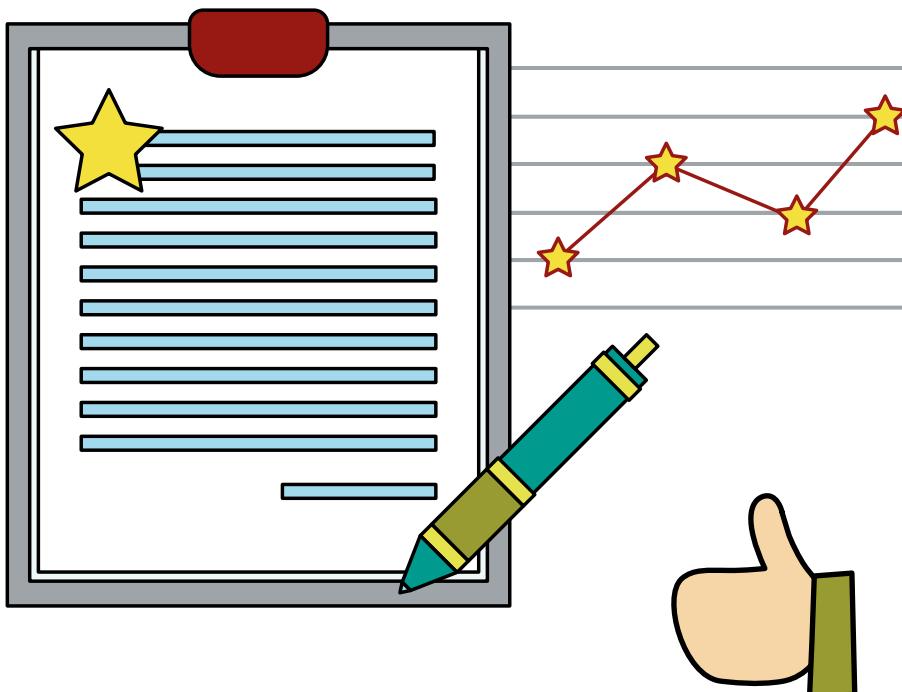
For reasons of confidentiality, these recommendations are not published.



Impact of general recommendations 2018-2023

We are taking the opportunity of this first five-year milestone in the life of the SMS to present a review of the 40 or so general recommendations that the SMS has formulated and submitted to the Minister. These are summarised and simplified in the following pages to make them easier to read and to leave room for the follow-up actions taken in relation to them. For a detailed overview of the content of the recommendations, readers can refer to the activity reports from previous years.

Recommendations relating solely to the very specific context of COVID have not been included. They can be consulted in the 2019-2020 and 2020-2021 activity reports.



RETENTION IN SCHOOL

RECOMMENDATION NO. 2 / 2018

Internal regulations of private schools



Summary of the situation

The School Mediator had identified several legal issues that cast doubt on the legality of the disciplinary measures provided for in the internal regulations of private schools. In particular, she pointed out that disciplinary measures are a matter reserved unto the law and that, therefore, they cannot be based simply on internal regulations. She also noted that some private schools had failed to submit amendments made to their internal regulations to the Ministry, as required by law. These two issues created legal uncertainty for both parents and the Minister of Education, Children and Youth in the event of a dispute.



Recommendation to the Minister

- raise awareness among private schools and relevant ministerial departments of the legal provisions concerning the validity of internal regulations, so that any changes proposed to be made to them are submitted for approval in accordance with the law
- ensure that internal regulations leave aside and disregard the question of disciplinary measures taken against pupils



Follow-up by the Ministry

The Minister requested that all private schools submit their latest internal regulations for individual discussion during interviews with a view to their possible approval.

RECOMMENDATION NO. 3 / 2018

Departure forms



Summary of the situation

The SMS raised the question of the legal value of the departure form, a document with no legal basis, arising from the purely administrative need to certify a pupil's departure. In practice, however, the departure form seems to have been diverted from its primary purpose and used as a means of pressurising a pupil into leaving his/her secondary school, outside the ambit of the legal expulsion procedure, or as a prerequisite for the admission of a pupil considered "difficult".

In addition, the SMS noted that the measure provided for in Article 15 of the *règlement grand-ducal modifié du 23 décembre 2004* (amended Grand-Ducal Regulation of 23 December 2004) concerning rules of conduct in secondary schools, is similar to a disciplinary measure of expulsion and that, as such, it should be included in a law, as disciplinary sanctions are a matter reserved unto the law.



Recommendation to the Minister

- replace the departure form with a purely administrative computerised note in the Fichier élèves (administrative school dataset)
- correct the inconsistency regarding disciplinary measures in the course of a future amendment to the relevant law



Follow-up by the Ministry

Ministerial Instruction No. 2019 / 02 of 4 February 2019, communicated to secondary schools, reiterates the purely administrative nature of the departure form and the legal procedure for expulsion.

RECOMMENDATION NO. 6 / 2019

Adjustment of school marks



Summary of the situation

The SMS questioned the legality of deducting 1 to 4 points from a test mark or a term/semester mark, on the grounds that it violates the principles of non bis in idem and equality before the law, as well as failing to comply with the conditions attaching to the penalty.



Recommendation to the Minister

- reconsider the question of downgrading marks



Follow-up by the Ministry

The Ministry announced a revised version of the relevant legal and regulatory texts as well as a new ministerial instruction containing recommendations for teachers.

RECOMMENDATION NO. 9 / 2018

The educational measure: transferring a pupil temporarily or permanently to another class within the same school



Summary of the situation

The educational measure of transferring a pupil, temporarily or permanently, to another class within the same school raises various difficulties when it involves a change of location:

- imposing a change of class to a distant school site is equivalent to forcing a change of school, if not expulsion;
- a transfer to another site may conflict with the principle of prioritising enrolment in a nearby secondary school;
- the principle of equality before the law may not be respected: pupils enrolled in a secondary school with only one site are unlikely to find themselves suddenly transferred to another building overnight;
- transferring a pupil to another class in the same school but situated at a different school site amounts in reality to a disciplinary measure, and must be treated as such.



Recommendation to the Minister

- amend Article 42 of the *loi modifiée du 25 juin 2004 portant organisation des lycées* (amended Law of 25 June 2004 on the organisation of secondary schools) to specify expressly that a pupil may not be transferred to another class in the same school but located at a different site without first consulting the parents or the adult pupil and without obtaining their explicit consent
- in the meantime, issue a ministerial instruction to that effect



Follow-up by the Ministry

Ministerial Instruction No. 2019 / 01 requires secondary schools to obtain the express consent of parents whenever a change of class ordained as an educational measure involves a change of school site.

RECOMMENDATION NO. 22 / 2019

Entry in the WebUntis e-class register



Summary of the situation

One complaint highlighted the risk that parents would only be informed of an entry in the electronic class register for inappropriate behaviour after a certain amount of time had elapsed, thus making it difficult for them to monitor their child's behaviour. Moreover, the possibility of retroactive entries is likely to undermine parents' confidence in the school, as such retroactive entries can be used to compile a disciplinary file with a view to possible expulsion.



Recommendation to the Minister

- ensure that parents who use WebUntis to monitor their child's behaviour at secondary school are informed in real time of any entries made therein
- ensure that the date when any entry is made in WebUntis is indicated
- clarify the use of WebUntis through a ministerial instruction, pending the implementation of any necessary IT adjustments



Follow-up by the Ministry

As each entry in the WebUntis class register is documented in detail, any person concerned may, in the event of suspicion regarding one or more entries, request the principal of the school to provide the protocol of the entries for the period in question. An analysis will determine whether a modification of the WebUntis system at the IT level is appropriate.

RECOMMENDATION NO. 25 / 2020

The right of appeal in disciplinary matters



Summary of the situation

The SMS is regularly called upon to intervene by parents or pupils of legal age in disciplinary proceedings, mostly due to relationship difficulties between the parties. It has found that those concerned were not always informed of their rights in disciplinary matters, particularly their right to refer the matter to the appeals committee.

The SMS also reiterated the spirit of the *loi modifiée du 25 juin 2004 portant organisation des lycées* (amended Law of 25 June 2004 on the organisation of secondary schools): the commentary on Article 43 specifies that the disciplinary measure of permanent expulsion is taken against pupils whose behaviour at secondary school proves impossible to manage – this suggests that educational measures were taken by the secondary school against the pupil concerned before the most severe disciplinary measure, expulsion, was imposed.



Recommendation to the Minister

- make secondary schools aware that, as long as the period for appealing has not expired, the pupil is still enrolled at the school and has both the obligation and the right to attend classes
- ask the secondary schools responsible for the expulsion to contact the *Direction générale de l'enseignement secondaire* (General Directorate of Secondary Education) to find out whether an appeal has been lodged
- ensure that expulsion is used as a last resort



Follow-up by the Ministry

The Minister sent a letter to the secondary school managements reminding them of, and clarifying, the disciplinary expulsion procedure: following a decision by the disciplinary council to expel a pupil, the parents and pupil are to be informed of the possibility of appeal in good time; the pupil's enrolment at the secondary school is to be maintained until the appeal period has expired; the *Direction générale de l'enseignement secondaire* is to be contacted to find out about a possible appeal.

RECOMMENDATION NO. 28 / 2020

Conditions for enrolling a pupil following expulsion



Summary of the situation

Following complaints concerning pupils subject to compulsory schooling, the SMS was prompted to question the legal basis for conditional enrolment following expulsion, namely Article 43ter of the *loi modifiée du 25 juin 2004 portant organisation des lycées* (amended Law of 25 June 2004 on the organisation of secondary schools): For an expelled pupil who is re-enrolled in the same secondary school or enrolled in another secondary school, the principal shall set the conditions for enrolment; the pupil, if he/she is of age, or the parents of the pupil, if he/she is a minor, shall agree to those conditions in writing. In the event of non-compliance with those conditions within twelve months of enrolment, the principal may expel the pupil, after consulting the class council.

