

REGULATIONS FOR THE LEGAL PROTECTION OF DECISIONS CONCERNING EDUCATION (EXAMINATION APPEALS BOARD)

for HAN University of Applied Sciences

<i>Subject</i>	<i>Regulations for the legal protection of decisions concerning education (Examination Appeals Board)</i>
<i>Executive Board decision no.</i>	<i>2020/1697</i>
<i>Participation Council consent</i>	<i>10-7-2020</i>
<i>Adopted on</i>	<i>10-7-2020</i>

Article 1 The Examination Appeals Board

1. The HAN Examination Appeals Board, hereinafter referred to as “the Appeals Board” or “the Board”, is established as:
 - a. The Examination Appeals Board at HAN, as defined in article 7.60 paragraph 1 of the Higher Education and Research Act (in Dutch: WHW);
 - b. The Examination Appeals Board at HAN for CROHO-registered post-initial master courses, in accordance with the decision of the institutional board dated 6 March 2012, no. 2012/280.
2. The Appeals Board is established in the HAN administrative building in Arnhem and holds sessions in that building, insofar as the Appeals Board does not announce a session in a different location, as referred to in article 2 paragraph 2.

Article 2 Size and composition, chambers

1. The Appeals Board has a chair, two deputy chairs and eight members, the latter consisting of four teaching staff members and four student members, as well as two deputy members (‘members’).
2. The Appeals Board establishes two chambers. One chamber holds sessions in Arnhem and one chamber holds sessions in Nijmegen.
3. Each chamber has three members, namely:
 - a. one member who is not part of the HAN community. This member is also the chair. They must meet the requirements for appointment as a judge of a district court and should preferably belong to the judiciary;
 - b. a member belonging to HAN’s teaching staff;
 - c. a member who is enrolled as a student at HAN.
4. The members can be deployed in either of the chambers.
5. Contrary to paragraph 3, in complex cases the chair of the Appeals Board may decide to compose the Appeals Board of five members instead of three members, namely a chair or deputy chair, two teaching-staff members and two student members.
6. The members are appointed by the Executive Board. In the case of members from HAN, this is done on the recommendation of the Participation Council. When nominating members, the Participation Council ensures that the HAN Schools are represented as evenly as possible. The members do not form part of the Executive Board or the Inspectorate.
7. The members of the Appeals Board are appointed for a period of three years, on the understanding that the students among them are appointed for a term of one year.
8. At their own request, the members of the Appeals Board will be dismissed by the Executive Board. Upon reaching the age of seventy, their resignation is granted with effect from the following month. They will be dismissed if they are unfit to perform their duties on account of illness or disability, or if they have been convicted of a criminal offence by a final court decision. Before the dismissal is granted pursuant to the third sentence, the person concerned is informed of the intention to

- dismiss them and is given the opportunity to be heard on the matter.
9. The members may receive remuneration from the Executive Board.
 10. The Appeals Board is assisted by an official secretary from HAN's general support and management staff, to be appointed by the Executive Board. At the request of the chair, one or more deputy official secretaries may be appointed by the Executive Board.
 11. The official secretary and any deputies carry out their duties in accordance with the chair's instructions.

Article 3 Powers of the Appeals Board

1. The Appeals Board rules exclusively on appeals by persons concerned, as defined in article 4 paragraph 1, or by prospective course participants of a post-initial master course (hereinafter to be referred to as the 'student') against:
 - a. decisions as referred to in article 7.8b paragraphs 3 and 5, and article 7.9 paragraph 1 of the Higher Education and Research Act;
 - b. decisions regarding the passing of the final assessment, as referred to in article 7.9d of the Higher Education and Research Act;
 - c. decisions other than decisions of a general nature, taken on the basis of the provisions under or pursuant to title 2 of chapter 7 of the Higher Education and Research Act, with a view to admission to final assessments;
 - d. decisions taken on the basis of additional investigations, as referred to in articles 7.25 paragraph 5 and 7.28 paragraph 4 of the Higher Education and Research Act;
 - e. decisions by boards of examiners and examiners;
 - f. decisions by committees as referred to in article 7.29 paragraph 1 of the Higher Education and Research Act; and
 - g. decisions taken based on article 7.30b of the Higher Education and Research Act with a view to admission to the degree courses referred to in that article.
2. The refusal to make a decision is deemed equivalent to a decision. If a decision is not taken within the period prescribed by or under the law, or, in the absence of such a period, is not taken within a reasonable time, the taking of the decision is deemed to have been refused.

