



Examination Appeals Board Regulations

September 2018

Clause 1 Definitions

WHW – the Dutch Higher Education and Research Act (*Wet op het hoger onderwijs en wetenschappelijk onderzoek*).

CBE - the examinations appeal board (*college van beroep voor de examens*) within the meaning of Article 7.60 of the WHW.

Clause 2 Composition and appointment

1. The CBE is made up of five members, consisting of:
 - the chairman and deputy chairman who are independent of HAS University of Applied Sciences and are also required to comply with the requirements for appointment as judicial officials set out in Article 5 of the Dutch Status of Judicial Officials Act (*Wet rechtspositie rechterlijke ambtenaren*);
 - three members who are employed as lecturers at HAS University of Applied Sciences; and
 - one member who is registered as a student at HAS University of Applied Sciences.
2. The members are appointed by the Board of Governors. The chairman and deputy chairman are appointed for a period not less than three years and not exceeding five years. The student member and his deputy are appointed for a period of two years. The other three members and deputies are appointed for a period of five years. Before appointing the members, the Board of Governors shall request advice from the University Council.
3. The members and deputies shall be discharged from office at their own request.
4. Members and deputies shall also be discharged from office if as a consequence of illness or shortcomings they are unable to fulfil their office or if they have been convicted of a crime in an irrevocable judgment. Before discharge from office shall be carried out under this provision, the person concerned shall be informed of the proposed discharge and shall be entitled to a hearing.
5. The CBE shall receive secretarial support from the Student Affairs Department at HAS University of Applied Sciences.

Clause 3 Amicable settlement before processing appeal

1. Before accepting the appeal for processing, the CBE shall send the notice of appeal to the body against which the appeal is directed with an invitation to check, in consultation with the student concerned, whether it is possible to reach an amicable settlement of the dispute.
2. If the appeal is directed against a decision of an examiner/assessor, the notice of appeal shall be sent to the exam committee. If the examiner/assessor against whom the appeal is directed is a member of the exam committee, they shall not participate in the deliberations referred to in paragraph 1.
3. The relevant body shall inform the CBE within three weeks of the outcome of the deliberations, producing the relevant documents.
4. The chairman may decide to omit an attempt to reach an amicable settlement if in his opinion such an attempt would be pointless or would disproportionately disadvantage the appellant. In that case, the chairman shall appoint a period for submission of the notice of defence.

Clause 4 Scope of competence

1. A concerned party may submit an appeal to the CBE against:
 - a. decisions relating to binding negative course recommendations (Articles 7.8b(3) and 7.8b(5) of the WHW) and as referred to in Article 7.9(1) of the WHW;
 - b. decisions concerning determination of the number of credits obtained as referred to in Article 7.9a of the WHW and decisions concerning passing the final examination, as referred to in Article 7.9d of the WHW;
 - c. decisions concerning the scope of the exemption referred to in Article 7.31a(3) of the WHW;
 - d. decisions, other than generally applicable decrees, taken on the basis of the provisions in title 2 of chapter 7 of the WHW with regard to admission to examinations;
 - e. decisions taken on the basis of the additional investigation referred to in Articles 7.25(4) and 7.28(4) of the WHW;
 - f. decisions by exam committees and examiners/assessors;
 - g. decisions by committees as referred to in Article 7.29(1) of the WHW; and
 - h. decisions taken under Article 7.30b of the WHW with regard to admission to the study programmes referred to in that article.

Clause 5 Submission of the notice of appeal

1. The appeal may be submitted by or on behalf of a concerned party whose interest is directly affected by a decision as described in Clause 4. It is submitted in a notice of appeal supported by reasons.
2. The appeal may be submitted on the following grounds:
 - the decision is contrary to a universally binding rule, legislation or regulations introduced under legislation (for example, teaching and examination regulations);
 - the decision is contrary to principles of reasonableness and fairness; and/or
 - the decision is contrary to a general principle of good governance.
3. The notice of appeal must be submitted within six weeks following notification of the decision. The date of submission of the notice of appeal determines whether it has been submitted on time.
4. The notice of appeal shall be sent or submitted to the Student Affairs Department, studentzaken@has.nl. P.O. Box 909108, 5200 MA 's-Hertogenbosch. The Student Affairs Department shall send a confirmation of receipt and pass the notice of appeal on to the competent body.

