



1 July 2023

## Guidance for administrative and contentious appeals - BAC session 2023

Dear parents of the European school community,

You will find below legal and administrative guidance on potential administrative and contentious appeals against Bac 2023 results. The advice given does not constitute professional legal advice nor does it free parents and pupils from making all necessary verifications on the legal and administrative aspects of their appeals by consulting the [official texts published on the website of the Office of the Secretary-General of the European Schools \(OSGES\)](#) as well as the relevant [case-law](#) (please, note that Judgments are in French). We hope that you will find them useful.

### A. Preliminary procedural reminders

If you feel that your child has been harmed because of the Baccalaureate examination proceedings, you should consider lodging a formal complaint. The timeframe for putting together a complaint or appeal is very tight, **so an early start is advisable**.

- Administrative appeals need to be lodged at the latest ten (10) calendar days from the date of notification of Bac results;
- The administrative appeal must be sent in writing to the Director of the School, who will transmit it to the OSGES; article 12.3 of the Arrangements for Implementing the Regulations for the European Baccalaureate <https://www.eursec.eu/BasicTexts/2015-05-D-12-en-35.3.pdf> (AIREB) indicates that the administrative appeal can be sent by e-mail with read receipt, by registered letter or deposited at the school (make sure in thatcase to get a receipt);
- The administrative appeal may only concern procedural irregularity – therefore, it is not possible to contest pedagogical assessments<sup>i</sup>;
- If the pupil is 18 at the date of the signature of the administrative appeal, s/he must sign it – it will be rejected otherwise;
- The administrative appeal will be considered by the Secretary-General but formally decided by the Chairman of the Baccalaureate Examination Board;

- Should the administrative appeal be rejected, a contentious appeal is possible before the [Complaints Board of the European Schools](#) in Brussels, within fifteen (15) calendar days from the day of notification of that rejection.

## B. ADMINISTRATIVE APPEAL

The General Rules of the European Schools (article 66.2) and the Arrangements for implementing the Regulations for the European Baccalaureate (article 12) - AIREB foresee that Bac results may be challenged based on “procedural irregularity” which is prejudicial to the students i.e. “affects them negatively”. Unfortunately, this plea of illegality can be raised effectively only within the limits determined by Article 12 of the AIREB, i.e. that the illegality invoked can result solely from a procedural irregularity and not from an infringement, fundamentally, of a rule of law (see Complaints Board’s decision in [case 20/42](#), para. 21)

Generally, you are entitled to lodge an appeal if, for example, due to specific or general procedural irregularity:

1. The process leading to the final Bac mark does not respect the procedures defined in Derogation to the General Rules and to the Arrangements for Implementing the Regulations for the European – AIREB.
2. Any procedural error in the calculation of the marks has occurred.

In accordance with article 6.4.10 of AIREB the immediate first step for lodging an appeal is to formally request the Director of your school to deliver a copy of the documentation related to the written exam, including: **a)** the original script; **b)** the total marks awarded by each corrector (first, second and, where applicable, third corrector); **c)** The details of the marks; **d)** the examiners’ comments; **e)** the examination paper and **f)** the marking schemes.

The written request for the original exam script and supporting documentation listed above must be made to the Director of the School not later than **four calendar days after the candidate has been informed of the examination results**. The Director is then obliged to make all the documents available not later than three calendar days after receipt of the request. Then, an administrative appeal, formulated in writing and specifying the reasons, must be lodged through the Director of the School attended by the pupil to the Chairman of the Examining Board of the European Baccalaureate. The Director of the School will send electronically the complaint accompanied by all the relevant documentation to the Secretary-General of the European Schools not later than 2 working days after the reception at the school.

On a proposal from the Secretary-General of the European Schools, the Chairman of the Examining Board will decide whether or not the complaint or appeal lodged is admissible and well founded. Should it be deemed admissible and well founded, the Chairman of the Examining Board will assess on a **case-by-case basis** the need for the candidate to retake the examination (in September). If a decision is made to offer a re-examination because of a general procedural irregularity, the decision can be applied to all candidates whose examinations suffer from the same procedural irregularity. The decision thus adopted will be communicated to the candidate (or all candidates) not later than 15 calendar days from reception in the Office of the Secretary-General of the European Schools.

### **C. CONTENTIOUS APPEAL**

A contentious appeal may be lodged with the Complaints Board<sup>ii</sup> only if an administrative appeal has been lodged with the Chairman of the Examining Board (via the Secretary-General).

