

MSM

MAASTRICHT
SCHOOL OF
MANAGEMENT

Rules and Regulations

Board of Appeal for Examinations

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Regulations of the Board of Appeal for Examinations

Maastricht School of Management has a Board of Appeal for Examinations where students can lodge appeals on the grounds of article 2 of these regulations. This Board is an independent Board of Appeal.

Article 1 Definitions

In these rules of procedure, the following definitions apply:

Act	:	the Higher Education and Research Act;
Board of Appeal	:	MSM's Board of Appeal for Examinations
Chair	:	the Board of Appeal's chair;
Examination Board	:	the Examination Board referred to in Article 7.12 of the act;
Secretary	:	the Board of Appeal's secretary;
Service Point	:	the Complaints Service Point referred to on the website of MSM; Appellant
	:	the party filing a notice of appeal with the Board of Appeal.

Article 2 Jurisdiction

1. The Board of Appeal has jurisdiction concerning the following decisions:
 - a. decisions referred to in Article 7.9 paragraph 1 of the act;
 - b. decisions concerning determination of the number of credits earned as referred to in Article 7.9a of the Act and decisions concerning passing the final examinations as referred to in Article 7.9d of the act;
 - c. decisions of a non general nature taken under the provisions by or pursuant to Chapter 7 Title 2 of the act in so far applicable to MSM pursuant Article 7.1 paragraph 2 and 3 of the act;
 - d. decisions by examination boards and by examiners;
 - e. decisions by committees as referred to in Article 7.29 paragraph 1 of the act.
2. A refusal to decide is considered equivalent to a decision. If a decision is not taken within the period stated by the act, or, if there is no such period, within a reasonable period, this will be considered equivalent to a refusal to decide.
3. The appeal may be filed with respect to a decision being contrary to the law.
4. If the appeal is accepted by the Board of Appeal for Examinations, but a final judgment is not yet communicated by the Board of Appeal, the Final Decision from the MSM Examination Board is binding, until a final judgment has been sent.

Article 3 Size of the Board of Appeal and term of office of the members

1. The Board of Appeal consists of at least three and at most five members. The number of deputy members does not exceed the number of members.
2. The chair, deputy chair(s), other members and any deputy members are appointed by the MSM Dean on the Board of Appeal's recommendation for a three-year period. They may be reappointed again.
3. The members and deputy members may not be part of the MSM Executive Board or the Education Inspectorate. Besides the chair, at least half of the Board of Appeal members must be lecturers or academic staff members.
4. The chair and deputy chair(s) must satisfy the requirements for appointment as judicial officers referred to in Article 1d of the Judicial Officers (Legal Status) Act (Wet rechtspositie rechterlijke ambtenaren).

5. Members and deputy members are dismissed from the Board of Appeal:
- at their own request;
 - if they are no longer member of MSM or the faculty community;
 - when they turn age 70, effective the following month.
- They are also dismissed early if, because of illness or disability, they are not fit to carry out their position, as well as if they have been convicted of a crime in a court judgment which has become final. Before being dismissed pursuant to the provisions in the previous sentence, the party concerned is informed of the intention to dismiss him/her and is given the opportunity to be heard in this regard.

Article 4 Secretary

1. The Board of Appeal is assisted by a secretary appointed by the Dean. The Dean may appoint one or more deputy secretaries as well.
2. The secretary exercises his/her duties in compliance with the instructions of the chairperson of the Board.

Article 5 Representation

The Board of Appeal is represented at law and otherwise by the chair or secretary.

