

Rules of procedure of the Examinations Appeals Board ('College van Beroep voor de Examens')

Erasmus University Rotterdam

(as referred to in Section 7.62 of the Higher Education and Research Act (WHW) and Article 56 of the EUR Administrative and Management Regulations (BBR-EUR))

Text adopted by the Executive Board on 16 December 2010

Article 1. Definitions

The following definitions apply in these regulations:

- the Board: the Examinations Appeals Board, as referred to in Section 7.60 of the Higher Education and Scientific Research Act (WHW).
- the Act: the Higher Education and Research Act ('Wet op het hoger onderwijs en wetenschappelijk onderzoek', WHW); (Bulletin of Acts Orders and Decrees 1992, 593, amended thereafter).
- EUR: Erasmus University Rotterdam.
- a party involved: a student, a prospective student, a former student, an external student, a prospective external student, a former external student.
- an interested party: an interested party as referred to in Section 1:2 of the General Administrative Law Act ('Algemene wet bestuursrecht').

Article 2. The size and composition of the Board

1. The Board has at least six members, including the chairperson and the deputy chairperson or chairpersons, and at least six deputy members. The number of deputy members will not exceed the number of members.
2. Two members and two deputy members are to be appointed from the section of students registered with EUR.
3. Besides the chairperson, at least half the Board members will be lecturers or members of the EUR academic staff.

Article 3. Division into chambers

1. Appeals will be dealt with by a chamber of the Board comprising three or five members.
2. The composition of the chamber will be determined by the Board secretary on behalf of the chairperson.

Article 4. The term of appointment and the dismissal of the (deputy) members of the Board

1. The chairperson, the deputy chairperson or chairpersons, the other members and the deputy members are appointed by the EUR Executive Board for a three year term or, in the case of students, a two year term. They may be reappointed.
2. Besides the cases referred to in Section 7.60, paragraph 6, of the Act, the members and deputy members will also be dismissed if they have finished fulfilling the capacity that has been the grounds for their appointment as member or deputy member of the Board.

Article 5. The Board secretary

1. The Board is assisted by a secretary who will be appointed by the Executive Board.

2. The Executive Board can add one or more officials to assist the secretary.
3. The appointment of the Board secretary and any addition of officials, as referred to in the second paragraph, will take place after consultation with the chairperson of the Board.
4. The secretary and any officials added on the grounds of the second paragraph will observe the instructions of the Board chairperson when performing their tasks.
5. After consultation with the Board chairperson, the Executive Board will also appoint one or more deputy secretaries.

Article 6. The Board's powers

1. The Board is authorised with regard to the following decisions:
 - a. decisions as referred to in Section 7.8b, paragraphs 3 and 5, and Section 7.9, paragraph 1 of the Act;
 - b. decisions relating to determining the number of credits to be achieved as referred to in Section 7.9a of the Act, as well as decisions relating to passing the final examinations as referred to in Section 7.9d of the Act;
 - c. decisions relating to the extent of the exemptions as referred to in Section 7.31a, paragraph 3 of the Act;
 - d. decisions, not being general decisions, taken on the grounds of the provisions by virtue of or pursuant to title 2 of chapter 7 of the Act, with a view to admission to exams;
 - e. decisions, taken on the grounds of the additional research referred to in Sections 7.25, paragraph 4, and 7.28, paragraph 4, of the Act;
 - f. decisions by examining boards and examiners;
 - g. decisions by committees as referred to in Section 7.29, paragraph 1 of the Act;
 - h. decisions taken on the grounds of Sections 7.30a and 7.30b of the Act with a view to admission to the programmes referred to in that article;
 - i. decisions as referred to in the Section 6, paragraph 4, Section 7, paragraph 4, and Section 8, paragraph 4 of the Admission Requirements, Selection and Tuition Fees Experiments Act ('Experimentenwet vooropleidingseisen, selectie en collegegeldheffing') (Bulletin of Acts, Orders and Decrees 2005, 222).

Article 7. The submission of the appeal

1. The appeal is submitted by a party involved to the (digital) EUR students legal protection facility.
2. The term for submitting an appeal is six weeks. The term commences on the day after the day on which the disputed decision has been made known to the parties involved in the prescribed manner or otherwise.
3. If the appeal is submitted after the end of the term referred to in the second paragraph, it will not be possible to declare it inadmissible on that basis if the submitting party cannot reasonably be judged to have been in default.
4. No court registry fees are payable for the processing of the appeal.