Article 4 Appeals procedure

1. The appeal may be lodged by a person concerned. A person concerned is a student, former student, prospective student, external student, prospective external student or former external student. An appeal is lodged by means of a reasoned letter of appeal.
2. The letter of appeal is submitted to the official secretary of the Complaints and Disputes Office (who can be reached by email at Bureau.klachtengeschil@han.nl), who records the date of receipt and forwards it to the chair.
3. The letter of appeal must be submitted within 6 weeks of the day on which the decision in question was communicated to the student.
4. If the letter of appeal is lodged after the expiry of the period referred to in paragraph 3, a non-admissibility declaration on these grounds will be withheld if it cannot reasonably be shown that the applicant was in default.
5. The letter of appeal is signed by the applicant and contains:
 - a. the name, address and telephone number of the applicant;
 - b. the date: the date on which the appeal was lodged;
 - c. a clear description of the decision being appealed, including, if possible, a copy of the decision. In the case that a refusal to take a decision is being appealed: a clear description of the decision that should have been taken according to the applicant;
 - d. the grounds on which the appeal is based; and
 - e. the applicant's signature.
6. The chair investigates whether the letter of appeal complies with the provisions of paragraph 5. If the letter of appeal does not meet these provisions, the applicant will be informed of this without delay and invited to rectify the omission within a stipulated period. The decision period will be suspended until the applicant has rectified the omission. If the applicant fails to rectify the omission within the prescribed period, the appeal will be inadmissible.

Article 5 Compulsory attempt to reach an amicable settlement

1. Before considering the appeal, the Appeals Board will send the letter of appeal to the body against which the appeal is directed, with an invitation to examine, in consultation with the persons

- concerned, whether it is possible to settle the dispute amicably.
2. If an examiner's decision is being appealed, the invitation as referred to in paragraph 1 will be sent to the board of examiners.
 3. The body will inform the Appeals Board of the outcome of the deliberations within 3 weeks, submitting the relevant documents.
 4. If an amicable settlement has not proved possible, the Appeals Board will consider the letter of appeal.
 5. The investigation of an amicable settlement may be omitted if, in the chair's opinion, the appeal is evidently inadmissible, evidently well-founded or evidently unfounded.
 6. The chair may decide that an attempt to find an amicable settlement will not be applicable if, in their opinion, such an attempt would be futile or would result in a disproportionate disadvantage for the applicant.

Article 6 Written defence

1. If it has not proved possible to reach an amicable settlement, the body will send a written defence to the Appeals Board within 15 working days of receiving the invitation as referred to in article 5 paragraph 1.
2. If the decision of an examiner is being appealed, a written defence by the examiner concerned may be attached.
3. The chair may determine that the written defence may be submitted later, within a period that they consider reasonable.
4. In addition to the written defence, the chair may, upon their own initiative, obtain any information they consider necessary and request documents. The bodies and staff members as well as the examiners provide the Appeals Board with the information it needs to carry out its task.

Article 7 Composition of the Appeals Board; challenging the inclusion of members

1. The Appeals Board immediately informs the parties of the intended composition referred to in article 2 paragraph 3.
2. If one of the parties believes that certain facts or circumstances would hinder an impartial assessment by a member of the Board, this party may challenge the inclusion of the member in question. A member of the Board may also be excused on the grounds of facts and circumstances such as these.
3. A request to challenge or be excused must be made within three working days of receipt of the letter regarding the composition of the Board. The other members decide on requests to challenge or excuse. In the event of a tie, the request will be granted.
4. If a request as referred to in paragraph 3 is granted, the chair will designate an alternative member in the place of the member concerned, in accordance with article 2 paragraph 3. If the chair is challenged or excused, they will be replaced by the deputy chair.
5. Immediately after a final decision is made on the composition of the Board, the chair will determine whether, and if so when, the Board will commence the preparatory investigation as referred to in article 8.

Article 8 Preparatory investigation and hearing

1. If no amicable settlement can be reached, the chair determines the composition of the Appeals Board to handle the letter of appeal in question in due observance of the provisions of article 2 paragraph 3. In the absence of the chair, a deputy acts as chair.
2. The Appeals Board may:
 - a. obtain further information in writing from the parties concerned or other bodies; and
 - b. ask experts to provide written advice or reports.
3. The Appeals Board may itself, or on request, summon third parties whose interests are directly involved in the dispute in question. Any third party becomes a party to the proceedings by summons.
4. Without prejudice to the provisions of paragraph 3, any interested party may request the Appeals Board to be permitted to intervene or join one of the parties. If the request is granted, the requestor will be considered a party.
5. The Appeals Board may join related cases and split joined cases.
6. As soon as the chair considers that the relevant facts have been sufficiently clarified by the preparatory investigation and the factual information needed to make a decision has been gathered in the documents, the chair will determine the place and time for the hearing. The official secretary immediately summons the parties to the session. The summons takes place at least