This legal provision is arbitrary and violates the constitutional principle of the legality of penalties, the principle of non bis in idem and the principle of equality before the law.



Recommendation to the Minister

- review Article 43ter of the 2004 Law, in particular the fourth paragraph thereof



Follow-up by the Ministry

The Ministry will incorporate the SMS's considerations into the work being done on a possible review of the disciplinary procedure applied by secondary schools.

RECOMMENDATION NO. 30 / 2020

The selection procedure for new pupils enrolling in international public schools



Summary of the situation

The SMS is regularly contacted by parents who do not understand the criteria used to refuse their child's enrolment in one of the international public schools, when, in their opinion, their child meets the "criteria" for admission to such an establishment.

None of the laws establishing the various international public schools indicate those criteria. Although the Council of State specified at the end of 2015 that, in the absence of criteria, admissions would be made in order of registration, in accordance with the "first come, first served" principle, international public schools would individually establish their own selection criteria, such as giving priority to siblings, proximity to the pupil's place of residence, nationality, etc.



Recommendation to the Minister

- consider uniform selection criteria, which will need to be laid down in law
- pending legislative change, determine selection criteria in a ministerial instruction



Follow-up by the Ministry

The Minister informed the School Mediator that the Service des offres internationales et européennes (Service for International and European Schooling Offer) had been tasked with developing admission criteria for international public schools.

RECOMMENDATION NO. 34 / 2020

Downward adjustment of school marks (see No 6 / 2019)

**Summary of the situation**

In light of a new complaint concerning the downward adjustment of school marks in secondary schools, the SMS reiterated its previous conclusions.

**Recommendation to the Minister**

- inform secondary schools, by means of a ministerial instruction or an interpretative circular, that the downward adjustment of school marks is contrary to legal principles and, therefore, to be prohibited

**Follow-up by the Ministry**

The Minister announced that he would inform secondary schools that, pending the introduction of legislation to regulate assessment, as required by Article 23(3) of the Constitution, the practice of adjusting marks downwards should be suspended.

RECOMMENDATION NO. 35 / 2020

Departure forms (see No. 3 / 2018 and No. 17 / 2019)



Summary of the situation

Despite its previous recommendations and Ministerial Instruction No. 2019/02, the SMS found that some secondary schools were still not complying with the aforementioned instruction and were continuing to encourage certain pupils to collect their departure forms, or even attaching the departure form directly to the end-of-year statement of marks, much to the surprise of parents and pupils, who thus found themselves, de facto, without a secondary school for the coming school year. In two of the cases referred to it, the SMS observed that the initiative came from the class teacher, which raises the question as to whether the ministerial instruction was communicated to all teachers, in addition to the school management.



Recommendation to the Minister

- remind secondary school managements and National Education officials/employees that the terms of the Ministerial Instruction No. 2019 / 02 of 4 February 2019 are to be complied with, without exception



Follow-up by the Ministry

The Minister reminded secondary school managements of the terms of Ministerial Instruction No. 2019/02 (see page 34).

A new procedure has also been put in place concerning the procedures for de-registering pupils who are subject to compulsory schooling. These measures are intended to combat school dropout. In the cases outlined in the communication of 23 November 2022 to secondary school principals ("Procedure for de-registration and registration in the Fichier élève" and "CGIE FE Note on the management of de-registrations and pre-registrations"), pupils must now complete a questionnaire with the SePAS before obtaining a departure form. This will allow various parties to intervene with a view to preventing potential dropouts.

RECOMMENDATION NO. 37 / 2020

Reimbursement of school travel expenses



Summary of the situation

Through a complaint, the SMS observed a certain lack of clarity surrounding the issue of reimbursement of financial contributions to school trip costs in the event of a pupil withdrawing.



Recommendation to the Minister

- settle, possibly by means of a circular note, the issue of reimbursement of the financial contribution of a pupil who withdraws from a compulsory and paid school activity
- remind schools that parents must be informed of the possibility of taking out cancellation insurance, save where it is accepted that the school will automatically and systematically act as a substitute for such insurance



Follow-up by the Ministry

In its explanatory response, the Ministry announced that it would remind secondary school principals of the importance of making parents aware of the possibility of taking out travel cancellation or interruption insurance.

RECOMMENDATION NO. 41 / 2021

Update to the "Vade-mecum: The disciplinary measure of expulsion"

**Summary of the situation**

The document entitled "Vade-mecum: The disciplinary measure of expulsion, dated October 2018, remains incomplete in certain areas. In particular, it does not take into account the recommendations and notes of the SMS, nor the relevant ministerial instructions.

**Recommendation to the Minister**

- request the service responsible for secondary education to systematically update the vade-mecum, in particular by including in it ministerial instructions on disciplinary matters

**Follow-up by the Ministry**

The vade-mecum relating to the disciplinary measure of expulsion will be updated.

RECOMMENDATION NO. 43 / 2021

Admission to the secondary school leaving examination



Summary of the situation

Individual complaints are regularly lodged concerning a refusal to admit pupils to their secondary school leaving examinations. In this context, the SMS has raised questions concerning:

- respect for the constitutional principle of matters reserved unto the law and the conditions under which it is permissible to refer to an implementing regulation;
- the issue of sub-delegating certain powers to the administrative authority;
- certain application difficulties arising from the two règlements grand-ducaux du 31 juillet 2006 portant sur l'organisation de l'examen de fin d'études secondaires (Grand-Ducal regulations of 31 July 2006 on the organisation of secondary school leaving examinations).



Recommendation to the Minister

- provide for amendment of the legal provisions serving as the basis for the Grand-Ducal regulations of 2006
- supplement those Grand-Ducal regulations with a clear and precise procedure for organising the lists of candidates to be registered for secondary school leaving examinations
- inform secondary school principals, by means of a ministerial instruction, of the procedure to be followed pending the amendments to the normative texts



Follow-up by the Ministry

See the reply to Recommendation No. 47 / 2021 on page 48.

RECOMMENDATION NO. 45 / 2021 1

The expulsion procedure in relation to Article 4 of the Law establishing the *Service de médiation scolaire*



Summary of the situation

While a number of complaints concern the summoning of pupils to appear before their school's disciplinary council with the aim of expelling them, the SMS wished to raise awareness of several aspects of the application of the *loi modifiée du 25 juin 2004 portant organisation des lycées* (amended Law of 25 June 2004 on the organisation of secondary schools).

Article 21 of that Law provides for the presence of a member of the *Service psychosocial et d'accompagnement scolaires* (SePAS, Psychosocial Counselling and School Support Service) at the disciplinary council. However, it has been reported to the SMS that it is not uncommon for the SePAS member to know little or nothing about the pupil concerned, or even to take the side of the teachers and the school management.

In addition, the SMS often notes procedural errors in the application of disciplinary procedures (Article 43ter). In this regard, reference is made to Recommendation No. 41 / 2021. In particular, the SMS has observed in some cases the absence of the legal representative when the pupil is summoned to appear before the disciplinary council.

It has also been observed that the prerequisite for referral to the SMS of having completed the "appropriate administrative procedures established within the school community" (Article 4 of the Law of 18 June 2018 establishing the SMS) can prove problematic when time is against the pupil. It should be noted that pupils and their parents feel the decision to expel them from school to be brutal and humiliating, especially when, first, preventive and educational measures have not been put in place beforehand and, second, when they feel that they have been victims of procedural irregularities, abuse of power, etc. The resulting loss of confidence in the education system is likely to lead to mental disengagement from school, which may be a prelude to actual dropout.

Lastly, the SMS points out that the principle of weighting disciplinary sanctions, although confirmed by case-law, is not always taken into account by the relevant bodies in secondary schools.



Recommendation to the Minister

- support the SMS in the future amendment of its framework law, which would aim to waive the requirement to complete preliminary administrative procedures in urgent cases
- establish a clear and uniform procedure to guide SePAS members called upon to deliberate in a disciplinary council
- remind secondary school managements that expulsion is the last resort and should only be imposed after preventive educational measures have proven insufficient



Follow-up by the Ministry

The Ministry has adopted a position on the various points raised in the complaint. In terms of action, it has announced that the *collège des directeurs* (Panel of Principals) will be made aware of the issues raised in the recommendation.

RECOMMENDATION NO. 47 / 2021

Exclusion from secondary school final examinations



Summary of the situation

Among the complaints concerning exclusion from the final examination, some relate to exclusion due to late arrival at one of the examinations. However, the legislation (Article 6 of the *règlements grand-ducaux de 2006 sur l'organisation des examens de fin d'études secondaires* (2006 Grand-Ducal regulations on the organisation of secondary school final examinations)) stipulates that candidates [registered for the secondary school final examination] who, without a reason recognised as valid by the commissioner, withdraw or are absent, shall be referred to the summer session of the following year. The possibility of a pupil being excluded for arriving too late is therefore not provided for.

The SMS also refers to its recommendation No. 43 / 2021 (page 45) as regards the question of matters reserved unto the law and the sub-delegation of certain powers to an administrative authority.



Recommendation to the Minister

- provide for amendment of the legal provisions serving as the basis for the Grand-Ducal regulations of 2006
- inform secondary school principals, by means of a ministerial instruction, of the procedure to be followed pending the amendments to the normative texts
- take into account the points raised by Recommendation No. 43 / 2021 when amending the aforementioned legislation



Follow-up by the Ministry

There are plans to draft new legislation concerning the organisation of classical and general secondary school leaving examinations, which are currently governed by the *règlement grand-ducal modifié du 31 juillet 2006 portant organisation des examens de fin d'études classiques et générales* (amended Grand-Ducal Regulation of 31 July 2006 on the organisation of classical and general secondary school leaving examinations). Several points need to be amended in relation to the text currently in force. There are plans to replace the Grand-Ducal Regulation with a law.