Article 8. Confirmation of receipt of appeal

1. The EUR legal protection facility confirms receipt of the appeal in writing to the party involved.
2. The EUR legal protection facility forwards the appeal as soon as possible to the Board for further processing.
3. The Board will inform the body that took the disputed decision about the appeal as soon as possible.

Article 9. The content of the appeal; the remedy of omissions

1. The appeal will be signed and contain:
 - a. the name, address, place of residence, telephone number and email address of the appellant,
 - b. the date,
 - c. a reference to the examiner in question or the body involved which took the disputed decision,
 - d. a clear description of the decision against which the appeal is directed, with submission - if possible - of a copy thereof or, if the appeal is directed against the refusal to decide, a clear description of the decision which, in the appellant's opinion, should have been taken, and
 - e. the grounds on which the appeal is based.
2. The Board secretary will inform the appellant of any omissions s/he has caused and will ask the appellant to rectify them within a period of time to be determined by the chairperson of the Board.

In the event that the appellant does not rectify the omission within said period of time, it will not be possible to declare it inadmissible.

Article 10. The amicable settlement

1. The Board secretary will immediately send a copy of the appeal to the chairperson of the body to which the appeal is directed, with an invitation to consult with the party/parties involved as to whether amicable settlement of the dispute is possible. A copy of this invitation will be sent to the parties involved.
2. If the disputed decision is taken by an examiner, it will be communicated in the manner referred to in paragraph 1 to the chairperson of the examining board in question with an invitation to consult with the party/parties involved and the examiner will check whether an amicable settlement of the dispute is possible. A copy of this invitation will be sent to the examiner and to the party involved.
3. The chairperson of the body to which the appeal is directed will invite the party involved, on behalf of this body, to attempt to reach a settlement at the earliest opportunity, but by no later than within five days after receipt of the appeal and the invitation to make an amicable settlement.
4. The chairperson of the body will inform the Board, within three weeks of receipt, of the appeal and the invitation as referred to in the first or second paragraph regarding the outcome of the consultation, providing reasons.
5. If an amicable settlement has been reached, the secretary will inform the parties that the Board will not process the appeal.

Article 11. Absence of an amicable settlement

1. The chairperson of the Board can decide that no attempt should be made to find an amicable settlement if, in his/her opinion, such an attempt would be pointless or result in a disproportional disadvantage for the party involved. In that case, the chairperson of the Board will set a deadline by which the statement of defence has to be submitted.
2. The secretary will immediately send a copy of the appeal to the chairperson of the body to which the appeal is addressed with a request to submit the documents relating to the appeal to the Board by the deadline set on the grounds of paragraph 1. A copy of this request will be sent to the party involved.
3. If the disputed decision has been taken by an examiner, the documents referred to in the second paragraph will also be sent to the chairperson of the examining board concerned.

Article 12. Written preparation

1. In the event that it has transpired that an amicable settlement is impossible, or if a decision has been taken not to try and reach an amicable settlement, the chairperson of the body will submit all the documents relating to the proceedings by the deadline referred to in Article 10, paragraph 4, or set on the grounds of Article 11, paragraph 1.

- He will include the statement of defence by the body or the examiner concerned.
2. If requested to do so the chairperson can determine that the defence can be submitted later, within a period of time s/he considers reasonable.
 3. Copy of the documents and the statement of defence as referred to in paragraph 1 will be sent immediately to the party involved.
 4. If the party involved indicates that h/she wishes to submit a reply to the statement of defence, or the examiner concerned or the body concerned indicates that it wishes to respond to the reply in the form of a rejoinder, the chairperson of the Board can, if there is still sufficient time available, having regard for the provisions in the sixth paragraph, provide an opportunity to do so within a period of time determined by him.
 5. The Board will immediately send the other party a copy of the reply, or of the rejoinder, as referred to in the previous paragraph.
 6. Interested parties can submit additional documents to the Board up until ten days before the hearing.
 7. Insofar as interested parties approve, the sixth paragraph does not have to be applied.
 8. The Board can take the initiative to collect the information and request the documents it considers necessary and which relate to the proceedings. The chairperson of the body will immediately send the Board, on request, the (education and examinations) regulation(s) which applied when the examinations or a part of the examinations were taken and also all documents which the Board believes it requires to deal with the appeal.

Article 13. Processing without a hearing

1. The Board can issue a judgement at any stage of the proceedings without a hearing being necessary, if it believes that the appeal is manifestly inadmissible or manifestly unfounded.
2. The Board will base its decision exclusively on the documents relating to the proceedings.