Clause 6 Content of the notice of appeal

1. The notice of appeal shall be signed by the appellant and shall contain:
 - a. the name, address, telephone number and study programme of the appellant;
 - b. the date on which the appeal is submitted;
 - c. a clear description of the decision against which the appeal is directed, if possible enclosing a copy of that decision. In the event that the appeal is directed against a refusal to take a decision, the notice of appeal shall contain a clear description of the decision that should, in the opinion of the appellant, have been taken; and
 - d. the grounds on which the appeal is based.
2. The chairman of the CBE shall investigate whether the notice of appeal satisfies the requirements in paragraph 1. If the notice of appeal does not satisfy these requirements, he shall communicate this to the appellant immediately and give him the opportunity to repair the defect within a specified period. The period for deciding on the appeal shall be suspended for as long as the defect has not been repaired. If the appellant does not repair the defect within the appointed period, the appeal is inadmissible.

Clause 7 The notice of defence

1. If an amicable settlement has not proved possible or has not been sought further to a decision by the chairman, the body shall within three weeks after this decision has been taken send a notice of defence to the CBE.

2. If the appeal is directed against a decision by an examiner/assessor, the exam committee shall enclose a notice of defence from the relevant examiner/assessor.
3. The chairman may provide that the notice of defence may be submitted later, within a period that he considers reasonable.
4. In addition to the notice of defence, the chairman may take the initiative to obtain such information and request such documents as he considers necessary. The bodies and staff members and the examiners/assessors shall provide the CBE with such information as the CBE requires in order to carry out its duties.

Clause 8 Simplified appeals procedure

1. The chairman may decide not to deal with the appeal at a hearing as described in Clause 10 if:
 - he believes that the appeal is:
 - manifestly inadmissible; or
 - manifestly unfounded; or
 - the appellant and the body defending the appeal have declared that they do not wish to exercise the right to a hearing.
2. If the body against which the appeal is directed concedes the appeal in full and no other interested parties' interests could be negatively affected as a result, the chairman may also decide not to hold a hearing.

Clause 9 Preparatory investigation

1. Once the composition of the CBE is known, the chairman shall determine whether, and if so when, the CBE shall commence the preparatory investigation.
2. The CBE may:
 - obtain further written information from the parties or from other bodies; and/or
 - request experts to provide written advice or a written report.
3. The CBE may on its own initiative or at the request of the parties call third parties whose interests are directly affected to participate in the proceedings. Any third party called to participate shall become a party to the proceedings.
4. Third parties may make an independent request to the CBE to be joined with another party in the proceedings or to take part in the proceedings as a separate party.
5. The CBE may consolidate matters that are connected and split consolidated matters into separate proceedings.

6. Once the chairman believes that the preparatory investigation has clarified the situation sufficiently and the relevant information has been presented in the documents, the time and place of the hearing shall be appointed. The chairman shall give the parties notice to attend the hearing immediately. Notice shall be given at least ten working days before the hearing.