RECOMMENDATION NO. 48 / 2021

Application of Article 39 of the *loi modifiée du 25 juin 2004 portant organisation des lycées* (amended Law of 25 June 2004 on the organisation of secondary schools)



Summary of the situation

Following a complaint from a pupil at the *École d'hôtellerie et de tourisme du Luxembourg* (EHTL), it emerged that the pupil had been expelled by decision of the class council and not the disciplinary council. The expulsion in question was not due to inappropriate behaviour but to poor academic results. Article 39 of the amended Law of 25 June 2004 provides for the pupil to be moved to another class in such cases. However, this is not always possible in specialised schools such as the EHTL.



Recommendation to the Minister

- allow the EHTL to derogate from Article 39 of the amended Law of 25 June 2004
- analyse whether the above-mentioned derogation should be extended to other specialised institutions so as not to disadvantage pupils enrolled on a conditional basis
- in the absence of definitive admission, instruct the Direction générale de l'enseignement secondaire to redirect the pupil and find him/her another school, beyond his/her compulsory schooling



Follow-up by the Ministry

The Ministry confirmed that a pupil admitted on a conditional basis who is unable to qualify for permanent admission due to inadequate academic results will be redirected for educational reasons rather than expelled. The various relevant services (the secondary school's *cellule d'orientation* (guidance unit), the *Direction générale de l'enseignement secondaire* for complex cases, and the *Maison de l'orientation*) will assist the pupil in this reorientation process. The Ministry does not endorse the proposal for an exemption from Article 39 of the amended Law of 25 June 2004 for the EHTL or other secondary schools.

RECOMMENDATION NO. 51 / 2022

Commitment contracts



Summary of the situation

The SMS questioned the legality of the "commitment contract" that some secondary schools require pupils whose behaviour is deemed inappropriate to sign. It questioned its purpose, which is to be able to expel a pupil outside the ambit of the disciplinary procedure provided for by law. Furthermore, forcing a pupil and his/her parents to sign a "commitment contract" increases the pressure on the pupil, which could prove counterproductive. Should not the work to be done with the pupil be based on joint and positive collaboration between all stakeholders, rather than on constraints based on fear and pressure?



Recommendation to the Minister

- decide on the appropriateness and usefulness of such commitment contracts and, as the case may be, inform secondary school principals, preferably by circular letter, that the use of commitment contracts is to be prohibited
- where such commitment contracts turn out to be appropriate and useful, then, in order to ensure equal treatment for all secondary school pupils, the procedure for implementing such a tool should be clarified in law



Follow-up by the Ministry

The Ministry will incorporate the SMS's considerations into the work being done on a possible review of the disciplinary procedure applied by secondary schools. It will organise a discussion with secondary schools to remind them that any action contrary to the law is prohibited, while assisting them in their mission to raise awareness among young people about the importance of following the rules and in implementing measures to prevent school dropout.

RECOMMENDATION NO. 52 / 2022**Disciplinary expulsion followed by re-enrolment in the same school****Summary of the situation**

Following several complaints from pupils who were expelled and then re-enrolled under certain conditions in the same secondary school, the SMS was once again prompted to question Article 43ter of the *loi modifiée du 25 juin 2004 portant organisation des lycées* (amended Law of 25 June 2004 on the organisation of secondary schools) in line with its Recommendation No. 28 / 2020 (see page 39). It referred to the Minister's response to that recommendation, in which he said he intended to include in the law the disciplinary offences attributable to a pupil which, where appropriate, justify his or her expulsion from the secondary school where he or she is enrolled following a first expulsion.

**Recommendation to the Minister**

- take the SMS's observations into account when amending the 2004 Law

**Follow-up by the Ministry**

The Minister has instructed his services to continue reviewing the entire disciplinary procedure and to further raise awareness among secondary schools regarding the interpretation and application of legal provisions, including Article 43ter.

INCLUSION IN SCHOOL

RECOMMENDATION NO. 13 / 2019

Reasonable accommodations in tests at national level and IT support



Summary of the situation

In some cases, reasonable accommodations planned by the commission d'inclusion (inclusion commission) for the tests at national level in cycle 4.2 could not be implemented by the SCRIPT for technical reasons. Yet the tests at national level play an important role in guiding pupils' educational choices. Furthermore, while the use of a computer or tablet is essential for some pupils with special needs, some municipal authorities are reportedly unable to provide this equipment.



Recommendation to the Minister

- organise tests at national level in such a way as to ensure that reasonable accommodations are invariably in place
- train teachers in the use of teaching tools related to reasonable accommodations
- consider covering the cost of IT equipment, regardless of the municipal authority or parents' financial means



Follow-up by the Ministry

Deputy primary school directors responsible for pupils with special needs have been made aware of the procedures for implementing reasonable accommodations.

It was announced that the Service de la scolarisation des élèves à besoins spécifiques (S-EBS, Service for the Education of Pupils with Special Needs) would put in place a procedure to ensure the rapid provision of the necessary IT equipment (see also Recommendation No. 40 / 2021, page 60).

The "omnibus" Law of 30 June 2023 introduced a new Article 29bis into the loi modifiée du 6 février 2009 portant organisation de l'enseignement fondamental (amended Law of 6 February 2009 on the organisation of primary education). It specifies that the inclusion commission of primary education may draw up an individualised support plan, which may consist of reasonable accommodations in the context of classroom teaching and assessment tests, as well as reasonable accommodations in relation to tasks set for pupils during and outside of lessons.

RECOMMENDATION NO. 14 / 2019

Recurring difficulties in providing support for pupils with special needs in primary education



Summary of the situation

During the course of several complaints, and following interviews with various services of the MENJE, the SMS identified the following problems in the care of pupils with special needs:

- failure to attach reports relating to a specific need to inclusion commission files;
- failure to appoint reference persons;
- the “flight” of pupils with special needs to specialised institutions abroad;
- lack of communication between certain players in the school community;
- insufficient involvement of parents;
- a breach of the principle of equality, given the varying responsiveness of primary education management/inclusion commissions.



Recommendation to the Minister

- ensure that any report relating to a specific need is systematically attached to the inclusion commission file
- address the issue of the active role of reference persons
- address the issue of extending the cycle for pupils with special or specific needs
- provide automatic information to parents on the consequences of a unilateral decision to enrol their child in a school abroad
- ensure the annual reassessment of the plan de prise en charge individuel (PPCI, individualised support plan), which must be explicitly submitted to parents for approval



Follow-up by the Ministry

AA memo detailing the procedures to be followed with regard to the management of medical, educational or psychosocial reports, informing parents and reporting to child protection services, will be sent to the inclusion commissions.

With regard to care provided by an institution abroad, dialogue between stakeholders will be strengthened with a view to greater transparency.

The "omnibus" law of 30 June 2023 amended Articles 29 and 31 of the *loi modifiée du 6 février 2009 portant organisation de l'enseignement fondamental* (amended Law of 6 February 2009 on the organisation of primary education) and introduced a new Article 29bis. Under these provisions, the commission d'inclusion has a duty to inform parents. Parents are also more involved in the implementation of measures for their child. With regard to reference persons, they no longer have to be a member of the inclusion commission. More people are now eligible to become reference persons. The role of the reference person has also been strengthened.

RECOMMENDATION NO. 18 / 2019

The reference person for primary school pupils with special needs



Summary of the situation

Several complaints led the SMS to further clarify its Recommendation No. 14 / 2019 on the reference person.



Recommendation to the Minister

- remind inclusion commissions (CIs) that appointing a reference person is a legal obligation
- ensure, as far as possible, that each directorate for primary education has at least one person whose sole role is to act as a reference person
- ask all CIs to take stock of the extensions to the cycle and highlight the number of children with special needs affected
- raise awareness among CIs of the active role that the reference person must play in supporting parents and pupils when an extension to the cycle has been decided, with or without the parents' opposition



Follow-up by the Ministry

With the amendment of Article 31 of the *loi modifiée du 6 février 2009 portant organisation de l'enseignement fondamental* (amended Law of 6 February 2009 on the organisation of primary education) (loi du 30 juin 2023, Law of 30 June 2023, known as the "omnibus" law), the reference person no longer has to be a member of the inclusion commission. This means that more people are now eligible to become reference persons.

RECOMMENDATION NO. 19 / 2019

The Avatar telepresence robot and decisions of the *Commission des aménagements raisonnables* (CAR, Reasonable Accommodations Commission)



Summary of the situation

The use of the Avatar robot for pupils forced to follow distance learning over a long period has encountered difficulties, calling inclusion into question:

- certain CAR measures, such as the use of a course-sharing platform, were not systematically applied;
- the pupil's "physical presence" in class via the Avatar was regularly forgotten;
- the Avatar pupil was excluded from break times due to concerns about data protection and image rights.



Recommendation to the Minister

- remind secondary school managements that CAR decisions must be implemented as they stand
- do not lose sight of the social inclusion aspect of distance learning for health reasons
- provide awareness training for teachers responsible for pupils learning remotely



Follow-up by the Ministry

A guide is currently being drawn up to inform beneficiaries and interested parties about the procedural, legal and technical aspects of the measure. The publication of the guide will be communicated to the school managements and the relevant commissions.

The *loi modifiée du 25 juin 2004 portant organisation des lycées* (amended Law of 25 June 2004 on the organisation of secondary schools), as amended by the "omnibus" Law of 30 June 2023, specifies that the commission d'inclusion is responsible for ensuring the implementation of reasonable accommodations.

RECOMMENDATION NO. 20 / 2019

Inclusion commission, confidentiality and parental consent



Summary of the situation

The SMS noted that in decisions of the commission d'inclusion (CI, inclusion commission), parental consent is not always sought and that communication with parents is sometimes lacking. It draws attention, in particular, to:

- transfers of documents without parental authorisation;
- interference by the CI in medical consultations;
- threats to report parents who appear unwilling to accept the choices of the CI.