Article 6 Content of notice of appeal and omissions

1. The notice of appeal must be dated and signed, and must at least include:
 - a. the appellant's name, full address and email address;
 - b. an indication of the examiner or body that took the decision;
 - c. a clear description of the decision against which the appeal is directed, if possible, with submission of a copy thereof, or, if the appeal is directed against the refusal of a decision, a clear description of the decision which, in the appellant's judgment, should have been taken;
 - d. the grounds on which the appeal is based;
 - e. a claim which is described as precisely as possible;
 - f. name of the program, location and intake in which the appellant is enrolled.
2. The secretary of the Board indicates on the appeal the date of receipt and issues an acknowledgement of receipt. The secretary notifies the chairperson of the Board without delay of the receipt of an appeal.
3. The secretary of the Board notifies the appellant of any omissions he or she finds and requests that these be remedied within the deadline to be set by the chairperson. If the appellant does not remedy his or her omissions within the deadline set, the appeal may be held to be inadmissible.
4. An individual appeal to a Final Decision related to a group assignment, will be rejected. The Board of Appeal for Examinations will judge an appeal in case of a group assignment only on group level and not individual level. To guarantee that all group members agree with filing the appeal, the Board of Appeal will only consider an appeal when all group members are mentioned in the written motivated appeal and are copied in the email sent to the Board of Appeal.

Article 7 Amicable settlement

1. Before the appeal is considered, the Board of Appeal sends the notice of appeal to the body against which the appeal is directed, inviting it to ascertain, in consultation with the party(ies) concerned, whether the dispute can be settled amicably.
The chair of the body concerned calls on the party(ies) concerned to do this within five days after receiving the invitation referred to in the previous sentence. If the appeal is directed against a decision by an examiner, the notice of appeal will be sent to the relevant Examination Board. If the examiner against whom the appeal is directed is a member of the Examination Board, s/he will not, pursuant to the act, participate in the discussions concerning an amicable settlement.
2. Within three weeks or, if possible, earlier, the body concerned informs the Board of Appeal in writing of the result of the discussions, while submitting the documents related to the appeal. If an amicable settlement has not been possible, the notice of appeal will be taken up by the Board of Appeal
3. If an amicable settlement has been achieved, it will be signed by the chair of the body concerned and included with the notice referred to in the previous paragraph.
4. The chair of the Board of Appeal can decide that an attempt to settle the appeal amicably will not be made if, in his/her judgment, such an attempt will obviously be fruitless or will disproportionately prejudice the appellant. The decision will be communicated to the parties, with the period within which the statement of defence must be filed by the body concerned being indicated as well.

Article 8 Refraining from amicable settlement

1. If an amicable settlement has not been possible, the body concerned or Examination Board concerned will include with the notice referred to in Article 7, paragraph 2, any documents relating to the case, insofar as these are in the respondent's possession. A statement of defence will also be included. The foregoing will apply mutatis mutandis in the event of a decision referred to in Article 7, paragraph 4.
2. The chair may determine that the statement of defence may be filed at a later time deemed reasonable by him/her.
3. Immediately after receiving the statement of defence, the secretary will send a copy of it to the appellant.

Article 9 Location and date of hearing

1. After the notice from the body concerned referred to in Article 7, paragraph 2, has been received, the chair of the Board of Appeal sets the location and date for the hearing.
2. The secretary gives the parties written notice of the location and date for the hearing at least 10 calendar days beforehand.
3. The secretary summons the parties to that hearing.
4. The Board of Appeal's meetings and hearings take place in Maastricht.
5. On its own initiative, the Board of Appeal may gather information deemed necessary by it and request documents relating to the case.
6. The bodies, staff members and examiners of the institution furnish the Board of Appeal with information which the Board of Appeal believes is necessary to perform its duties.
7. The parties need not be heard if:
 - a. the appeal should obviously be declared inadmissible;

- b. the appeal is obviously unfounded or
- c. the interested parties have stated that they do not wish to exercise their right to be heard.

Article 10 Processing the appeal without session

- 1. If the Board is of the opinion that an appeal is manifestly inadmissible or manifestly unfounded, it may announce the outcome of its deliberations at all times and without having dealt with the appeal in session, regardless of the status of the appeal procedure.
- 2. The Board bases its decision solely on the records related to the dispute.

Article 11 Reply/Rejoinder

- 1. The chair may decide to give the parties the opportunity to file a reply or rejoinder within a period to be set by the secretary.
- 2. The reply or rejoinder is directed to the chair and filed with the secretary, who will furnish a copy to the other party.

