

Section 31—Policy Handout No. 2:

Scope and procedure for an application for reconsideration and appeal in the area of studies and teaching

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This policy handout from Section 31: Quality Management and Legal Affairs is intended as a guide for students on how to proceed if they feel that their rights have been violated by Universität Hamburg decisions.

This policy handout is subdivided into three parts:

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1. General information with respect to an application for reconsideration (*Widerspruch*)

University applicants, undergraduate and graduate students, doctoral researchers, and *Habiltierende* (postgraduate students) may initiate appeal proceedings by filing an application for reconsideration against a binding decision handed down by the University—known as “administrative acts/decisions” (*Verwaltungsakte*). This could be, for example, an official administrative notice of decision with respect to admission, legally relevant decisions regarding examinations, fee notices, and general matters affecting students.

1.1 Scope of reconsideration proceedings

Reconsideration proceedings (*Widerspruchsverfahren*) allow for internal administrative review of the legitimacy and reasonableness scope of administrative decisions which aggrieved parties believe are erroneous, and, where appropriate, provide a procedural instrument to vacate or amend decisions.

Reconsideration proceedings are initiated upon filing an application for reconsideration and are concluded when an official decision is pronounced, provided that the application has not been withdrawn before a decision is issued. If an application is withdrawn within a timely manner, the applicant shall not incur any costs for reconsideration proceedings. An application for reconsideration can be withdrawn at any time before a decision is pronounced without incurring any fees.

2. Procedure

Pursuant to the German Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*, VwGO), an application for reconsideration must be made either orally in person and recorded by or filed in writing with the agency that issued the administrative decision within one month (Section 70 subsection 1 VwGO) or one year (Section 58 subsection 2 VwGO) after the aggrieved party has received notice of the administrative decision, e.g., in the form of an adverse decision. A decision that is delivered via first-class or registered mail to a domestic address is deemed as officially issued three days after the decision has been sent.

2.1 Form

The application for reconsideration must be filed in conformity with the statutorily prescribed form. There are two options:

a) In writing

An application may be filed in conformity with the requirement for written form via:

- a signed letter
- facsimile, if the original document (the document placed in the fax machine) has been signed

An application for reconsideration may not be filed via email.

b) Orally and recorded by the agency

For the purpose of recording, orally means that the applicant must verbally formulate his or her complaints or objections in person before someone authorized by the government agency to record the applicant's statements in writing, which must then be signed by the applicant.

2.2 Proper government agency with which to file an application for reconsideration

In order to appeal a decision, the application for reconsideration must be filed with the agency that originally issued the notice of decision (refer to the letterhead or the instructions for legal redress). Exception: The central Examinations Appeals Committee is responsible for appeals against the results in a teacher training degree.

2.3 Period in which to file

Notices of decision generally contain information about your rights of legal redress, information about filing periods, formalities, and proper recipients. An application for reconsideration of an administrative decision must be filed within one month of notice of the respective decision (Section 70 subsection 1 VwGO). If a notice of decision fails to advise you of your legal rights of redress or the instructions provided are erroneous, then the period within which to file an application for reconsideration is one year (Section 58 subsection 2 VwGO). Applications for reconsideration are considered timely when they are received within the respective period by the agency or office that originally issued the notice of decision.

If, through no fault of the applicant, an application is not filed within the period prescribed therefor, a petition may be submitted requesting that the time bar be lifted and the rights of appeal be revived/reinstated (*Wiedereinsetzung*). Such a petition must be submitted within two weeks after cessation of the impediment. The petitioner must set forth facts that substantiate the reason for failing to file an application in a timely manner.

2.4 Justification

Demurs to the University's notice of decision should be formulated as clearly and completely as possible, so that it is clear that an application for reconsideration is being submitted and why. Moreover, proof in support of the application for reconsideration should be submitted with the application or shortly after the application has been filed.

2.5 Suspensive effect of the application for reconsideration

Generally, filing an application for reconsideration effects a stay. This means that the administrative decision will not be enforced so long as a decision concerning the application for reconsideration has not been rendered. There is no suspensive effect however if the administrative decision is immediately enforceable by operation of law (e.g., the collection of contributions and fees) or by an agency decree.

2.6 Costs for reconsideration proceedings

If the applicant is denied relief, he or she shall bear the costs of the proceedings.

Costs, including those for admission and examination matters, are determined in accordance with the fee bylaws for special services at Universität Hamburg (*Gebührensatzung für die Inanspruchnahme besonderer Leistungen der Universität Hamburg*) and amount to anywhere between EUR 25 and EUR 450 if relief is denied.

2.7 Appealing the reconsideration proceedings decision

If relief is denied on the application for reconsideration, this decision may be appealed within one month after receiving the decision by filing a complaint with the Hamburg administrative law court (*Verwaltungsgericht Hamburg*). There is no requirement to be represented by an attorney at the trial court level.