Recommendation to the Minister

- ensure that the confidentiality of information collected by professionals is strictly respected
- remind members of the school community of the importance of obtaining "free and informed" consent from parents
- find out how many children with special educational needs have left the Luxembourg education system since the start of the 2017/2018 school year



Follow-up by the Ministry

The Ministry informed the SMS that the IFEN offers training courses on the processing of personal data and that ministerial guidelines on this subject were issued in December 2018. It specified that it is not possible to obtain statistics on all pupils with special needs who have left the Luxembourg school system, as parents are free to enrol their children in a school abroad without having to give a reason.

The Ministry has sent a letter to primary school directors reminding them that inclusion in school is based on the "free and informed" consent of parents and that reporting for child protection purposes must remain the exception and should under no circumstances be used as a means of putting pressure on parents.

The "omnibus" Law of 30 June 2023, by amending Articles 29 and 31 of the *loi modifiée du 6 février 2009 portant organisation de l'enseignement fondamental* (amended Law of 6 February 2009 on the organisation of primary education) and introducing a new Article 29bis, entrusted the commission d'inclusion with the task of informing the parents. Parents are now also more involved in procedures aimed at putting measures in place for their children.

RECOMMENDATION NO. 26 / 2020

Article 29 of the *loi modifiée du 6 février 2009 portant organisation de l'enseignement fondamental* (amended Law of 6 February 2009 on the organisation of primary education) (failure to update the CI form)



Summary of the situation

The form issued by certain inclusion commissions, which serves as the basis for organising the support of pupils with special educational needs, still refers to the old version of Article 29 of the *loi modifiée du 6 février 2009 portant organisation de l'enseignement fondamental* (amended Law of 6 February 2009 on the organisation of primary education). Among other things, this has the effect of depriving parents of information about two new measures available to them: specialised ambulatory intervention by a centre de compétences en psychopédagogie spécialisée (competence centre for specialised psychopedagogy) and the organisation of specific learning workshops or learning workshops that supplement the regular school offer.



Recommendation to the Minister

- revise all forms submitted to parents for approval to ensure that their consent is based on the latest version of the 2009 Law



Follow-up by the Ministry

The updated personalised learning and support project form will be submitted to the relevant partners for approval. In addition, the chairpersons of the inclusion commissions will be reminded to always refer to the latest version of the Law of 6 February 2009.

RECOMMENDATION NO. 31 / 2020

Right for class teachers to be heard by the *Commission nationale d'inclusion* (CNI, National Inclusion Commission)



Summary of the situation

In a complaint, the class teacher, considering him/herself to be the person best placed to assess the child's skills and needs, repeatedly expressed his/her wish to be heard by the CNI. However, this possibility was denied on the grounds that the hearing of class teachers is not provided for by law. However, the class teacher is directly affected by the CNI's decision: he/she is best placed to assess the child's needs and skills on a daily basis; the CNI's decision will inevitably have a direct impact on his/her relationship with the child and the child's parents.



Recommendation to the Minister

- invite the relevant directorates to consider a possible amendment to the loi du 20 juillet 2018 portant création de centres de compétences en psychopédagogie spécialisée (Law of 20 July 2018 establishing competence centres for specialised psychopedagogy) with a view to enshrining in law the right of class teachers to be heard by the CNI
- in the meantime, issue a ministerial instruction inviting the CNI to grant the said request if a class teacher expresses the wish to do so



Follow-up by the Ministry

By amending Article 46(1)(13) of the amended Law of 20 July 2018 in favour of inclusion in school, the "omnibus" Law of 30 June 2023 now provides for the possibility for a class teacher to participate in meetings of the *Commission nationale d'inclusion*.

RECOMMENDATION NO. 32 / 2020

Secondary school's inclusion commission and referral to the *Commission d'aménagements raisonnables*



Summary of the situation

Several complaints indicate that parents encounter obstacles in the process of referring cases to the *commission d'inclusion scolaire de l'enseignement secondaire* (CIS, inclusion commission of the secondary school) and the *Commission d'aménagements raisonnables* (CAR, Reasonable Accommodations Commission).

For example, the possibility of referring a case directly to the *Commission nationale d'inclusion* (CNI, National Inclusion Commission) may be left unmentioned, or the reference person may not communicate a request for reasonable accommodations to the school principal (who is responsible for forwarding it to the CAR) for arbitrary and/or subjective reasons.



Recommendation to the Minister

- in future legislative amendments, provide explicitly for the right of parents to apply directly to the CAR, without having to go through another authority
- send a ministerial instruction to all secondary school management teams, making them aware that all CAR applications must be systematically submitted to the CAR within a reasonable time-frame for allocation



Follow-up by the Ministry

Since the amendment introduced by the "omnibus" Law of 30 June 2023, it is now expressly provided that the CAR may be directly applied to by the parents or pupils of legal age (Art. 55-3(2), second paragraph, of the Law of 20 July 2018 in favour of inclusion in school, as amended).

RECOMMENDATION NO. 40 / 2021**Tablets for pupils with special or specific educational needs****Summary of the situation**

The SMS is regularly contacted by parents of pupils with special educational needs, enrolled in primary education, regarding the obstacles they encounter due to the lack of clear national procedures for the provision and use of tablets by their children. It refers to the Ministry's response to Recommendation No. 13 / 2019 (page 52), which announced the development of a procedure for providing IT equipment to pupils with special educational needs. However, the SMS has continued to receive complaints on this subject and has not been informed of any such procedure.

**Recommendation to the Minister**

- ensure that all pupils with special educational needs enrolled in primary education can benefit from a tablet if they require one
- put in place a handbook setting out a single national procedure, specifying in particular the criteria for entitlement to such a tablet and its use in the pupil's daily life
- provide, as far as possible, the necessary budget so that the pupils covered by this recommendation are no longer dependent on third parties, in particular municipalities or directorates for primary education, for the provision of tablets

**Follow-up by the Ministry**

The Minister informed the School Mediator that the *Centre de gestion informatique de l'éducation* (CGIE, IT Management Centre for Education) is responsible for providing tablets for children with special educational needs and that directorates for primary education and competence centres are responsible for managing them. He also announced that a new procedure for providing technological tools to pupils with special educational needs was being developed in conjunction with the CGIE.

RECOMMENDATION NO. 55 / 2022

Access of members of the équipes de soutien des élèves à besoins éducatifs spécifiques (ESEB, support teams for pupils with special educational needs) and inclusion commissions (CI) to the Scolaria application



Summary of the situation

In order to ensure the effective implementation of measures for pupils with special needs in primary education, it is desirable for ESEB and CI members to have general access to the Scolaria education management application. Currently, only the class teacher can grant access to the pupil's file to the relevant member (the reference person), which is not always done within the ideal time-frame. This change would facilitate administrative work and reduce the number of conflicts caused by delays that are detrimental to the pupils concerned.



Recommendation to the Minister

- analyse the possibility of granting ESEB/CI members appointed as reference persons permanent access to pupils' files in the Scolaria application



Follow-up by the Ministry

The Minister considers that it would not be appropriate to grant ESEB/CI members appointed as reference persons permanent access to pupils' files, on account of the need to protect personal data. He suggests that, in the event that the class teacher fails to enter special registrations, the ESEB members concerned should contact the relevant directorate for primary education.

INTEGRATION IN SCHOOL

RECOMMENDATION NO. 7 / 2018

Taking the Luxembourgish language into consideration in the decision to promote pupils from cycle 1 to cycle 2



Summary of the situation

As a result of a regulatory inconsistency, Luxembourgish is excluded from the promotion decision in cycles 2, 3 and 4, but not in cycle 1. This led to the extension of cycle 1 in the complaint that gave rise to the recommendation.

Cycle 1 pupils should not have to undergo an extension if they are unable to express themselves sufficiently in Luxembourgish, when pupils in subsequent cycles in the same situation do not have to undergo such an extension.



Recommendation to the Minister

- amend Article 10 of the Grand-Ducal Regulation of 6 July 2009, as amended, in order to exclude expressly, as in subsequent cycles, consideration of Luxembourgish language skills in the decision to promote pupils from cycle 1 to cycle 2



Follow-up by the Ministry

Amendment of the legislative and regulatory texts is being considered as part of the overhaul of the primary education curriculum.

RECOMMENDATION NO. 17 / 2019

Newly arrived pupils, departure forms, reception classes

**Summary of the situation**

Once again (see Recommendation No. 3 / 2018), it appeared to the SMS that the departure form was being used to push pupils into leaving a school in disregard of the disciplinary procedure. The case concerned a newly arrived pupil who was struggling to find a school. In this case, the SMS was informed that there were insufficient spots available in reception classes for young adults.

**Recommendation to the Minister**

- supplement Ministerial Instruction No. 2019 / 02 by specifying that the departure form is only considered valid once the reason for departure has been mentioned on it
- raise awareness among the Service de la scolarisation des enfants étrangers (Department for the Schooling of Foreign Children) of the principle of equality before the law
- establish an alert mechanism for the creation of additional classes for "newly arriving pupils", whether they are of compulsory school age or not

**Follow-up by the Ministry**

See Recommendation No. 35 / 2020 (page 42)

RECOMMENDATION NO. 39 / 2020

Schooling for pupils in an irregular situation



Summary of the situation

Frequent complaints have been received regarding difficulties encountered by pupils in an irregular situation in Luxembourg, whether in relation to their names being removed from the list of pupils or obstacles to entering into an apprenticeship contract. Yet the Ministerial Letter of 6 January 2014 already reminded the authorities concerned that all children of compulsory school age living in the Grand Duchy must be enrolled in school, regardless of their nationality or status (...), whether their application for international protection has been rejected or is still being processed.

However, that letter is restrictive, as it only refers to applicants for international protection who have been rejected and for whom the appeal process has not yet been exhausted, excluding a number of other situations (children of migrants in regular or irregular situations, etc.).

Furthermore, in the context of vocational training, the SMS noted the opposition of the MAEE and the ADEM to the conclusion of apprenticeship contracts between pupils and their future employer by reason of their status.