The applicant must have an interest in bringing the proceeding. In order for a parent or pupil to have legal standing before the Complaints Board, it is not necessary that the pupil has failed the Bac or that the grades prevent him/her from entering their university of choice (see Complaints Board's decision in [case 16/49](#), para. 15). Those two situations are not restrictive in nature, and it is up to the Complaints Board to check, in each specific case, whether the applicant (or his/her legal representatives) can successfully argue that he/she has suffered a sufficiently adverse effect of such a nature as to justify the interest that he/she invokes to contest a decision relating to the European Baccalaureate (see Complaints Board's decision in [case 20/42](#), para. 12-13).

#### **Please note:**

- You may not add new legal or factual grounds between the administrative and contentious appeal; you may however elaborate or detail your reasoning, or address points raised in the rejection decision;
- You may be assisted by a lawyer before the Complaints Board;
- If you lose your contentious appeal, you may be condemned to pay the costs of the OSGES (around 800/1000 Euro);
- If you win your contentious appeal, the OSGES may be condemned to pay your costs – if you wish for that to be the case, the contentious appeal needs to state that and state an estimation of legal costs you might face;
- The contentious appeal process must end within six months, but interim measures can also be requested;
- The Complaints Board has sole jurisdiction in the first and final instance.

The contentious appeal process takes time and results, at most, in the offer of a retake of the “subject” examination concerned. It should be noted that it is very unusual for such retakes to be offered before September. Therefore, the applicant can request the suspension of enforcement of the decision being appealed and of applications for other interim measures.

The applicant must establish the urgency of the case and set out de jure and de facto elements providing supporting evidence justifying the measure requested. The purpose of the interim proceedings is to guarantee the full effectiveness of the substantive judgment, and to achieve this objective, “the measures requested must be urgent in the sense that they are necessary, to avoid serious damage and irreparable to the interests of the applicant” (see Complaints Board’s decision [in case 20/34R](#), pg. 9-8).

Correction and ratification of candidate’s mark and overall average are also possible. Please note that the complaint Board is only allowed to annul the decision adversely affecting the candidate issued by the Baccalaureate Examining Board on account of a procedural irregularity. Should your contentious complaint be successful, the Chairman of the Examining Board may “assess on a case-by-case basis the need for the candidate to retake the examination concerned.”

## **POSSIBLE GROUNDS FOR AN APPEAL**

Not all anomalies trigger the possibility of lodging an appeal. The only grounds for appeal are formal irregularities, which vitiate the BAC results such as any violation of the procedural rules established for carrying out the BAC exams or procedural flaws. All candidates must be subject to the same written examination tests, regardless of the language section to which they belong. This rule expresses the requirement that the assessment of candidates be conducted in conditions of equality and objectivity in accordance with the principles of good administration and equal treatment of the European Schools and the Member States of the European Union. Undoubtedly the Examining Board of the European Baccalaureate has a broad discretion regarding the determination of the content of the examination tests, but this must be compensated by a scrupulous observation of the rules governing the organization of such tests. Therefore, differences in the translations of the same examination test affect the conditions of equality between candidates and the objectivity of the test resulting in a procedural irregularity jeopardising the uniformity of the examination papers of the different language sections. Some procedural irregularities may also range from an individual examination question being faulty in some way, in case of disregard of the special arrangement for candidate qualified on account of their learning difficulties (SEN pupils), to some kind of incident occurring in the exam room resulting in the examination being delayed/halted, for instance.

Please do note that **Pedagogical assessments** to whether the grade(s) assigned to a pupil actually reflect his or her performance in the examination at issue are excluded for consistent decisions<sup>iii</sup> of the Complaints Board. The lack of teachers' qualifications to teach the subjects of the BAC does not constitute a procedural flaw. The same applies in case a teacher seems not to have covered the syllabus in class. Regarding the correctors (second and eventually third proof-reader), it is the responsibility of them to judge the validity in the examination test of any approach or solution proposed by a candidate. Instructions to assist their work are merely indicative and non-prescriptive. In scope therefore such a judgment is, by definition, an assessment of a pedagogical nature and therefore cannot be considered a ground for a formal complaint/appeal. Concerns related to content of the exams are quite common. Some pupils do perform worse than they expected, and this, in itself, often raises concern about level of difficulty of the exam. There are no direct rules defining the level of difficulty, but underperformance across the schools would be a cause for concern if this were link to procedural flaws.

---

<sup>i</sup> See Chapter "Possible grounds for appeals".

<sup>ii</sup> The Rules of procedure for lodging an appeal with the Complaints Board are available at the following link:  
<http://www.scholaeuropaea.eu/cree/index.php>

<sup>iii</sup> see case 17/07, point 13.