Article 14. Place, time and convocation of the hearing

1. Unless the provisions in Article 13 apply, the chairperson will take a decision, as soon as possible, regarding the place and time at which the appeal hearing will take place.
2. With due regard for the chairperson's instructions, the secretary will invite the members of the chamber to attend a hearing at the earliest opportunity.
3. The secretary will summon the parties to attend the hearing in good time. Wherever possible the period before the summons will include five non-working days.
4. If the appeal relates to a decision by an examiner, the secretary will also send the examiner a copy of the summons sent to the chairperson of the examining board in question.

Article 15. Making available of documents for perusal

1. As regards the hearing, all documents relating to the proceedings will be made available to interested parties at the secretariat for a period of at least a week. The secretary will inform the parties to this effect in the convocation as referred to in Article 14, paragraph 3.
2. The chairperson can stipulate, whether at the request of an interested party or otherwise, that documents with very personal content will not be made available for perusal by parties. A notification will be made if this provision is applicable.

Article 16. Replacement and assistance at the hearing; witnesses, experts and interpreters

1. The parties can be represented at the hearing by an authorised representative or be assisted by counsel.
They can also be accompanied at the hearing by witnesses, experts and interpreters, provided they submit the names of those people in writing to the Board and the other party by no later than four days before the day of the hearing.
2. At the request of interested parties, the witnesses and experts accompanying them can be heard.
3. The costs of witnesses, experts and interpreters are for the account of the interested party they accompany.
4. If a party is represented, the Board will, in any event, send the documents relating to the case

- to the authorised representative.
5. The Board can summon witnesses and experts to appear on its own initiative or at the request of the parties.

Article 17. Challenges and exemptions

1. As regards the hearing, each of the current members of the Board can be challenged by one or more of the parties involved in the appeal on the grounds of facts or circumstances which could hinder the formation of an impartial judgement by the member in question. A member can also claim exemption from giving testimony on the grounds of facts or circumstances.
2. The other current members of the Board will decide as quickly as possible whether the challenge or exemption is to be permitted. Decisions will be taken based on a majority of votes. In the event of an equality of votes the request will be permitted.

Article 18. The hearing

1. The appeal will be heard at a public Board meeting. In exceptional cases the Board can decide that the appeal will be heard wholly or partially at a hearing behind closed doors.
2. The chairperson of the Board will be in charge of the hearing. He will give each of the parties the opportunity to clarify their position. Those present at the hearing must behave in accordance with the chairperson's instructions. The chairperson is authorised to dismiss those parties that fail to do so.
3. The secretary will attend the hearing. S/he will take notes of the matters dealt with at the hearing.
4. The interested parties will be heard in each other's presence. On their own initiative or on request the interested parties can be heard separately, if a reasonable case can be made that a joint hearing will hinder careful proceedings or if, during the hearing, facts or circumstances would become known with regard to which secrecy is required on serious grounds.
5. If the interested parties are heard separately, each of them will be informed of the matters heard in their absence. The Board can disregard this, whether at the request of the interested party or otherwise, insofar as secrecy is required on serious grounds. A notification will be made if this provision is applicable.
6. Serious grounds are, in any event, not present insofar as the obligation exists, pursuant to the Government Information (Public Access) Act ('Wet openbaarheid van bestuur') to grant a request for information contained in these documents.
7. If a serious ground is based on the fear of damage to the physical or mental health of an interested party, perusal of the documents in question can be reserved for an authorised representative who is either a lawyer or a doctor.
8. If, during the hearing, the Board takes the initiative of submitting documents, or documents are submitted to the Board, the chairperson of the Board will give the parties the opportunity of studying said documents and of expressing their opinions thereon.
10. The parties may change the content of the appeal and of the statement of defence, as well as the grounds on which these are based up until the closure of the hearing, unless the Board is of the opinion that the other party would be unreasonably prejudiced by this change.
11. If it transpires, before the closure of the hearing, that the investigation has not been complete, the Board can stipulate that the hearing will be continued at a point in time to be determined by the Board. In addition, the parties can be issued with instructions regarding the evidence.
12. The official language of the hearing is Dutch.
13. Contrary to the previous paragraph, the Board can, whether at the request of a party or otherwise, allow a different language to be used if such would be more efficient and the interests of, among others, the other party would not be disproportionately prejudiced.
14. Before the closure of the hearing, the chairperson of the Board will give notice of when the judgement will be made. Wherever possible the judgement will be made within two weeks after closure of the hearing.