Lastly, the SMS considers that the right to education should not be limited to the age of compulsory schooling, but should be guaranteed at least until the age of 18, as recommended by the International Convention on the Rights of the Child.



Recommendation to the Minister

- adapt the letter of 6 January 2014 to ensure that all children present on the national territory have the right to education, regardless of their status
- provide, as far as possible, for the establishment of an exceptional pathway enabling these pupils to enter the labour market as part of their vocational training
- guarantee young people the right to education until at least the age of 18



Follow-up by the Ministry

In the short term, a letter was sent to primary school directors reminding them of the legal and regulatory provisions in force and the content of the Ministerial Letter of 6 January 2014.

The new loi du 20 juillet 2023 relative à l'obligation scolaire (Law of 20 July 2023 on compulsory schooling) stipulates that all minors who have

reached the age of four before 1 September and who are habitually resident in the Grand Duchy of Luxembourg are subject to compulsory schooling and extends compulsory schooling to the age of 18 (Article 4). The definition of "habitual residence", a concept proposed by the Council of State, follows the Court of Justice of the European Union in incorporating the concept of presence on the territory as well as the intention to settle there.

In addition, reference continues to be made to the Ministerial Letter of 6 January 2014 concerning the enrolment in school of children and young people who have recently moved to the country and are subject to compulsory schooling.

RECOMMENDATION NO. 42 / 2021

Provision of intercultural mediators



Summary of the situation

Numerous complaints arise from the language/culture barriers existing between the complaining families and the school community. The SMS notes that, despite the fact that the Grand-Ducal Regulation of 10 May 2012 clarifying the role of the intercultural mediator has been in existence for almost ten years, not all professionals in the field seem to be aware of this service, and even if they are, they sometimes cannot be bothered to take advantage of it, notwithstanding that intercultural mediators can play a key positive role in avoiding misunderstandings and building trust.



Recommendation to the Minister

- remind directorates for primary education and secondary school managements and all other services of the MENJE of the aforementioned Grand-Ducal Regulation of 10 May 2012, so that greater use is made of intercultural mediators
- in all correspondence sent to parents, include information letting them know that they may, if they wish, have recourse to the services of an intercultural mediator, together with contact details of the relevant service



Follow-up by the Ministry

The Minister sent a letter to directorates for primary education reminding them of the regulations governing the provision of intercultural mediators. The importance of using intercultural mediators will also

be reiterated, as will the importance of informing parents about this service in various communications. The procedures for using intercultural mediators are also reiterated each year in the spring circular sent to the municipal authorities.

Continuing training on collaboration practices between school staff and intercultural mediators was organised and attended by numerous primary and secondary education professionals in February 2023.

RECOMMENDATION NO. 49 / 2021

Ichool enrolment for children and young people who have recently moved to the country and are subject to compulsory schooling



Summary of the situation

The SMS regularly receives complaints about municipalities or secondary schools refusing to enrol pupils who have recently arrived in the country because they are unable to provide a residence certificate. However, the Interministerial Circular of 6 January 2014 states that a child cannot be refused on the grounds of being unable to produce a residence certificate and the Convention on the Rights of the Child recognises the right of the child to education.



Recommendation to the Minister

- raise awareness among the various services of every child's right to education and the existence of the aforementioned circular



Follow-up by the Ministry

A ministerial letter was sent to municipal authorities, directorates for primary education and secondary school principals, reminding them of the legislative and regulatory provisions in force.

In addition, Article 4(1) of the new Law of 20 July 2023 on compulsory schooling provides that: All minors who have reached the age of four before 1 September and who are habitually resident in the Grand Duchy of Luxembourg are subject to compulsory schooling.

OTHER RECOMMENDATIONS

RECOMMENDATION NO. 23 / 2020

Processing and follow-up of general recommendations issued by the SMS



Summary of the situation

The experience gained in dealing with and following up on the SMS's general recommendations has prompted it to make several suggestions.



Recommendation to the Minister

- raise awareness among the various services of the need to acknowledge receipt of general recommendations, indicating the service and the name of the official responsible for following up on them
- ensure that the SMS is informed, wherever possible within a reasonable time-frame, of the action taken or planned in response to its general recommendations, and that related documents, such as ministerial instructions, are systematically forwarded to it
- bring in the School Mediator when a case is brought to the attention of the Minister, so that all parameters are taken into account when drafting a possible ministerial instruction or other standard
- remind his services that any intervention on their part with schools or other National Education services must not compromise professional secrecy and confidentiality
- ensure that in future no intervention with schools or other National Education services takes place in the name and on behalf of the School Mediator



Follow-up by the Ministry

The procedures for following up on recommendations have been reviewed. With regard to professional secrecy, all staff members are required to respect it; and to ensure that they do so, Recommendation No. 23 / 2020 has been sent to all heads of general directorates within the Ministry.

RECOMMENDATION NO. 24 / 2020

Indicating, in administrative decisions, avenues for lodging an appeal



Summary of the situation

The SMS found that decisions refusing to recognise a pupil's school status were procedurally flawed, in that they did not indicate the available remedies for lodging an appeal.

Yet Article 14 of the *règlement grand-ducal du 8 juin 1979 relatif à la procédure à suivre par les administrations relevant de l'État et des communes* (Grand-Ducal Regulation of 8 June 1979 on the procedure to be followed by State and municipal administrations) stipulates that administrative decisions refusing to grant, in whole or in part, the requests of the parties or revoking or modifying ex officio a decision that created or recognised rights must indicate the means of appeal available against them, the time-limit within which the appeal must be lodged, the authority to which it must be addressed and the manner in which it must be presented.



Recommendation to the Minister

- remind his various services that may take an administrative decision that might go against the addressee of their legal obligation to inform citizens of their rights of appeal



Follow-up by the Ministry

The obligation to indicate possible legal remedies, judicial and non-judicial, has been reiterated to the Ministry's services and bodies. A standard wording has been adopted.

RECOMMENDATION NO. 29 / 2020

Referral to the School Mediator by parents who are also National Education officials/employees



Summary of the situation

Some parents are reluctant to formally refer matters to the School Mediator because of their status as National Education officials/employees. However, all parents, regardless of their employer, have the right to feel free to refer matters to the School Mediator without fear of repercussions on their professional situation. It also appears that there have been cases where National Education officials/employees have failed to inform parents of their right to refer matters to the SMS. Such attitudes are likely to undermine the principle of equal access to public services.



Recommendation to the Minister

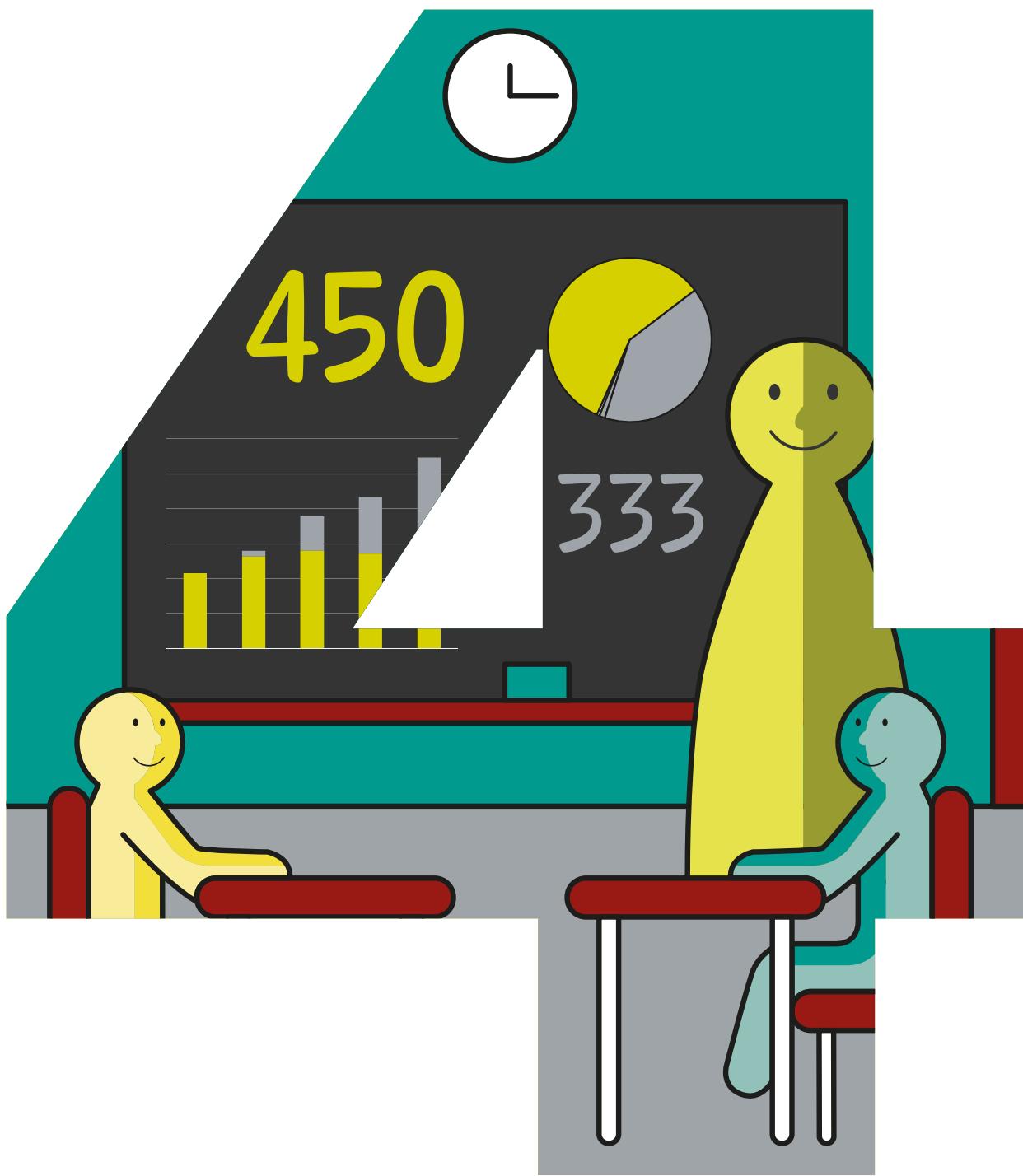
- raise awareness among directorates for primary education and secondary school managements of the principle of equal access to public services, in particular the right to refer matters to the School Mediator, regardless of whether they are parents or National Education officials/employees



Follow-up by the Ministry

The Minister has instructed his services to raise awareness of the issues raised by the School Mediator among regional directorates and secondary school managements at upcoming school meetings.

