

Rules of Procedure

Board of Appeal for Examinations (COBEX)

Saxion

Adopted by the plenary meeting of the Board of Appeal on 25.03.2010

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Rules of Procedure

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Chapter I: Foundation

Section 1

Foundation.

These Rules put into effect the provisions laid down in section 7.62 of the Higher Education and Research Act (WHW) concerning the Rules of Procedure for the Board of Appeal for Examinations, as well as the provisions laid down in this Act concerning the regulation of issues and the procedure of the Board of Appeal for Examinations.

Chapter II

The Board of Appeal

Section 2

Authority of the Board of Appeal

The Board of Appeal rules on appeals instigated by the person concerned, as referred to in section 8, paragraph 1, against the decisions mentioned in section 7.61 WHW.

Section 3

Board of Appeal Procedure

The Board of Appeal rules in plenary session on appeals submitted to it pursuant to section 2.

Section 4

The number of members and the composition of the Board of Appeal.

1. The Board of Appeal consists of six members, three of whom are deputy members; they are appointed and dismissed by the Board of Executives.
2. The chairman and the deputy chairman will be appointed in office.
3. Apart from the chairman, the Board of Appeal consists of one member from among the teaching staff and one student of Saxion Universities.
4. The members and deputy members will in turn take a seat on the Board of Appeal. In addition, the members and deputy members can replace one another in case of inability to attend or vacancy to participate in the activities of the board.
5. The chairman and the deputy chairman have to meet the requirements for eligibility for appointment as a judicial official, as referred to in section 1d of the Legal Position Judicial Officials Act.
6. Remuneration for the members and deputy members will be fixed by decision by the Board of Executives.

Section 5

The period for which the (deputy) members of the Board of Appeal are appointed and their dismissal

1. The members and the deputy members of the Board of Appeal are appointed for a period of four years and, in as far as students are involved, for a period of two years. The teacher and student members can be re-appointed once.
2. Every four years, immediately after the annual meeting a teacher member will resign in accordance with a rotation schedule to be drawn up by the board. The rotation schedule is to be drawn up in such a way that each teacher member will resign no later than in the eighth year after his (re) appointment. A teacher member, appointed in a temporary vacancy, takes the position in the rotation schedule of the person he replaces.
3. In addition to the grounds mentioned in section 7.60 sub 6 WHW, the members and the deputy members of the Board of Appeal are

dismissed by the Board of Executives when the Board of Appeal is dissolved, and also when they no longer hold the position on the basis of which they were appointed members or deputy members of the Board of Appeal.

Section 6

The secretary of the Board of Appeal

1. The Board of Appeal is assisted by a secretary who is appointed by the Board of Executives.
2. The secretary of the Board of Appeal in carrying out his activities will take into account the instructions of the chairman of the Board of Appeal.
3. The Board of Appeal will also appoint a deputy secretary who, in case of inability to attend or vacancy, can take over the activities of the secretary.

Section 7

Duty of care of the Board of Executives

The Board of Executives will ensure that the members mentioned in section 4, their deputies and the former members and their deputies will not suffer any disadvantage by or as a result of their membership of the Board of Appeal in their position within Saxion Universities.

Chapter III Appeal Procedure

Section 8

Lodging an appeal

1. Appeals can be lodged by the person concerned, who is defined as a (prospective or former) student or a (prospective or former) *extraneus*.
2. The appeal does not suspend the decision against which it is lodged.
3. The appeal is addressed to the Board of Appeal and submitted to the secretary of the board or the Reporting Centre for Complaints & Disputes.
4. The period of appeal is six weeks* and begins on the day after the one on which the decision was announced.
5. An appeal has been lodged in time when it has been received before the end of the period of appeal referred to in subsection 4.
6. If the appeal is submitted after the period referred to in the fourth and fifth subsection, rejection on the ground of want of form will not take place if it cannot reasonably be judged that the applicant can be blamed for the overdue submission.
7. If the appeal is made against an overdue decision, the appeal is not restricted to a certain period. The appeal can be lodged as soon as the administrative body is in default with respect to a timely decision. The appeal is however rejected on the ground of want of form if the appeal has been lodged at an unreasonably late date.

- (* NB: the term of six weeks is prescribed by law.)

Section 9

Confirmation of receipt of appeal

The secretary on behalf of the Board of Appeal confirms in writing the receipt of the appeal and informs the applicant of the appeal within what period he may expect a response on the substance.

Section 10

Contents of the appeal; rectification of an omission

1. The appeal is to be signed and to contain:
 - a. name, address and place of abode of the applicant
 - b. the date
 - c. indication of the body or the person against whom the appeal is being lodged,
 - d. a clear description on the decision against which appeal is being lodged, or in case the appeal is lodged against a refusal to take a decision, a clear description of the decision which, in the opinion of the applicant, should have been taken, and
 - e. the grounds for the appeal.
2. When the appeal is made against a decision, it should be accompanied by a copy of that decision, if possible.

