

Rules of Procedure of the Examination Appeals Board

Breda University of Applied Sciences

As established by the Examination Appeals Board on 22 January 2018

Consent from the Executive Board:

Consent from the Participation Council was obtained on: n/a

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Rules of Procedure of the Examination Appeals Board of Breda University of Applied Sciences¹

Rules for the implementation of article 7.62 of the Dutch Higher Education and Research Act (WHW), established by the Examination Appeals Board following consent obtained from the Executive Board on 29 January 2018.

If the English version of these rules shows discrepancies or leads to differences of interpretation, the version in the Dutch language will be decisive and legally binding.

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¹ As from 1 September 2018 the name of the legal entity of “Stichting NHTV Breda Internationale Hogeschool” will be changed to “Stichting Breda University of Applied Sciences”. In anticipation, the new name is already used in these rules.

Chapter 1, Definitions

Article 1

In these rules, the following terms refer to:

Appellant	The person concerned in the sense of article 7.59a of the WHW and article 3.1 of these Rules of Procedure.
Notice of appeal	An appeal - submitted in writing or via the central facility as referred to in article 7.59a of the WHW - against a decision in the sense of article 7.61 paragraph 2 of the WHW;
Appeals Board	Examination Appeals Board (EAB) as referred to in article 7.60 of the WHW.
Higher Education Appeals Board (HEAB)	Appeal court judge as referred to in article 7.64 in conjunction with article 7.66 of the WHW.
Rules	The Rules of Procedure as referred to in 7.62 of the WHW.
Student	The person enrolled at Breda University of Applied Sciences as a student or 'extraneus' student as referred to in article 7.32 of the WHW.
Defendant	The relevant authority which made the decision appealed against.
Statement of defence	The official response by the relevant authority which made the decision appealed against.
WHW	Dutch Higher Education and Research Act.

Chapter 2, Organisation of the Examination Appeals Board

Article 2 Composition and method of operation

- 2.1 The Appeals Board is composed of fifteen members, including the chair and a deputy chair. The members act as deputy members to each other.
- 2.2 When processing an appeal, the Appeals Board will be composed of the chair or a deputy chair, three members of staff including at least two lecturers, and one student member. The members do not work at or are not enrolled at the academy that delivers the degree programme within which the appeal concerned is pending.
- 2.3 The chair, deputy chair, other members and deputy members will be appointed by the Executive Board for a term of five years, and student members for a term of two years. Upon the expiration of their term, they will be immediately eligible for reappointment for the same term.
- 2.4 The members and the deputy members of the Appeals Board will not be members of the Executive Board, of the management team of an academy, or of the Education Inspectorate.
- 2.5 The chair and deputy chair will meet the eligibility requirements for appointment as judicial officer, as referred to in article 5 of the Judicial Officers (Legal Status) Act.
- 2.6 At their request, the chair, the deputy chair, the members, and the deputy members of the Appeals Board will be granted dismissal by the Executive Board. Furthermore, they will be dismissed by the Executive Board when they cease to hold the capacity to which their appointment as a member or deputy member of the Appeals Board is associated.
- 2.7 The meetings of the Appeals Board to establish amendments to these rules and to deal with internal affairs will be led by the chair.
- 2.8 If the chair is absent or unable to attend, the chair will be replaced by the deputy chair.
- 2.9 The Appeals Board is assisted by a secretary and an assistant secretary which are appointed by the Executive Board for each academy. The Executive Board will appoint a deputy secretary. The secretary and his/her deputy will be appointed after consultation with the chair of the Appeals Board. In the fulfilment of his/her tasks, the secretary will observe the instructions of the Appeals Board.
- 2.10 The assistant secretary of an academy will support the secretary in the attempts to achieve amicable settlements as referred to in article 4 of these rules. In the fulfilment of his/her tasks, the assistant secretary will observe the instructions of the secretary.
- 2.11 The secretary and the assistant secretaries will not be members of the Appeals Board and cannot be appointed as members of the Appeals Board.

