

Language Table Appeals Regulations

providing the elaboration of Article 5.5 of the Code of Conduct Higher Education

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Introduction

These regulations detail the appeal procedure with the National Commission Code of Conduct. In brief, it is about the option for language test providers to appeal against decisions of the Assessment Committee, such as a refusal to include the test in the table or a measure to - conditionally - remove the test from the table. The decisions taken by the Assessment Committee cannot be regarded as decisions under the terms of the General Administrative Law Act (*Algemene wet bestuursrecht* - Awb). Therefore, this procedure is not an objection procedure under the Act mentioned but an appeal procedure based on self-regulation.

Article 1. Definitions

The following definitions apply to these Regulations:

Appellant:

The language test provider, as referred to in Article 5.5 of the Code of Conduct Higher Education.

Appeals Committee:

The Committee referred to in these regulations.

Code of Conduct Higher Education:

The most recent version of the Code of Conduct International Students in Higher Education published on www.internationalstudy.nl.

Regulations of the Code of Conduct:

The Regulations elaborate on Article 8.4 of the Code of Conduct Higher Education published on www.internationalstudy.nl.

National Commission:

The National Commission referred to in Section 8 of the Code of Conduct Higher Education,

Assessment Committee:

The Assessment Committee referred to in Article 5.4 of the Code of Conduct Higher Education.

Appendix language tests Code of Conduct:

The appendix referred to in Article 5.2 of the Code of Conduct Higher Education.

Article 2. Appeals Committee and administrative office

1. The National Commission acts as the Appeals Committee.
2. The secretary referred to in Article 9 of the Regulations National Commission Code of Conduct will be appointed to the administrative office.
3. The administrative office will have the following tasks:
 - a. processing incoming documents and correspondence with the parties in consultation with the chairperson;
 - b. organizing hearings as referred to in Article 8 of these regulations;
 - c. making a report of the hearing;
 - d. all the activities that the chairperson or the Committee deem necessary.
4. The Committee and the administrative office will deal with all documents relating to the appeal case with confidentiality.

Article 3. Challenges and disqualification

1. Before the start of the oral handling of the appeal, the appellant may request to challenge one or more members of the Committee:
 - a. if the member has a personal interest in the dispute;
 - b. if the member has a relationship with the appellant that may obstruct an impartial judgment;
 - c. any other grounds of facts or circumstances that may complicate the ability of the member concerned to give an impartial opinion.
2. In the cases mentioned above, a member of the Committee may also be disqualified at their own initiative.
3. The other members of the Committee will decide about the challenge as soon as possible. In such cases, the other members of the Committee decide by majority of votes. Each member of the Committee has one vote. In the event of a tied vote, the request shall be granted.

Article 4. Competence

1. The Committee shall only decide on the following:
 - a. a decision of the Assessment Committee addressed to the appellant regarding the refusal of inclusion in the language table;
 - b. any other measure addressed to the appellant, taken by the Assessment Committee as referred to in Article 5.4 Code of Conduct Higher Education.

Article 5. Periods

1. The appeal must be lodged within four weeks¹ after sending the decision or the notice to the appellant.
2. If the notice of appeal has been filed after the expiry of that period, inadmissibility on that ground shall not apply if the appellant proves that it lodged the appeal as soon as it could reasonably be required, shall remain at the chairperson's discretion.
3. The regulations allow for the chairperson to extend the period.
4. The administrative office will send the appellant a confirmation of receipt of the appeal within five working days after receiving it.

Article 6. Proceedings and costs

1. The appellant may appeal with the Committee against a decision referred to in Article 4 of these Regulations that may have harmed its interests directly.
2. The appeal must be signed and include the following:
 - name, address and place of residence of the appellant;
 - the date;
 - a clear description of the decision subject to the appeal. A copy of the disputed decision must be included. If the appeal is directed at the refusal of a decision, a clear description of the decision that should have been made in the opinion of the appellant must be included;
 - the grounds that form the basis of the appeal; and
 - copies of the relevant documents for the case.
3. The appellant will be notified by, or on behalf of, the chairperson of the Committee of any omissions in the appeal and will be invited to repair these within a period set by the chairperson. Should the appellant not have repaired the omissions within that period, the appeal may be declared inadmissible.
4. If the appeal is written in a language other than Dutch or English, and a translation is needed to investigate the appeal properly, the appellant provides a Dutch or English translation.