Article 19. Treatment without the attendance of (one of the) parties

1. If a party or both parties did not attend the hearing, the chairperson of the Board will check

- that said party or parties was/were properly summoned.
2. If a party that was not present was properly summoned, the appeal may also be dealt with without that party or both parties being present.

Article 20. The discussion and decision by the Board

1. The Board will discuss and decide in chambers. The Board will base its judgement exclusively on the documents made available for perusal and on that put forward at the hearing or, without the other party being prejudiced as a result, was submitted.
2. The secretary will be present during the discussion in an advisory capacity.
3. The participants in the discussion are obliged to observe secrecy regarding the dealings in chambers.

Article 21. New facts or circumstances

If, after the hearing, facts or circumstances become known to the Board which may be of considerable importance for the decision to be taken with regard to the appeal, the interested parties will be informed to that effect and they will be given an opportunity to express an opinion on the matter.

Article 22. The judgement

1. The Board will decide within ten weeks after receipt of the appeal.
2. The deadline will be postponed as of the day on which the submitting party is asked to rectify an omission up until the day on which the omission is rectified or the relevant deadline has passed.
3. The Board may adjourn the decision for no longer than four weeks. The adjournment will be announced in writing.
4. Further postponement is possible insofar as the party involved consents and the interests of other interested parties are not harmed as a result or if they consent.
5. The judgements by the Board will be dated and will state:
 - a. the names and places of residence of the parties and the names of the authorised representatives,
 - b. the grounds on which the judgement is based,
 - c. the decision, and
 - d. the names of the members of the Board who pronounced the judgement.
6. The judgement will be signed by the chairperson and the secretary and copies will be sent to the parties and to the Executive Board and the dean in question, and published on the Board's website. The version of the judgement published on the Board's website will be anonymous.

Article 23. Combining and dividing of appeals

1. The Board can, on its own initiative or at the request of the parties, bring third parties into the action whose interests are directly affected by the dispute. Each third party will then become a party in the action as a result.
2. Without prejudice to the provisions in paragraph 1, any party that has an interest in the dispute, can ask the Board to intervene or for permission to join one of the parties. If the request is allowed, the requesting party will become a party to the proceedings.
3. In the instances referred to in the first and second paragraphs, the Board will take those measures which are necessary for a proper process.
4. The Board can combine related matters and divide combined matters.

Article 24. The annual schedule of meetings

1. Wherever possible Board meetings will be held on dates and at times which have been laid down beforehand in a schedule of meetings to be drawn up by the Board every year.
2. The Board can stipulate that, contrary to the established schedule, a meeting can be held at another date or time.

Article 25. Substitution of the chairperson

In the event of inability to impeditment or inability to attend, or at the request of the chairperson, the latter will be substituted by a deputy chairperson.

Article 26. The provisional decision

1. In matters in which the interest of the party involved requires an immediate provisionally enforceable decision, the party can ask the chairperson of the Board, in a petition stating reasons, for a provisional decision in anticipation of the judgement on the principal. The chairperson decides on this request after having heard the body in question, or the examiner in question, or at least after having summoned them.
2. The provisions in:
 - Article 10,
 - Article 11,
 - Article 12, paragraphs 1 to 3 and paragraphs 6 to 8,
 - Article 14, paragraph 1,
 - Article 15,
 - Article 16,
 - Article 18, paragraphs 1, 2, 3 and 12 to 14,
 - Article 23, paragraphs 1 and 3,
 - Article 22, paragraph 5 under a, b and c and paragraph 6, apply mutatis mutandis to the request.

Article 27. Discontinuance or amendment of a provisional decision

The provisional decision can be discontinued or amended by the chairperson of the Board after h/she has heard the parties, or at least has properly interviewed them. The provisions in:

- Article 16,
- Article 18, paragraphs 1, 2, 3 and 12 to 14,
- Article 22, paragraph 5 under a, b and c and paragraph 6, apply mutatis mutandis.

Article 28. Lapsing of a provisional decision

The provisional decision lapses as soon as the Board decides in the principal, insofar as the judgement by the Board does not indicate a different point in time.

Article 29. Review of judgements

1. A judgement by the Board can be reviewed at the request of either of the parties on the grounds of new facts or circumstances which, if they had been known earlier, could have resulted in a different judgement.
2. Insofar as necessary, the provisions in Articles 6 to 21, will apply mutatis mutandis to a request for a review.

Article 30.

In cases in which these regulations do not provide, the chairperson of the Board will decide, if necessary after consultation with the other members of this Board.