Chapter 3 Lodgement of appeals and amicable settlement

Article 3 Lodgement of appeals

- 3.1 Appeals may be lodged with the Examination Appeals Board, in cases by or pursuant to the

WHW, by students as well as by other persons concerned, being prospective and former students, 'extraneus' students, or former 'extraneus' students.

- 3.2 The appeal will be lodged by means of a substantiated notice of appeal within six weeks after the date when the decision was or should have been communicated to the person concerned or within six weeks after the date when the person concerned was notified in writing of a refusal to make a decision.
- 3.3 A notice of appeal should be lodged with the Appeals Board in writing or by means of the electronic form in the digital Service Point of Breda University of Applied Sciences with regard to the legal protection of the student as referred to in article 7.59a of the WHW.
- 3.4 The notice of appeal will contain:
- name, address details, student number of the person lodging the appeal (hereinafter referred to as 'appellant');
 - the date of the appeal;
 - specification of the authority that made the decision that is open to challenge;
 - a clear description of the decision and/or act which is appealed against, if possible including a transcript of the challenged decision; and/or, if the appeal is lodged against a decision being denied, a clear description of the decision that should have been made in the appellant's opinion;
 - the grounds on which the appeal rests.
- 3.5 The Appeals Board will confirm receipt of the notice of appeal by return, digitally or in writing.
- 3.6 If the appeal is not lodged in conformity with sections 1, 2, 3, and/or 4 of this article, the chair of the Appeals Board may declare the appeal inadmissible, without any further investigation being required.
- 3.7 If the time limit for lodging an appeal (six weeks) is exceeded as a result of a situation of force majeure unattributable to the appellant, the Appeals Board will refrain from declaring the appeal inadmissible.
- 3.8 If the notice of appeal does not meet the requirements as specified in section 4 of this article, the chair of the Appeals Board may notify the appellant of the omissions in the notice of appeal and invite him/her to remedy these omissions within fourteen days. Should the appellant fail to remedy these omissions, the appeal may be declared inadmissible.

Article 4 Amicable settlement

- 4.1 Before taking the appeal into consideration, the Appeals Board will send the notice of appeal to the authority whose decision is being appealed against, with the invitation to examine in consultation with the person concerned whether an amicable settlement can be reached. If the appeal challenges a decision made by an examiner/assessor, the relevant Board of Examiners concerned shall be informed of the notice of appeal. If the examiner/assessor whose decision is being appealed against is a member of the Board of Examiners, he/she will not take part in the consultations.

- 4.2 Within three weeks after the date of the invitation from the Appeals Board, the authority or examiner/assessor concerned will inform the Appeals Board of the result to which the consultations have led by submitting all the relevant documents.

Chapter 4 Processing of appeals

Article 5 Processing of appeals

- 5.1 If an amicable settlement proves to be impossible, the notice of appeal will be processed by the Appeals Board. A defence statement written by the relevant authority will be attached to the documents referred to in section 2 of article 4 of these rules.
- 5.2 A copy of the statement of defence will be sent by return to the appellant.
- 5.3 The Appeals Board will be entitled to obtain any information it deems necessary and request any documents relating to the appeal case.
- 5.4 The authorities and staff members, as well as the assessors/examiners of the institute will provide to the Appeals Board all information deemed necessary for the fulfilment of the Board's tasks.