COMPLAINTS IN FIGURES

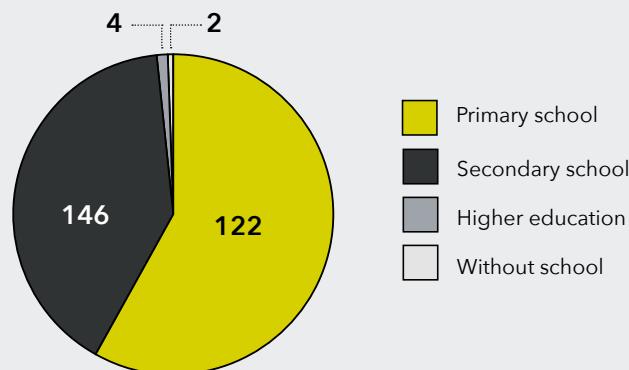


The SMS recorded a total of 274 individual complaints for the period from 15 September 2022 to 14 September 2023. These figures represent a 26% increase compared to individual complaints in the previous year.

The 274 individual complaints break down into 151 official complaints and 123 unofficial complaints. Complaints are termed unofficial when the complainants declined to formally refer the matter to the School Mediator, and thereby to formally authorise him/her to obtain information from the public education authorities. In the majority of these unofficial referrals, exchanges between the SMS and the complainants nevertheless helped to ease the initial tensions that led to the contact and thus resolve the conflict without the direct involvement of the SMS. In rarer cases, it was the complainants' fear of possible negative consequences that prevented them from formally referring the matter to the SMS. That fear was often unfounded, based on hearsay or personal school experiences.

Of the 274 complaints received by the SMS during the 2022-2023 school year, 208 had been closed at the time of writing this report, while 66 were still being processed.

122 complaints concerned **primary school pupils** (including three from early childhood education), **146** concerned **secondary school pupils** and **4** concerned **young people in higher education** (BTS, etc.). **2** were **without a school**.



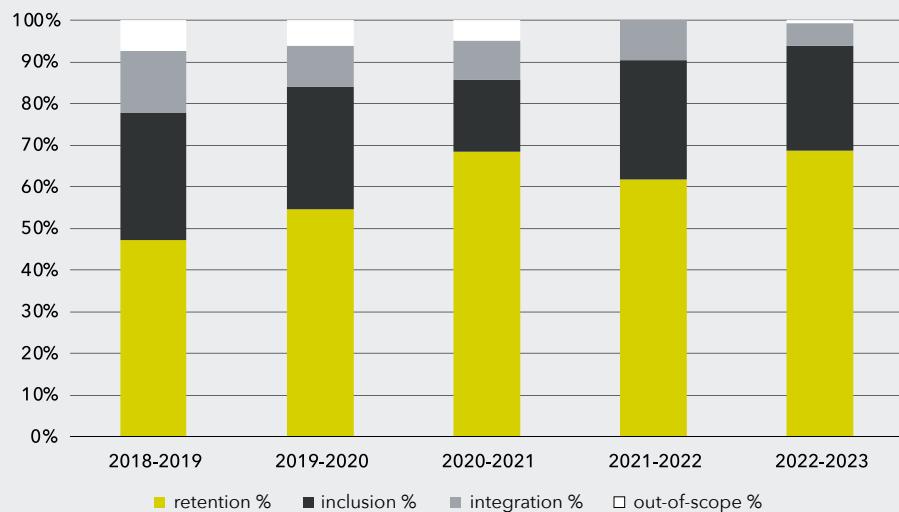
Of the **274 complaints**, **211** concerned **public schools**, **12** concerned **private schools** and the other 51 did not specify the school. There is a slight over-representation of the public sector: overall, 85.7% of pupils attend schools in the public sector, and **94.6%** of complaints (specifying a particular school) come from pupils attending schools in the **public sector**.

The 274 complaints are broken down by area of competence as follows:

- **188** complaints relating to **retention in school**;
- **69** relating to **inclusion in school** of children with special educational needs;
- **15** relating to **integration in school**;
- **2** were **out-of-scope**.

It should be noted that many complaints overlap several areas of competence; they are classified in the area that appears to be most affected. The statistics system is currently being revised; in future, it will allow the same complaint to appear in several areas.

Complaints by competence area %



If the SMS receives complaints that do not fall within its remit, it forwards them "for assignment" to the relevant ministerial departments, as provided for in Article 1 of the *règlement grand-ducal du 8 juin 1979 relatif à la procédure à suivre par les administrations relevant de l'État et des communes* (Grand-Ducal Regulation of 8 June 1979 on the procedure to be followed by State and municipal administrations).

The number of mediation sessions and the time taken to process a complaint vary. They depend on the complexity of each individual case and the emotional charge that accompanies it.

Thus, the processing of a complaint may involve several individual mediation sessions (with one of the parties) and/or collective sessions (with all parties) in order, first of all, to re-establish dialogue and thereafter to seek an amicable agreement.

Between 15 September 2022 and 14 September 2023, the SMS conducted more than **450 mediation sessions** (333 in 2021-2022).

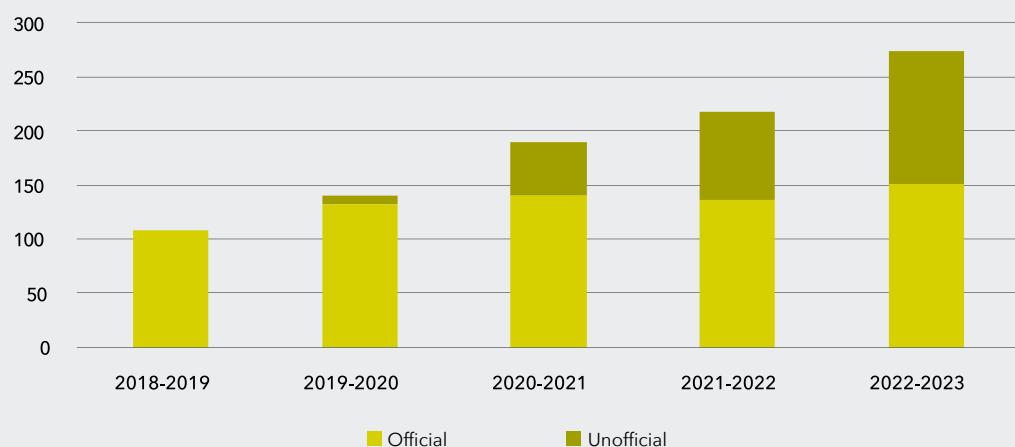
Of the 274 complaints, **53** concerned young adolescents who were no longer subject to compulsory schooling, i.e. who were **over 16 years of age**.

From its creation **in September 2018 until 14 September 2023**, the SMS received 929 complaints, of which **667** were **official** and **262** **unofficial** complaints.

450
MEDIATION
SESSIONS
IN 2022-2023

333
MEDIATION
SESSIONS
IN 2021-2022

Official and unofficial complaints since 2018



² Article 1: any administrative authority to which a request for a decision is submitted shall examine ex officio whether it is competent to deal with that request. Where it considers that it is not competent so to do, it shall forward the request without delay to the competent authority and notify the applicant accordingly.

OUR PROMOTIONAL AND NETWORKING ACTIVITIES





The Service de médiation scolaire continues to develop its promotional activities: it participates in fairs and conferences with various communication and awareness-raising materials; it takes part in, or organises, regular exchanges with members of the school community and individuals, groups and institutions involved in promoting the well-being of pupils; and it offers training courses for professionals.

INSTITUTIONAL EXCHANGES

Meetings with the Minister's office have continued to take place regularly, every four to six weeks. They serve to resolve certain situations and to convey anonymised observations on the functioning of the education system outside of formal recommendations.

In December 2022, the SMS joined the network of communication advisors coordinated by the MENJE's *Service presse et communication* (Press and Communication Service), which meets every six to eight weeks. This framework enables the SMS to collect and exchange information that is useful in various ways.

SMS staff held numerous meetings with UNICEF, other public bodies responsible for rights (OKaJu, CCDH, Ombudsman), and associations active in areas of interest to the SMS (Arcus, ALAN, Fondation Autisme Luxembourg, Maison de l'adoption, etc.). They also consulted with several services and administrations under the umbrella of the MENJE (*Service des droits de l'enfant*, SECAM/*Service de l'intégration et de l'accueil*, directorate for primary education, CePAS, specialised teachers for pupils with special educational needs, *Service des élèves à besoins spécifiques / Service national de l'éducation inclusive*, *Commission des aménagements raisonnables*, Eltereforum, *Agence pour la transition vers une vie autonome*, *Service presse et communication*, *Observatoire de l'enfance, de la jeunesse et de la qualité scolaire*, *Commission nationale d'inclusion*, etc.) and of other ministries (*Direction de la santé*, *Service information et presse* of the Ministry of State).

