

## CHECKLIST FOR LEGALLY ROBUST DECISION-MAKING BY EXAMINATION BOARDS

This checklist contains requirements for making decisions based on e.g. rules of conduct referred to as the general principles of proper administration ('algemene beginselen van behoorlijk bestuur' – formele en materiele). Following these principles contributes to legally robust decision-making. The checklist is for informational and learning purposes, and can be used prior to or during the process of taking decisions, as a quality assurance tool, and as training material for Examination Board members.

### 1. COMPETENCE AND AUTHORITY (*legaliteitsbeginsel*)

- The decision falls within the statutory tasks of the Examination Board (*Art. 7.12 WHW + 3:4 lid 1 Awb*)
- The decision was taken by the Examination Board itself or under a valid written mandate (*Art. 10:5 Awb*)
- The authority can only be used for the justified cause (*Art. 3:3 Awb*)
- The applicable legal basis (WHW, EER, policy rules) is explicitly mentioned or cited

### 2. REASONED DECISION (*motiveringsbeginsel, verbod op vooringenomenheid, fair play beginsel*)

- The decision contains the facts, the legal frameworks or articles, the weighing of interests, and the conclusion
- The reasoning is specific to the individual circumstances of the student (*Art. 3:46 Awb*)
- The decision was made fairly, independently, and without any form of bias (*Art. 2:4 Awb*)  
(*Note: CBE practice: general or template reasoning is insufficient.*)

### 3. LEGAL CERTAINTY AND FORESEEABILITY (*rechtszekerheidsbeginsel*),

- The applicable rules were accessible, clear and foreseeable to the student (*EER, policy rules, published regulations*). No retroactive or unclear application of rules (*Art. 3:2 Awb*)
- The student knew what to expect and what could have been considered in making the decision

### 4. PROCEDURAL CAREFULNESS (*zorgvuldigheidsbeginsel*)

- All relevant facts and circumstances have been properly established (*Art. 3:2 Awb*)
- The student was heard where required (mandatory in case of sanctions, incl. fraud) (*Art. 7.12b WHW; consistent CBE/CBHO case law*)
- The decision is based on a complete and verifiable case file (request, evidence, hearing report, deliberation)
- Right procedure: No other procedure was followed instead of the already existing procedure (*Art. 3:3 Awb*)

### 5. EQUALITY AND CONSISTENCY (*gelijkheidsbeginsel*)

- Similar cases have been identified and considered: similar cases are treated in a similar way (*Art 1. Grondwet*)
- Any deviation from earlier decisions in similar cases is explicitly justified

### 6. LEGITIMATE EXPECTATIONS (*vertrouwensbeginsel*)

- Could the student have had legitimate expectations (e.g. based on statements or conduct of university (staff))?
- Have such expectations been explicitly assessed, weighed and addressed in the reasoning?  
(*Note: Legitimate expectations do not automatically prevail, but must be visibly weighed: the trust principle is applied in CBHO and Council of State case law*)

### 7. BALANCING OF INTERESTS (*eerlijke belangenafweging, specialiteitsbeginsel*)

- Relevant interests of individual student and other parties involved (and only those (*Art. 3:4(1) Awb*)) are explicitly addressed and weighed (quality assurance, final attainment level)
- The balancing of interests is explicit and traceable in the reasoning (*Art. 7.12 WHW*)

### 8. PROPORTIONALITY (ENHANCED REVIEW) (*evenredigheidsbeginsel, zwaardere proportionaliteitstoets >2022, verbod op willekeur*)

- The suitability, necessity and proportionality of the decision to achieve the legitimate aim, and the concrete consequences for the student, have been explicitly considered (is a less intrusive alternative available?) (*Art. 3:4(2) Awb; Council of State case law since 2022*)  
(*note: Key point: Sanctions, refusals or strict application of rules must always be individually proportionate*)

### 9. HARDSHIP CLAUSE (*hardheidsclausule*)

- Policy rules are applied as a framework, not mechanically as an automatic decision rule
- It has been assessed whether strict application would lead to disproportionate consequences
- If applicable, a deviation was considered and reasoned (*Art. 4:84 Awb*)

### 10. FORMAL REQUIREMENTS AND LEGAL REMEDIES

- The decision is adopted in accordance with formal procedures (proper meeting, quorum)
- The decision is communicated in writing (*Art. 3:41 Awb*)
- A correct legal remedies clause is included (*Art. 7.60 WHW; Art. 3:45 Awb*)

### 11. FINAL CONTROL CHECK (Transparency and Reviewability)

- Would an external reviewer (CBE) be able to understand what was decided, on what legal basis, and why this outcome is reasonable and proportionate? Would the decision withstand an appeal?