Article 6 Hearings

- 6.1 In the hearings on appeal cases, the Appeals Board will consist of the composition as prescribed in article 2.2.
- 6.2 The chair of the Appeals Board will determine the details (location, date and time) of the appeal hearing and schedule it at its earliest convenience. All parties involved will be notified and invited in time.
- 6.3 Any other specific documents relating to the appeal may be submitted by the parties involved and other interested parties until ten days before the appeal hearing.
- 6.4 Before the appeal hearing, all documents relating to the appeal will be submitted for inspection to the Appeals Board for a period of at least one week.
- 6.5 Either or both parties may invite witnesses and/or experts to be heard at the hearing. The names and capacities of these witnesses and/or experts will be submitted in writing by the party involved to the Appeals Board and to the opposing party at least four days prior to the hearing.
- 6.6 In its official capacity or at the request of either or both parties, the Appeals Board may summon experts and/or witnesses. The Appeals Board will ensure that a list of names and capacities of these witnesses and/or experts is submitted to all parties involved at least four days prior to the hearing.
- 6.7 The secretary of the Appeals Board will attend the hearing and will be responsible for writing reports on the matters discussed during the hearing.
- 6.8 All hearings will be public. Only in special cases may the Appeals Board decide to hold the appeal hearing behind closed doors.

Article 7 Appeal decisions and appealing against appeal decisions

- 7.1 The Appeals Board will decide to declare the appeal either admissible or inadmissible, or well-founded or ill-founded. The chair has the competence to declare the appeal manifestly inadmissible, for instance if the appeal does not comply with the requirements of article 3, section 4.
- 7.2 The appellant will be entitled to lodge an objection to the Appeals Board against the decision to declare an appeal manifestly inadmissible, as referred to in the previous section, within fourteen days after the date when this decision was sent. The appellant will be required to provide an adequate statement of reasons for his/her objection.
- 7.3 Because of the objection, the decision will be repealed, unless the objection is declared inadmissible or ill-founded by the Appeals Board.
- 7.4 If the Appeals Board is of the opinion that the objection is inadmissible, ill-founded, and/or manifestly ill-founded, the Appeals Board may decide to declare the objection inadmissible, ill-founded and/or manifestly ill-founded without any further investigation being required. In that case, the person who submitted the objection, if he/she requested so, should be given the opportunity of being heard either personally or through a duly authorised agent.
- 7.5 If the time limit for lodging an appeal (ten weeks) is exceeded as a result of a situation of force majeure, the chair will refrain from declaring the appeal inadmissible.
- 7.6 Within ten weeks after having received the notice of appeal, the Appeals Board will send its substantiated decision to the parties involved, either electronically or by registered post. This term will be postponed as from the day after the one on which the appellant was requested to remedy any omissions as referred to in section 8 of article 3 of these rules, until the day on which these omissions have been remedied or the mere lapse of the set term.
- 7.7 Immediately after the decision reached orally, the Appeals Board may notify the parties involved of this decision by any means of communication chosen by the Appeals Board.
- 7.8 The Appeals Board may adjourn the decision for at most six weeks. It is possible to further adjourn the decision if (a) all parties interested agree to it or (b) the appellant agrees to it and no other party interested can be affected as a result or (c) if this is necessary in relation to complying with lawful procedural provisions. The parties involved shall be notified of this in writing in time.
- 7.9 The written decision of the Appeals Board may be appealed against by the appellant within six weeks to the Higher Education Appeals Tribunal, PO Box 16137, 2500 BC The Hague (www.cbho.nl). No appeal may be lodged against the decision by the Higher Education Appeals Tribunal.

Article 8 Assistance

- 8.1 Parties are entitled to obtain assistance by counsel.
- 8.2 If a party wants to have themselves represented by an authorised agent who does not have the

capacity of a solicitor or lawyer, the Appeals Board will have to grant written approval for this in advance or oral approval at the hearing.

Article 9 Temporary provision

In cases where it is in the appellant's interest to make an accelerated decision by anticipation, which can be carried out immediately, the appellant may submit a substantiated request for a temporary provision, pending the judgement of the appeal itself. The chair will decide on this request after having heard, or at least summoned, the relevant authority and/or examiner/assessor.

Chapter 5 Concluding provisions

Article 10 Entry into effect and reference title

- 10.1 Replacing the previous Code of Order of the Examination Appeals Board of NHTV (1 September 2015), these Rules were established on 22 January 2018 and are due to enter into effect on 1 May 2018.
- 10.2 These rules can be referred to as "Rules of Procedure of the Examination Appeals Board of Breda University of Applied Sciences" .