Clause 10 Proceedings at the hearing

1. The appeal shall be heard during an open hearing of the CBE. In special cases, the chairman may decide to hear the entire appeal or part of the appeal behind closed doors.
2. The parties may arrange for a third party to assist them during the hearing.
3. If a party does not appeal at the hearing, the chairman shall verify that he has been given proper notice to attend. If this is the case, the hearing may proceed without that party being present. The same also applies if both parties do not appear at the hearing.
4. A scheduled hearing cannot proceed unless a majority of the members of the CBE who have been called to attend are present. In that case, the chairman shall postpone the hearing until such later time as he shall appoint.
5. The chairman shall:
 - open, preside over and close the hearing;
 - give each party an opportunity to explain their position;
 - ensure that the matter to be dealt with at the hearing progresses properly and efficiently towards a decision; and
 - except as otherwise provided in these regulations, decide in respect of all disputes arising at the hearing concerning how to deal with the matter.
6. If during the hearing written documents are submitted on the initiative of the CBE or written documents are submitted to the CBE, both parties shall be given the opportunity to consult the documents and express their views on the same.
7. The parties may address questions to one another through the chairman.
8. The parties may amend the grounds of the appeal and the defence and the grounds on which the same are based up until the conclusion of the hearing, unless the CBE finds that the other party would be unreasonably disadvantaged by such an amendment.
9. The chairman may decide not to hear any further witnesses or experts if in his opinion the facts have been clarified sufficiently by the witnesses and experts already heard.
10. If the chairman finds prior to the conclusion of the hearing before the CBE that the investigation has been incomplete, he may decide to suspend the hearing. Such a

decision to suspend the hearing may be accompanied by directions to the parties regarding the evidence.

11. A report of the hearing shall be prepared.

Clause 11 The decision

1. The decision will be made within ten weeks following receipt of the notice of appeal. The decision may be postponed for no more than four weeks. The summer holiday period is not included in calculating this time period.
2. The CBE shall deliberate and decide in a closed hearing. The decision shall be based solely on the case documents submitted prior to or during the hearing and the arguments of the parties during the hearing.
3. Decisions of the CBE shall take place by a majority of votes. In the event of equal votes, the chairman shall have the casting vote.
4. If the CBE considers it justified, it may annul the contested decision entirely or in part. It may require that a fresh decision or, in the situation where a decision was refused, a decision shall be taken in respect of the matter or that the paper/test/assessment, entire examination, admission assessment, additional assessment or any part thereof shall be taken again on conditions to be imposed by the CBE. The CBE is not authorised to take a fresh decision to replace the decision that has been annulled entirely or in part.
5. The body whose decision has been annulled shall, where necessary, take a fresh decision in the case having regard to the decision of the CBE. The CBE may appoint a time period for this in its decision.
6. The decision of the CBE shall be issued in writing and dated and shall include:
 - the name and place of residence of the parties and their representatives;
 - the decision on the appeal;
 - a proper explanation of the reasons for the decision, including, in the event that it has been decided not to hold a hearing, a statement explaining the grounds on which that decision was reached;
 - the names of the members of the CBE who have issued the decision; and
 - if applicable, the option to appeal against this decision to a higher authority, stating the time period for making such an appeal and the authority to whom that appeal may be made.
7. A copy of the decision shall be sent to the parties and to the exam committee or body concerned and, if applicable, the relevant director.
8. The decision shall be made available, with all personal data removed, for consultation by the general public at the offices of the CBE.
9. Decisions of the CBE are open to appeal before the Appeals Tribunal for Higher Education (*College van Beroep voor het Hoger Onderwijs* or CBHO) in The Hague.

Clause 12 Provisional remedy

1. In urgent cases, the appellant may request the chairman of the CBE to grant a provisional remedy pending the outcome in the main proceedings.
2. Clauses 5 and 6 of these regulations shall apply mutatis mutandis to a request for a provisional remedy. It is a requirement that there is an immediately demonstrable interest that requires an urgent remedy.
3. The chairman shall make a decision on this request after hearing the relevant body and/or the relevant examiner/assessor or at least giving them notice to attend a hearing.
4. The provisional remedy shall cease to apply once a decision is taken in the main case, unless that decision provides otherwise.

Clause 13 Miscellaneous

1. In situations that are not provided for in these regulations, the chairman shall decide, if necessary following consultation with the other members of the CBE.
2. Part 1 of these regulations constitutes regulations within the meaning of Article 7.62(1) of the WHW. The regulations and any amendment to the same require the approval of the institution management (the Board of Governors of HAS University of Applied Sciences).

In the event of any inconsistency between the Dutch version and the English version of this Regulations, the Dutch version shall prevail.