¹ The period of one month has been chosen as a reasonable period. The procedure is not tied to the periods mentioned in the Awb.

5. Any legal or other charges the appellant incurs for appealing are for its account.

Article 7. Defence

1. After receipt of the appeal, the administrative office will send the Assessment Committee a copy and the accompanying documents of the appeal and allow it to send a written defence within four weeks. The chairperson may decide on a shorter period.
2. The statement of defence will include a copy of the primary documents relevant to the case. The Committee can extend the period of defence based on a timely and substantiated request of the Assessment Committee.
3. After reception of the statement of defence, the Committee will immediately send the appellant a copy and the accompanying documents.

Article 8. Hearing

1. The chairperson will decide the venue and the times of the hearing session for the appeal as soon as possible. The parties will be invited to the hearing in time but no later than fourteen days before the session. The Committee and the appellant may unanimously consent to treat the appeal in writing.
2. If the chairperson deems that the case is suitable for treatment in writing, they will notify the members of the Committee and the appellant within ten days after receipt of the appeal. The chairperson will ask them if they consent to written treatment of the appeal and request them to answer this question within ten days after receipt.
3. If either or both parties answer negatively or if there is no answer, the case will be dealt with in a session in the prescribed manner.
4. The appeal will be discussed in a closed session of the Committee.
5. The Committee may, whether or not at the request of any of the parties to that effect, call up witnesses and experts for the hearing session. If the Committee uses this option, it will notify the parties in advance. The request must be sent to the Committee no later than seven working days before discussing the appeal.
6. If the right, as referred to in 8.5, is used at the request of a party, the costs will be for that party's account.

Article 9. Decision

1. The Committee will decide within six weeks of receipt of the appeal.
2. The Committee's opinion shall only be based on what has been brought forward during the session and in the documents presented by the parties.
3. The Committee is authorized to extend the period referred to under 9.1 with a maximum of six weeks.
4. If the Committee upholds the petition, it can order the Assessment Committee to make a new decision or perform another action with due observance of its opinion.
5. The Committee decides by a majority of votes. Each member of the Committee has one vote. The opinion of the minority will not be disclosed.
6. The Committee's decision will be dated and include:
 - the names of the parties, the capacities of the parties and the names of the authorized representatives;
 - the grounds that form the basis of the decision;
 - the decision.
7. The decision shall be signed by the chairperson and sent to the parties by registered mail.
8. The Committee's decision shall be binding on both parties.

Article 10. No processing²

1. The Committee can decide not to process or to discontinue the consideration thereof, if:
 - a. the appeal does not meet the requirements stated in Articles 4 and 6 of these Regulations;
 - b. the appeal is manifestly unfounded;

² Cf. Art. 20 Regulations of the Code of Conduct.

- c. the interest of the appellant is manifestly insufficient, or the seriousness of the decision is manifestly insufficient;
- d. the petition refers to a decision against which another procedure has been submitted or another mechanism is already in place;
- e. after intervention by the Committee and in its opinion, the complaints of the appellant have been appropriately met;
- f. the appeal refers to a case for which the public prosecutor has issued a relevant warrant of arrest or is subject to prosecution, or if the Assessment Committee's decision forms part of the criminal investigation or prosecution of a punishable action and a relevant warrant of arrest has been issued by the public prosecutor or is subject to prosecution.

Article 11. Unforeseen circumstances

1. In cases not covered by these Regulations and requiring an immediate decision, the chairperson shall decide after hearing the other members of the Committee.

These Regulations shall be cited as Language Table Appeals Regulations.