

Report on Case No CEDUC-26-8161

The complaint

1. The complaint, received at this Office on the 27th August 2026, was registered with the Office of the Ombudsman by the parents of their 11-year old daughter [OMISSIS]

The evidence

2. The complaint was communicated to the Permanent Secretary at the Ministry responsible for Education on the 1st of September 2026, with a request for the Ministry's views by not later than the 9th instant in light of the time sensitive nature of the complaint. To date no reply has been forthcoming. Nevertheless, since the complainants submitted all the correspondence they had exchanged with the Education Authorities, the undersigned is in a position to rule upon said complaint.

3. From the documentary evidence before the undersigned, it transpires that [OMISSIS] applied for admission to the National Sports School as from the coming scholastic year, under the swimming discipline. She was ranked third within the swimming discipline. As only two places were available in this discipline, she ended up on the waiting list. As far as academic entry requirements were concerned, her performance exceeded by far the published entry requirements, achieving over 90% in Mathematics and over 80% in Maltese

and English. The *pons asinorum* appears to have been in her fitness assessment test.

4. When the complainants requested the breakdown of the fitness assessment, it transpired that [OMISSIS] had registered a low mark in the 25m all out swim, allegedly obtaining the worst time (albeit a question of seconds) when compared to the two other swimmers. This time was recorded by the examiners with hand-held chronographs, but was never communicated to the complainants. The other two swimmers – both member of the same local swimming club – were [OMISSIS] and [OMISSIS]; [OMISSIS] belongs to a different swimming club.

5. This 25m all out swim was not a race between the three girls – it was intended solely, according to the Education Authority’s narrative, to gauge each swimmer’s speed and fitness. However, in all the correspondence with the NSS Board and with the Director General (Educational Services) no credible explanation was given as to why the three girls did not swim together. Even assuming that the hand-held chronographs registered the time correctly, swimming together in a time-trial was essential for two reasons. The first is that it would have enabled visual confirmation by all those present (including the complainants); and in the second place and more crucially, it is trite knowledge that in such time-trials a substantial difference can emerge between swimming alone (“against the time”) and swimming with others, when the very presence of those others normally enhances one’s performance albeit by a few seconds. By timing [OMISSIS] on her own, and the other two girls together, the examiners acted in a grossly unfair way with regard to [OMISSIS]. It should be noted that in the official A.S.A timings for the 50m freestyle, [OMISSIS] was always ranked ahead of both [OMISSIS] and [OMISSIS] (in the case of the latter by a difference of more than four seconds).

6. By their actions, the examiners gave a clear undue advantage to [OMISSIS] and [OMISSIS]. It is true that as the DG abovementioned stated in her email to the complainants of the 4th of August 2026, that the overall assessment fitness result is not determined solely by the 25m sprint but by a total of four component items. Such argument, however, is disingenuous since an undue advantage (or indeed disadvantage) to one or more competitors in one of the components automatically invalidates the results in the entire fitness test.

Conclusion and recommendation

7. For all the above reasons, the complaint is allowed (sustained) since the examiners' decision **to time [OMISSIS]. separately from [OMISSIS] and [OMISSIS] was unreasonable, unjust and improperly discriminatory** within the meaning and for the purposes of Article 22(1)(b) of the Ombudsman Act.

8. As for an appropriate remedy, this must be such as not to cause prejudice to [OMISSIS] and [OMISSIS] who, through no fault of their own, have already been accepted to join the National Sports School for the coming scholastic year. The undersigned, therefore, recommends that exceptionally and because of the undue disadvantage to which she was subjected, [OMISSIS] be also accepted to commence school at the NSS this coming scholastic year.

Vincent A De Gaetano
Commissioner for Education

11 September 2026