Article 12 Submission and inspection of additional documents

- 1. The parties may submit additional documents up to 10 calendar days before the hearing. The chair may decide that documents can be submitted after this period, too. The secretary sends a copy of the documents to the other party.
- 2. Before the hearing, the documents relating to the case are made available for inspection by the parties at the Board of Appeal for at least one week. The secretary informs the parties that the documents are available for inspection.
- 3. The parties may take copies and extracts from the file, except if the chair, on his/her own initiative or at the request of a party, has determined that documents whose content is very personal in nature will merely be available for inspection.

Article 13 Assistance and representation at the hearing; witnesses and experts

- 1. The parties may be represented at the hearing by a representative or be assisted by counsel. They may also bring witnesses and experts to the hearing, on the understanding that they provide a written list of the names of these persons to the Board of Appeal's secretary no later than four business days according to the Dutch calendar (Monday to Friday) before the hearing. The secretary informs the other party of this list.
- 2. The Board of Appeal may call witnesses or experts on its own initiative or at the parties' request. The secretary will inform the parties immediately if the Board of Appeal calls the witnesses or experts on its own initiative.
- 3. If a person is being represented, the secretary will in any case send any documents relating to the notice of appeal to the representative.

Article 14 Public or other hearing

- 1. The appeal is heard by the Board of Appeal in a public hearing. In exceptional cases, the Board of Appeal can decide that the appeal will be heard in whole or in part behind closed doors.
- 2. The chamber will hear the appeal in a plenary hearing.
- 3. The secretary ensures that interested parties are notified of the location and date of the hearing.

Article 15 Appearance at the hearing

If a party or its representative does not appear at the hearing, the chair will assess whether the party received a proper invitation. If the party was properly invited, the case may also continue to be heard without that party being present.

Article 16 Hearing

1. The chair of the Board of Appeal presides over the hearing and gives each party the opportunity to explain its position.
2. The chamber members are entitled to ask any questions which they deem necessary to assess the appeal.
3. If, during the hearing, written documents are submitted by the Board of Appeal on its own initiative or written documents are submitted to the Board of Appeal, the chair will give the parties the opportunity to inspect those documents and to state their views concerning these, unless the chair believes that submission of the documents will unreasonably prejudice a party in defending itself. In that instance, the chair can decide that the documents will not be taken into account in the deliberations or decision or that the hearing in the case will be adjourned until a later date to be set by him/her.
4. Before the hearing is closed, the chair indicates when a judgment will be rendered.

Article 17 Change in party's or parties' position

The parties may change the substance of the appeal or defence as well as the grounds on which they are based up to the time the hearing is closed, unless the chair of the Board of Appeal is of the opinion that the other party's position will be unreasonably prejudiced.

Article 18 Adjournment of the hearing

1. The chair of the Board of Appeal may, on his/her own initiative or at the request of a party, adjourn the hearing until a date mentioned in the adjournment decision or until a later date to be set by the chair.
2. If the hearing is adjourned until a later date set by the chair, the secretary will inform the parties when the hearing will be resumed.

Article 19 Deliberations

1. The chamber deliberates and decides in chambers. It bases its judgment solely on what was put forward at the hearing, on the written documents, and based on its own knowledge.
2. The secretary is present at the deliberations. He/she may cast an advisory vote.

Article 20 Stay of the hearing

If it is apparent before the judgment that the investigation has not been complete, the Board of Appeal may decide to continue the hearing on a date to be set by the Board of Appeal.

Instructions may be given to the parties regarding the evidence. In that instance, the secretary will inform the parties of the date on which the hearing will be continued.

Article 21 Meeting schedule

Insofar as possible, the Board of Appeal's meetings and hearings are held on dates and at times set beforehand in a meeting schedule to be formulated each year by the Board of Appeal.

The chair may decide that, in derogation of the meeting schedule, a meeting or hearing may take place at another time.

Article 22 Online Platforms

Due to the international character of MSM with students all over the world, the hearings and sessions can also take place via online platforms and applications.