3. Specific information about reconsideration applications

3.1 Application for reconsideration based on a denial of admission

a) Application for reconsideration submitted because admission was denied due to lack of capacity

Generally, if the University has denied admission due to place limitations, any appeal solely on that basis is likely to be unsuccessful because the University takes great care to calculate and reassess its capacities before setting admission numbers. Therefore, in order to be granted relief on an application for reconsideration, an applicant must plead facts which would result in a higher number for capacity.

Moreover, independent of any pending appeal, the University will act according to its succession procedure until all places have been filled. This means that each applicant will be considered for a place in accordance with his or her ranking within this procedure.

The fee for an unsuccessful application for a reconsideration proceeding for capacity-related admission disputes is currently EUR 25 plus postage fees.

b) Application for reconsideration submitted because admission was denied for failing to comply with formalities

The reasons for denying admission for failing to comply with formalities include failure to submit supporting documents, submitting incomplete supporting documents, uncertified transcripts, records or diplomas, insufficient qualifications for admission (e.g., language abilities), and failure to meet submission deadlines.

An application for reconsideration can also be submitted in cases of denial of admission based on one of these reasons. However, just as in any reconsideration proceeding, relief is contingent upon the reasons substantiated in support of the application for reconsideration.

Supporting documents that have not been submitted for admission in a timely manner cannot be submitted in reconsideration proceedings and held to cure this defect.

The fee for an unsuccessful application for a reconsideration proceeding for admission disputes resulting from a failure to comply with formalities is between EUR 25 and EUR 450. The exact amount depends on the amount of work required for the proceeding. Postage fees will also be charged.

c) Appeals excluded

In accordance with the state compact (*Staatsvertrag*) on the establishment of a shared facility for university place allocation and its ratification in state law, refusals of admission to degree programs involved in the central university place allocation procedure (medicine, dentistry, pharmacy) may not be appealed. An application for reconsideration of a rejection is therefore not permitted.

3.2 Application for reconsideration based on a change of status

a) Application for reconsideration based on denial of a request for a leave of absence or part-time study

An application for reconsideration may be submitted if a request for a leave of absence (e.g., due to childcare, illness, examination preparation, an internship, or studying abroad) or part-time study (e.g., due to childcare, illness, or gainful employment of at least 15 hours per week) has been denied. Please note that part-time study is only possible in law (*Staatsexamen*), socioeconomics (*Diplom*), education (*Magister*), and physics (*Diplom*) in addition to bachelor's and master's degree programs.

If relief is granted on the application for reconsideration, then the leave of absence or part-time studies will be approved.

The fee for an application for reconsideration is between EUR 25 and EUR 450. The exact amount depends on the amount of work required for the proceeding. Postage fees will also be charged.

b) Application for reconsideration based on forced withdrawal

Reasons for the forced withdrawal of students include, for example: failure to re-register, unpaid semester contributions, failure to provide proof of health insurance, failure to pass an examination that cannot be retaken, and failure to attend subject advising upon exceeding the regular period of study.

The application for reconsideration effects a stay, unless immediate enforcement has been expressly ordered in the specific case (semester contribution).

If there is a stay, semester documents will be issued.

The fee for an application for reconsideration is between EUR 25 and EUR 450. The exact amount depends on the amount of work required for the proceeding. Postage fees will also be charged.

3.3 Application for reconsideration based on examination matters

Applications for reconsideration with respect to examination matters can be based on e.g., denial of petitions establishing a hardship case, extension-of-time requests, notices of withdrawal, and applications for the recognition and credit of previously rendered examination performance as well as decisions regarding cheating or dishonesty, or a violation of rules and regulations.

In these cases, the examinations board responsible for the respective degree program shall first review the original decision. If the board does not grant relief on the application for reconsideration, the matter shall be remitted to the appeals committee (*Widerspruchsausschuss*).

If the application for reconsideration/appeal is based on the assessment of academic performance, legal review of the matter is limited because of the examiner's discretionary leeway with respect to any assessment or judgment. Therefore, any review of a decision with respect to assessment or judgment is limited to whether the examiner:

- failed to observe any binding regulations or provisions,
- premised a decision on an inaccurate set of facts and circumstances,
- misconstrued generally applicable grading precepts, or
- took irrelevant considerations into account.

If the appeals committee finds that the appeal (originally application for reconsideration) based on the assessment and grading of the examination is proper and well-founded, it will order, if required, a reassessment of written work, a new examination, or that new examiners be commissioned.

If the appeal is held to be impermissible and unfounded, the appeals committee will deny the relief requested on appeal and issue an appealable decision.

The fee for an application for reconsideration is between EUR 25 and EUR 450. The exact amount depends on the amount of work required for the proceeding. Postage fees will also be charged.