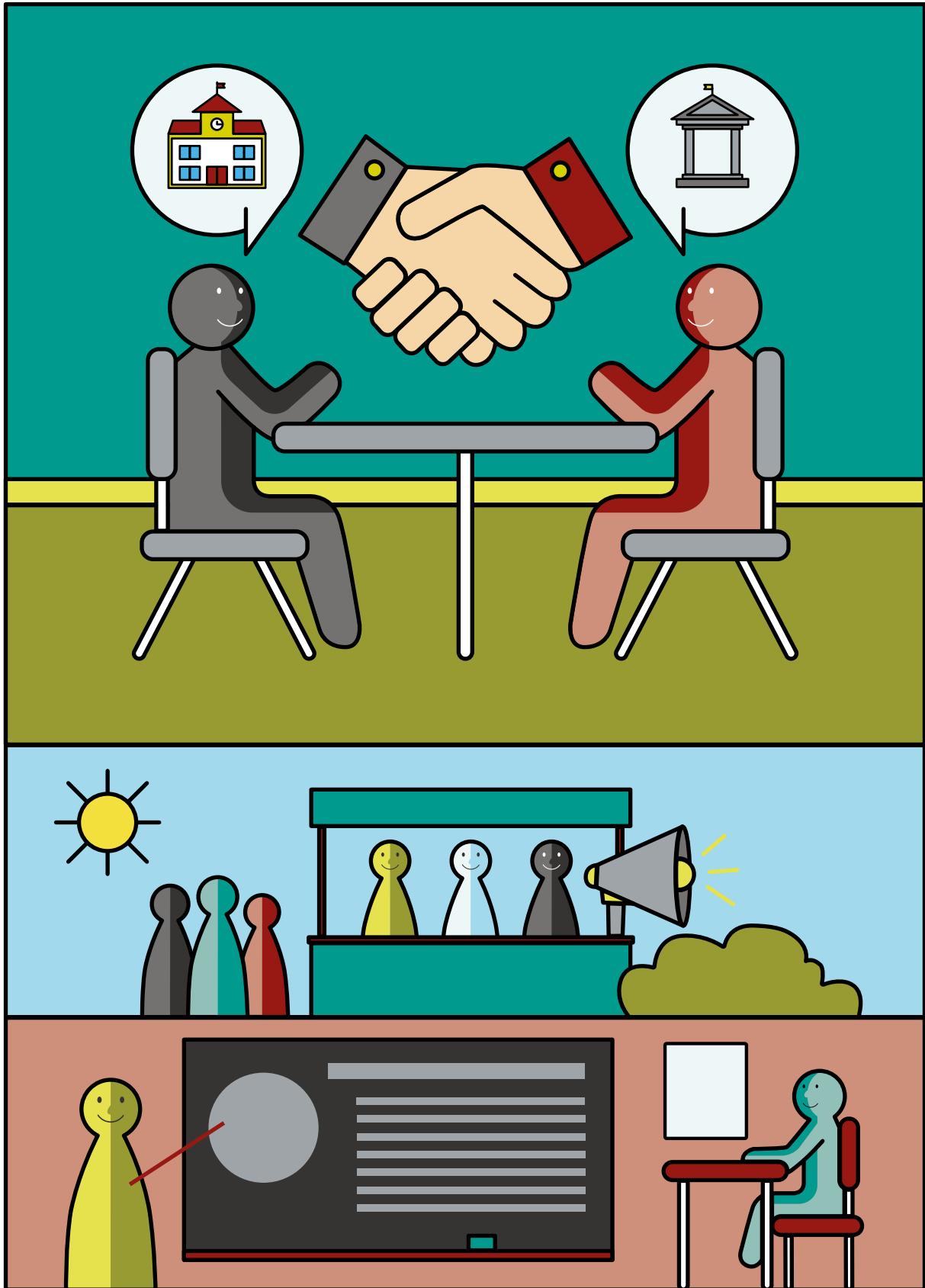
The SMS regularly participates in research projects led by the *Observatoire de l'enfance, de la jeunesse et de la qualité scolaire*, UNICEF, LISER, CEFIS, etc.

PARTICIPATION IN EVENTS

The SMS was present with a stand and activities for children at the Kannerrechtsfest – Children's Rights Discovery Day at the Parc merveilleux in Bettembourg, organised in September 2022 and May 2023 by the *Service des droits de l'enfant* (SDE, Children's Rights Service) of the MENJE.

TRAINING GIVEN BY THE SMS

The SMS gave two training courses on its work as part of the *Cours complémentaire de droit luxembourgeois* (supplementary course on Luxembourg law) in October 2022 and during the Kannerrechtswoch (Children's Rights Week) at the *Lycée technique pour professions éducatives et sociales* in June 2023.



OUR WORKSPACE AND RECEPTION AREA





In addition to being a workplace, the SMS is a space that welcomes families, pupils and various stakeholders involved in school mediation. It is therefore essential that it be easily accessible to the public and that its layout guarantees the confidentiality that is essential for trust and the handling of complaints.

Our infrastructure reflects the place that the SMS has come to occupy over the five years of its existence: initially housed in the Ministry of Education, Children and Youth's "Think Tank" annexe at 29, rue Aldringen, the SMS then occupied a floor at 138, boulevard de la Pétrusse; but those premises quickly became cramped as the number of staff grew. The SMS found temporary accommodation in more spacious offices at 10, rue Bender (near the train station) from November 2022, on the ground floor, with an extension to the first floor in December 2023.

The SMS currently has one large and one small meeting room, eight individual offices, an open-plan office that can accommodate up to four people, a reception area and a waiting room with a children's area.

Within two to three years, we will have a complete building in the Grund, which will be able to accommodate around 20 employees. This will bring us physically closer to the Ministry of Education, Children and Youth in Clausen, while **remaining separate** from it in order to preserve our independence and the trust of pupils and parents.

Annexes

SHORT GLOSSARY

APPROPRIATE ADMINISTRATIVE PROCEDURES

Remedies that the complainant must have pursued within the school community before referring the matter to the School Mediator (having addressed his/her complaint to the teacher, the directorate for primary education or management of the secondary school concerned, etc.)

COMPLAINANT

Parent of a minor pupil acting with parental authority, pupil of legal age or National Education official/employee who submits a complaint to the SMS

COMPLAINT

Referral to the SMS by a complainant who believes that, in a given situation, the school has either not provided adequate training, has not operated in accordance with its mission or is contravening the laws, regulations and instructions in force

GENERAL RECOMMENDATION

Written recommendation addressed directly by the School Mediator to the Minister of Education, Children and Youth. It concerns a general issue that has come to the attention of the School Mediator in the course of handling one or more complaints.

INCLUSION IN SCHOOL

Measures to enable every child, regardless of his/her special educational needs, to continue his/her schooling in a regular school

INDIVIDUAL MEDIATION

Stage in the mediation process at which the SMS meets with one of the parties to hear their position and arguments

INDIVIDUAL RECOMMENDATION

Written recommendation drawn up by the School Mediator following a complaint referred to the SMS concerning a specific pupil. It is sent directly to the relevant service of the Ministry of Education, Children and Youth or to the school concerned. In it, the School Mediator proposes a solution to be implemented within a specific time-frame. For reasons of confidentiality, individual recommendations are not published.

INTEGRATION IN SCHOOL

Measures to ensure that children from immigrant backgrounds have the best possible chances of academic success

INVESTIGATION

All steps taken by the SMS to gather relevant documents or other items, the purpose of which is to enable the School Mediator to deal with the complaint in a completely objective manner

MEDIATION

An ethical communication process based on the responsibility and autonomy of the participants, in which an impartial, independent third party (...) uses confidential discussions to promote the establishment or restoration of social ties and the prevention or resolution of the situation in question³

OFFICIAL COMPLAINT

When the complainant referred the matter to the School Mediator by signing online or on site the complaint form, which authorises the School Mediator to receive all the information necessary to open an investigation

RETENTION IN SCHOOL

Measures to keep pupils at risk of dropping out of school in education, i.e. those who are at risk of leaving the education system without qualifications; measures aimed at taking preventive action

UNOFFICIAL COMPLAINT

When the complainant contacted the SMS but did not wish to submit a formal complaint by signing the complaint form

³ « La médiation », Que sais-je ? ; PUF; 4e édition 2007

FREQUENTLY USED ABBREVIATIONS

ADEM	<i>Agence pour le développement de l'emploi</i> (National Employment Agency)
CAR	<i>Commission des aménagements raisonnables</i> (Reasonable Accommodations Commission) (MENJE)
CCDH	<i>Commission consultative des droits de l'homme</i> (Consultative Human Rights Commission)
CEFIS	<i>Centre d'étude et de formation interculturelles et sociales asbl</i>
CEPAS	<i>Centre psychosocial et d'accompagnement scolaires</i> (Psychosocial Counselling and School Support Centre)(MENJE)
CGIE	<i>Centre de gestion informatique de l'éducation</i> (IT Management Centre for Education) (MENJE)
CI	<i>Commission d'inclusion</i> (inclusion commission) (MENJE)
CMCC	<i>Centre de médiation civile et commerciale asbl</i> (Civil and Commercial Mediation Centre)
EBS	<i>Élèves à besoins éducatifs spécifiques</i> (pupils with special educational needs)
IFEN	<i>Institut de formation de l'Éducation nationale</i> (National Education Training Institute) (MENJE)
INAP	<i>Institut national d'administration publique</i> (National Institute for Public Administration)
LISER	Luxembourg Institute of Socio-Economic Research
MAEE	<i>Ministère des Affaires étrangères et européennes</i> (Ministry of Foreign and European Affairs)
MENJE	<i>Ministère de l'Éducation nationale, de l'Enfance et de la Jeunesse</i> (Ministry of Education, Children and Youth)
OEJQS	<i>Observatoire de l'enfance, de la jeunesse et de la qualité scolaire</i> (Observatory for Children, Youth and School Quality) (MENJE)
OKAJU	Ombudsman fir Kanner a Jugendlecher
SCRIPT	<i>Service de coordination de la recherche et de l'innovation pédagogiques et technologiques</i> (Coordinating Service for Educational and Technological Research and Innovation) (MENJE)
SEPAS	<i>Service psychosocial et d'accompagnement scolaires</i> (Psychosocial Counselling and School Support Service) (MENJE)
SMS	<i>Service de médiation scolaire</i> (School Mediation Service) (MENJE)

OUR FRAMEWORK LAW

Loi du 18 juin 2018 portant institution d'un service au maintien, à l'inclusion et à l'intégration scolaires de l'Éducation nationale. (Law of 18 June 2018 establishing a service for the retention, inclusion and integration in school within the National Education system)

ART. 1^{ER}.