- ten working days before the session.
7. The appeal is heard in a public session of the Appeals Board. In special cases, the chair may decide that all or part of the appeal will be heard in a closed session.
 8. Parties may be replaced at the session by authorised representatives and/or may be assisted by legal counsel. Furthermore, they may bring witnesses and experts to the session, on the understanding that they will send written notification to the Appeals Board and the other party of the names of these witnesses and experts no later than the fourth working day before that of the session.
 9. The Appeals Board may itself, or on request, summon witnesses and experts to a session.
 10. If a party fails to appear at a session, the chair will ascertain that they were properly summoned. If they were, the case may be heard in the absence of that party. The foregoing also applies in the event that neither party is present at the session.
 11. A session that has been called will not go ahead if, in addition to the chair, not all of the members summoned are present. If a student member, or a teaching-staff member, or a student member and a teaching-staff member of the Board are absent, the Board may decide to proceed with the planned session with the consent of the parties.
 12. The chair:
 - a. opens, leads and closes the session;
 - b. gives each of the parties the opportunity to present their point of view;
 - c. ensures that the case to be heard at the session is decided in a proper and efficient manner; and
 - d. decides, insofar as not otherwise prescribed in these regulations, how to proceed on any disputes that arise during the session itself.
 13. If, during the session, written documents are brought up by the Appeals Board or written documents are submitted to the Appeals Board, the parties will be given the opportunity to inspect these documents and to express their views on them.
 14. The parties may put questions to each other through the mediation of the chair.
 15. The parties may change the content of the appeal and of the defence, as well as the grounds on which these are based, until the closing of the session, unless the Appeals Board believes the opposing party will be unreasonably disadvantaged by this change.
 16. The chair may themselves, or at the request of either party, suspend the hearing by informing the parties of the time at which the session will resume or the way in which the parties will be informed of this.
 17. The chair may decide not to allow any further examination of witnesses or experts if, in their opinion, the examination of witnesses and experts thus far has already made the facts sufficiently clear.
 18. If, before the closing of the session, the chair of the Board considers the investigation to have been incomplete, they may decide to suspend the session. Such a decision to suspend may be accompanied by instructions to the parties to provide evidence.

Article 9 Verdict

1. Before closing the hearing, the chair announces when the verdict will be given. The verdict will be given within ten working days of the closing of the session, and within ten weeks of receipt of the letter of appeal.
2. The full Appeals Board deliberates and decides in a closed session. The Appeals Board bases its verdict exclusively on the documents submitted prior to or during the session.
3. The Appeals Board decides by majority vote. In the event of a tie, the chair's vote is decisive.
4. If the Appeals Board considers the appeal to be well-founded, it wholly or partly nullifies the contested decision. The Appeals Board may determine that the case should be decided again, or, if a decision has been refused, that a new decision should be taken, or that the final assessment, the entry assessment or any part of this should be taken again under conditions set by the Board. The Appeals Board is not authorised to take a new decision in the place of the decision that was wholly or partly nullified.
5. The body whose decision has been nullified reconsiders the case, insofar as is necessary, in accordance with the verdict of the Appeals Board. The Appeals Board may set a time limit for this in its verdict.
6. The verdict of the Appeals Board is dated and contains:
 - a. the names and addresses of the parties and authorised representatives;
 - b. the grounds on which the verdict rests;
 - c. the decision; and

- d. the names of the members who have reached the verdict. If it is possible to appeal the verdict, this will be stated in the verdict.
7. Copies of the verdict are sent to the parties as well as to the Executive Board, the board of examiners concerned and the dean concerned. The verdict is made available for inspection in generally accessible places at HAN and will be published in outline on HAN's website.

Article 10 Special procedures: provisional arrangement and review

1. As a matter of urgency, the chair may make a provisional arrangement at the applicant's request, pending the verdict on the main case. The provisions of article 4 apply mutatis mutandis to a request for a provisional arrangement.
2. The chair decides on this request after hearing the body in question or the examiner concerned, or at least after having summoned them.
3. The provisional arrangement lapses as soon as the Appeals Board has decided on the main case, unless stipulated otherwise in the provisional arrangement.
4. A review of a verdict by the Appeals Board may, at the request of each of the parties, be held on the basis of further facts or circumstances that might have led to a different verdict, had they been known earlier.
5. The provisions of these regulations apply mutatis mutandis to the request for a review, insofar as this is necessary.

Article 11 Other provisions

1. The official secretary ensures that the verdicts given by the Appeals Board and the relevant documents are kept in the archives of the Appeals Board.
2. The Appeals Board reports on its activities annually.
3. In cases not provided for in these regulations, the chair decides, if necessary after consultation with the other members.