3. When the requirements indicated in subsection 1, or any other explicit requirements for hearing an appeal, have not been met, the secretary of the Board of Appeal will inform the applicant of this and give him an opportunity to rectify the omission within a stipulated term. If the applicant fails to rectify the omission within the stipulated term, he may be declared inadmissible.

Section 11

Simplified procedure; Objection

1. The chairman of the Board of Appeal can issue an immediate ruling when he is of the opinion that the Board of Appeal evidently lacks competence, or the appeal is evidently inadmissible, or further hearing of the appeal is deemed unnecessary because:
 - a. the appeal is unfounded,
 - b. the decision against which the appeal is being lodged can clearly not stand, or
 - c. the decision against which the appeal is being lodged has been revoked by the authorised body, or has been altered so that the body concerned has evidently met the objections of the applicant.

He will base his ruling exclusively on the documents relating to the case. The ruling is equally subject to section 20.

2. Against a ruling of "evidently inadmissible" indicated in the opening of the first subsection and under a and c, the applicant can lodge and objection with the Board of Appeal within two weeks of the day on which the ruling was sent to him
Against the ruling meant in the first subsection under b, the defendant can lodge an objection with the Board of Appeal, within two weeks of the day on which the ruling was sent to him.
The objection is lodged in writing, stating reasons for the objection, signed by the applicant the defendant, as the case may be.
3. As a result of the objection, the ruling meant in the first subsection is nullified, unless the objection is declared inadmissible or unfounded by the Board of Appeal.
4. In case the Board of Appeal is of the opinion that the objection is evidently inadmissible or unfounded, declaration of the same will not take place until such time that the person who lodged the objection has been given fair hearing, in person or by proxy.

Section 12

Amicable settlement

1. Before hearing an appeal, the secretary on behalf of the Board of Appeal will send the appeal to the body against which appeal is being lodged, accompanied by the request to respond to the appeal within 10 working days. In addition, an explicit request is made to see if an amicable settlement is possible in consultation with the interested party or parties. The secretary of the Board of Appeal will play an active role in investigating the possibilities for an amicable settlement. No later than three weeks after receipt of the appeal, it must be clear whether the attempt to settle has resulted in a settlement.

2. In case an amicable settlement cannot be reached, the appeal will be heard by the Board.

Section 13

Documentary preparation of a hearing in session

When the appeal is to be heard by the Board of Appeal, the chairman may gather information in preparation for the hearing in session.

Copies of documents filed by interested parties will be sent to the opposing party without delay by the Board's secretariat.

As soon as the chairman is satisfied that the opinions of parties are sufficiently clear for hearing in session, he will finalise documentary preparations, fix the date for hearing in session, and parties will be invited for the session.

Section 14

Challenge and exemption

1. For the hearing in session each of the current members of the Board of Appeal can be challenged by one or more of the parties interested in the appeal, on the grounds of facts or circumstances deemed to stand in the way of impartial judgement by the member concerned. It is also possible for a member to request exemption based on such facts or circumstances.
2. The other current members will decide as soon as possible whether the challenge or exemption will be allowed. When votes are equally divided, the request will be allowed.
3. A request for challenging a member has to be submitted to the secretary of the Board of Appeal in writing before the hearing in session, stating the facts and circumstances on which the challenge is based.

Section 15

Substitution and assistance in session; witnesses and experts

1. At the hearing in session parties may be replaced by an authorised representative or a legal counsel. In addition, they may bring to the session witnesses and experts, on the understanding that the names of such persons have been made known to the Board of Appeal, and to the opposite party, four days in advance of the session at the latest.
2. If a party has himself represented, the Board of Appeal will at any rate send the documents pertaining to the case to the authorised representative.
3. The Board of Appeal can call for witnesses and experts, ex officio or at the request of parties.

Section 16

Hearing in session

1. The appeal is heard in public proceedings by the Board of Appeal. In special cases, and also at the motivated request of one of the parties, the Board of Appeal may decide that hearing of the appeal may take place partly or entirely in a session behind closed doors.

2. The chairman of the Board of Appeal will fix date, place and time at which the hearing of the appeal will take place. Parties will be notified of this in writing. The appeal will be heard on a location to be decided on later by the Board of Appeal.
3. The chairman of the Board of Appeal, or his deputy, is in charge of proceedings. He will ensure that both parties receive a fair hearing.
4. Parties may alter the content of the appeal and of the defence, as well as the grounds on which they rest, until the session is closed, unless the Board of Appeal judges that the opposite party is disproportionately disadvantaged by such alteration.
5. When, before the conclusion of proceedings, it appears that investigation of facts has not been complete, the Board of Appeal may stipulate that the hearing in session will be resumed at a later date and time to be determined by the Board. Such a decision may be accompanied by instructions to parties.
6. Before the hearing in session is concluded, the chairman will announce the date on which the decision will be delivered. Decisions will be delivered within ten working days after the conclusion of the session. The term can be extended by the Board of Appeal by a maximum of ten working days. Parties will be notified of this extension in time.