Article 23 Decision period

1. The Board of Appeal renders a decision within 10 weeks, calculated from the day after the period for filing the notice of appeal expired.
2. The period referred to in paragraph 1 will be stayed from the date on which the appellant was asked to rectify an omission referred to in Article 6, paragraph 3, until the date the omission was rectified or the period set for this expired without the appellant's rectifying the omission.
3. The Board of Appeal may extend the decision period by at most four weeks. Written notice of the extension will be provided. A further extension is possible, insofar as the appellant consents to this, and the interests of the other interested parties will not be prejudiced or the other interested parties consent to this.

Article 24 Joinder/Separation

The Board of Appeal has authority to join related cases and separate joined cases.

Article 25 Judgment

1. The decisions of the Board of Appeal are taken on the basis of an absolute majority of vote.
2. If the Board of Appeal finds that the appeal is well-founded, it will reverse the decision in whole or in part. The Board of Appeal does not have authority to take a new decision instead of the decision reversed in whole or in part. The Board of Appeal may determine that a new decision must be taken in the case, or, if the decision has been refused, that a decision has to be taken, or that the examination, admissions test, supplemental investigation or any portion thereof needs to be retaken or redone, under conditions to be stated by the Board of Appeal. Insofar as necessary, the body whose decision has been reversed provides for new relief in the case, with due observance of the Board of Appeal's judgment. The Board of Appeal may set a period for this in its judgment.

Article 26 Content of written judgments

1. The Board of Appeal's judgment will be set forth in writing as soon as possible after the decision has been taken. The judgment must be dated and must include:
 - a. the names and addresses or email addresses of the parties, and, if applicable, the name of the representative;
 - b. the grounds on which the judgment is based;
 - c. a decision;

- d. the names of the Board of Appeal members and deputy members who rendered the judgment.
2. A true copy of the judgment, which has been certified by the secretary, is sent to the parties and a copy is sent to the Board of Appeal members and deputy members, as well as the MSM Dean and relevant Education Officers.
A copy of the judgment is available to interested parties upon request.
3. The Board of Appeal may decide that the names of the parties will be omitted in the copies for interested parties.

Article 27 Preliminary arrangement

If speed is of the essence, the chair of the Board of Appeal can, at an appellant's request and in anticipation of the judgment in the main action, provide a preliminary arrangement, without prejudice to the provisions in Article 7.66, paragraph 2, of the act. The request is made in an application supported by reasons. The chair decides this request after consulting with, or at least summoning, the body concerned or examiner concerned, as well as the applicant.

Article 28 Placement in files

The secretary ensures that the judgments rendered by the Board of Appeal, along with the documents relating to them, are kept in the Board of Appeal's files.

Article 29 Unforeseen situations

In situations not covered or not clearly covered by these rules of procedure, the chair of the Board of Appeal decides the matter, if possible, after consulting with the other Board of Appeal members.

Article 30 Address of Board of Appeal

The Board of Appeal's e-mail address is boardofappeal@msm.nl.

Article 31 Filing notices of appeal and time periods

1. The person concerned must file a notice of appeal with the Board of Appeal within six weeks of the date on which the decision in question was announced in the prescribed manner or is deemed to have been refused.
2. The Secretary of the Board of Appeal confirms to the person concerned that it has received the notice of appeal, indicating the date of receipt, and forwards the notice of appeal to the Board of Appeal as soon as possible.
3. A notice of appeal is deemed to have been timely filed if it was received before the end of the period referred to in paragraph 1.
4. If the appeal is directed against the failure to take a timely decision, the appeal will not be subject to a filing period. The notice of appeal may be filed once the administrative body has failed to timely take a decision. The notice of appeal will, however, be declared inadmissible by the Board of Appeal if it is filed unreasonably late.

Short title

This regulation may be cited as the ‘Regulations of the MSM Board of Appeal for Examinations’.

Laid down by the Maastricht school of Management Board of Appeal for Examinations in its decision of October 1st 2019, following consent from the Dean on September 30, 2019.



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