Au sens de la présente loi, on entend par :

1^o « école » : une école fondamentale publique ou privée, un lycée public ou privé, le Centre de logopédie, les centres et instituts de l'éducation différenciée et le centre socio-éducatif de l'Etat ;

2^o « service » : un service d'une administration chargé de la scolarisation d'enfants ou de l'organisation des écoles ;

3^o « directeur » : le directeur de région, le directeur de lycée, le directeur ou chargé de direction du Centre de logopédie, des centres et instituts de l'éducation différenciée et du centre socio-éducatif de l'Etat ;

4^o « maintien scolaire » : les actions et mesures visant :

a) à prévenir que des adolescents ou jeunes adultes de moins de 25 ans qui ne sont plus en obligation scolaire quittent l'école sans qualification, c'est-à-dire, sans avoir obtenu un diplôme de fin d'études secondaires, ni un diplôme de technicien, ni un diplôme d'aptitude professionnelle, ni un certificat de capacité professionnelle, ni une qualification équivalente à l'un de ces diplômes ou certificats ; ou

b) à réintégrer ces derniers au lycée ou à une autre formation ;

5^o « inclusion » : la scolarisation dans les écoles fondamentales et les lycées des élèves à besoins éducatifs spécifiques ou particuliers ;

6^o « intégration sociale » : l'intégration d'élèves d'une école fondamentale ou d'un lycée qui n'ont pas passé toute leur scolarité au Luxembourg et qui pâtissent de ce fait de

déficits langagiers en allemand, en français ou en luxembourgeois qui entravent leur scolarisation ;

7^o « parents d'élève » : personnes investies de l'autorité parentale.

ART. 2.

(1) Il est institué auprès du ministre ayant l'Éducation nationale dans ses attributions, désigné ci-après par « le ministre », un service de médiation au maintien, à l'inclusion et à l'intégration scolaires de l'Éducation nationale, désigné ci-après par « le service de médiation ».

(2) Le service de médiation est dirigé par un médiateur au maintien, à l'inclusion et à l'intégration scolaires, désigné ci-après par « le médiateur scolaire ».

Le médiateur scolaire est nommé par le Grand-Duc, sur proposition du Gouvernement en conseil.

(3) Le cadre du service de médiation comprend un médiateur scolaire et des fonctionnaires des différentes catégories de traitement telles que prévues par la loi modifiée du 25 mars 2015 fixant le régime des traitements et les conditions et modalités d'avancement des fonctionnaires de l'Etat.

Le cadre peut être complété par des fonctionnaires stagiaires, des employés et salariés de l'Etat suivant les besoins du service.

ART. 3.

Le médiateur scolaire a pour mission de :

1^o recevoir, dans les conditions fixées par la présente loi, les doléances et réclamations d'élèves majeurs, de parents d'élèves mineurs ou d'agents de l'Éducation nationale des écoles, relatives à des situations où l'école soit n'offre pas de formation adéquate, soit n'a pas fonctionné conformément à la mission qu'elle doit assurer ou contrevient aux lois, règlements et instructions en vigueur ;

- 2° soutenir les élèves et les parents d'élèves dans leurs démarches ;
- 3° ouvrir une enquête relative à l'objet de la doléance ou réclamation ;
- 4° requérir auprès du service ou de l'école visé toutes les informations nécessaires à son enquête ;
- 5° formuler des recommandations à l'endroit du service ou de l'école visé ;
- 6° formuler des recommandations suite à ses observations au ministre et à l'Observatoire national de la qualité scolaire.

ART. 4.

Tout parent d'élève, tout élève majeur ou agent de l'Éducation nationale se trouvant dans une situation telle que décrite à l'article 3, point 1, peut, par une réclamation individuelle écrite, saisir le médiateur scolaire.

Cette réclamation ne porte pas préjudice aux droits du concerné de s'adresser à d'autres instances ou d'introduire un recours.

La réclamation doit être précédée des démarches administratives appropriées instituées dans le cadre de la communauté scolaire aux fins d'obtenir satisfaction.

ART. 5.

Sur autorisation écrite de l'élève majeur ou des parents de l'élève mineur, le médiateur scolaire peut demander, par écrit ou oralement, au service ou à l'école visé par la doléance ou la réclamation tous les renseignements qu'il juge nécessaires pour ouvrir une enquête. Le directeur ou le responsable du service remet au médiateur scolaire dans les délais fixés par celui-ci tous les dossiers et informations concernant l'affaire. Le caractère secret ou confidentiel des pièces dont il demande la consultation ne peut lui être opposé.

ART. 6.

En vue d'assurer le respect des dispositions relatives au secret professionnel, le médiateur scolaire veille à ce qu'aucune mention permettant l'identification des personnes dont le nom lui aurait

été révélé ne soit faite dans les documents établis sous son autorité ou dans ses communications.

ART. 7.

- (1) Lorsqu'une réclamation lui paraît justifiée, le médiateur scolaire conseille le réclamant et le service ou l'école et fait toutes les recommandations utiles au service ou à l'école, ainsi qu'au réclamant, afin de permettre un règlement à l'amiable. Les recommandations peuvent notamment comporter des propositions visant à améliorer le fonctionnement du service ou de l'école visé.
- (2) Lorsqu'il apparaît au médiateur scolaire, à l'occasion d'une réclamation dont il a été saisi, que l'application d'une décision aboutit à une iniquité, il peut recommander, dans le respect des dispositions législatives et réglementaires, au service ou à l'école mis en cause, toute solution permettant de régler en toute équité la situation du réclamant et suggérer les modifications qui lui paraissent opportunes d'apporter aux textes législatifs ou réglementaires qui sont à la base de la décision.
- (3) Le médiateur scolaire est informé par le directeur ou le responsable du service des suites données à son intervention dans un délai qu'il fixe.
- (4) Le médiateur scolaire a l'obligation d'informer la personne qui se trouve à l'origine de la réclamation par écrit des suites y réservées. Lorsqu'une réclamation ne lui paraît pas justifiée, le médiateur scolaire en informe le réclamant en motivant sa décision.
- (5) À défaut de réponse satisfaisante dans le délai qu'il a fixé ou en cas d'inaction du service ou de l'école suite à son intervention, le médiateur scolaire en informe le ministre.
- (6) La décision du médiateur scolaire de ne pas donner de suite à une réclamation n'est pas susceptible d'un recours devant une juridiction.

ART. 8.

Le médiateur scolaire établit un rapport d'activités annuel concernant le domaine d'activités dans ses attributions. Ce rapport contient les recommandations que le médiateur scolaire juge utiles. Le rapport est communiqué au Gouvernement et à la Chambre des députés. Il est publié sur le site du ministère compétent.

ART. 9.

À l'article 21 de la loi modifiée du 6 février 2009 relative à l'obligation scolaire sont apportées les modifications suivantes :

1° L'alinéa 1er est remplacé par les alinéas suivants : « Chaque année au mois de novembre, le ministre ou son délégué transmet aux bourgmestres le relevé des élèves de la commune qui sont inscrits dans les établissements scolaires de l'Éducation nationale. Il appartient au collège des bourgmestre et échevins de vérifier pour les résidents de la commune qui ne figurent pas sur cette liste, que l'obligation scolaire est respectée.

Si un élève en obligation scolaire quitte son établissement scolaire au cours de l'année scolaire et ne s'inscrit pas dans un autre lycée, le ministre ou son délégué en informe le bourgmestre.

Si le bourgmestre constate une infraction aux dispositions des articles 7, 13 et 14 ou s'il est informé par le président du comité d'école ou le directeur du lycée ou par le médiateur au maintien, à l'inclusion et à l'intégration scolaires d'une telle infraction, il met les parents en demeure par écrit dans les huit jours de se conformer à la loi et leur rappelle les sanctions pénales encourues. »

2° L'ancien alinéa 2, devenu l'alinéa 4, est complété par les mots « dans les quinze jours suivant la mise en demeure des parents ».

ART. 10.

L'article 1^{er}, alinéa 2, de la loi modifiée du 9 décembre 2005 déterminant les conditions et modalités de nomination de certains

fonctionnaires occupant des fonctions dirigeantes dans les administrations et services de l'État, est complété par un tiret libellé comme suit :

« - le médiateur au maintien, à l'inclusion et à l'intégration scolaires ».

ART. 11.

La loi modifiée du 25 mars 2015 fixant le régime des traitements et les conditions et modalités d'avancement des fonctionnaires de l'État est modifiée comme suit :

1° À l'article 12, paragraphe 1er, alinéa 7, point 12, les termes « de médecin-directeur adjoint du contrôle médical de la sécurité sociale et de médecin-directeur adjoint de l'Administration d'évaluation et de contrôle de l'assurance dépendance » sont remplacés par les termes « de médecin-directeur adjoint du contrôle médical de la sécurité sociale, de médecin-directeur adjoint de l'Administration d'évaluation et de contrôle de l'assurance dépendance et de médiateur au maintien, à l'inclusion et à l'intégration scolaires » ;

2° À l'annexe A, catégorie de traitement A, groupe de traitement A1, sous-groupe de traitement à attributions particulières, grade 17, sont ajoutés les termes « le médiateur au maintien, à l'inclusion et à l'intégration scolaires. »

ART. 12.

La référence à la présente loi se fait sous la forme suivante : « loi du 18 juin 2018 portant institution d'un service au maintien, à l'inclusion et à l'intégration scolaires de l'Éducation nationale ».

ART. 13.

La présente loi entre en vigueur deux mois suivant sa publication au Journal officiel du Grand-Duché de Luxembourg.



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