Section 17

The hearing in the absence of (one of the) parties

1. If one or both of the parties are absent at the hearing, the chairman of the Board of Appeal will check whether the party or parties have been properly called up.
2. If an absent party has been properly called up, the hearing of the appeal can also take place in the absence of that party or of both parties.

Section 18

Joinder of cases; Division

2. The Board of Appeal, ex officio or at the request of parties, can call up third parties whose interests are directly involved in the case. Any third party called thereby becomes a party in the case.
3. Subject to the provisions of the first subsection anyone whose interests are directly involved in the case, can request the Board of Appeal for permission to intervene or to join one of the parties. When the request is allowed, the applicant becomes a party in the case.
3. In the cases meant in the first and second subsection the Board of Appeal will draw up rules necessary for satisfactory proceedings.
4. The Board of Appeal is authorised to join connected cases and to divide joined cases.

Section 19

Consultation and decision

1. The Board of Appeal holds a plenary session and deliberates and decides in camera.

2. The Board will base its decision exclusively on the documents presented and on matters brought forward at the session or, without prejudice to the interest of the opposite party, submitted. After the deliberations the chairman will formulate a proposition for a decision.
3. The Board of Appeal will aim to arrive at a unanimous decision.
4. In case the Board of Appeal is unable to arrive at a unanimous decision, the issue will be decided by majority voting.

Section 20

Decision

1. The Board of Appeal will decide within ten weeks after receipt of the appeal.
2. The period will be suspended starting from the day on which the applicant has been requested to rectify an omission, until the day on which the omission is rectified or the period for that purpose has elapsed.
3. The Board of Appeal can adjourn the decision for a period of no more than four weeks. A written notification of the adjournment is provided.
4. Further deferment is possible in as far as the applicant agrees to this and other interested parties cannot be harmed in their interests or agree to the deferment.
5. The decisions of the board will be dated and include:
 - a. the names and addresses of parties and the names of their representatives,
 - b. the grounds on which the decision was taken,
 - c. the decision, and
 - d. the names of the members of the Board of Appeal who took the decision.
6. The decision is to be based on a proper motivation that is stated upon the announcement of the decision. If no hearing has taken place, it is indicated why this is the case.
7. The decision is signed by the chairman of the board and by the secretary, and a copy of the decision is sent to parties and made available to interested parties. The board may decide to leave out the names of parties from the published copies for interested parties.

Chapter IV PROVISIONAL RULING.

Section 21 Provisional ruling

If immediate action is required, the interested party can request the chairman of the Board of Appeal to make a provisional ruling, in accordance with section 7.61 subsection 7 WHW.

Section 22 Procedure for the request for a provisional ruling

1. Upon receipt of a request pursuant to section 7.61 subsection 7 WHW, the chairman of the Board of Appeal will decide, as soon as possible, place, date and time on which public hearing is to take place. Parties will be notified of this in writing. The public hearing will take place on a location to be determined later by the Board of Appeal.
2. Sections 8 sub 3, 13, 15, section 16 sub 1, 2 and 4, 18 sub 1 and 3, section 20 sub 1, sub 5 under a, b and c, and sub 7 apply equally to the request for a provisional ruling.

Section 23 Repeal or alteration of a provisional ruling

Interested parties and can request the chairman to repeal or alter the provisional ruling.

Sections 15, 16 sub 1, 2 and 4, and section 20 sub 1, sub 5 under a, b, and c, and sub 7 all equally apply.

Section 24 Repealed provisional ruling

The provisional ruling is nullified as soon as the Board of Appeal has reached a decision in the main issue, insofar as another time has not been indicated.

Chapter V

Other Issues

Section 25

Plenary meetings; Decision-making

1. Once a year the Board of Appeal will hold a plenary meeting to discuss general procedure in the Board of Appeal. All members, deputy members and persons mentioned in section 6, will be invited to participate in this meeting.
2. The Board of Appeal in its plenary meeting, can only take decisions when the majority of the (deputy) members are present.
3. Decisions will be taken by majority vote.
4. Blank votes will not be taken into account.

Section 26

Annual report

The Board of Appeal will report annually to the Board of Executives on its activities, signalling bottlenecks and suggesting alterations of this regulation, if necessary, or of the Students' Charter Saxion Universities, concerning these points.

Section 27

Definition of a year of session

A year of session is equal to a calendar year.

Section 28

Contingencies

In all cases in which the law, the Students' Charter or these Rules of Procedure do not provide, decisions will be taken by the Board of Appeal.

Section 29

Reference title

This regulation may be referred to as: Rules of Procedure of the Board of Appeal Saxion Universities.

Section 30

Effect

This regulation is effective as of the first day after approval by the Board of Executives.