

Guidelines for the Reconsideration of Decisions of the ACCESS-Disability Support Committee by the Board of Experts

1. Title:

The title of these guidelines is the 'Guidelines for the Reconsideration of Decisions of the ACCESS-Disability Support Committee by the Board of Experts'.

2. Interpretation:

For the purposes of these guidelines:

'A decision at first instance' means a decision delivered by the ACCESS-Disability Support Committee, which decision constitutes a *res judicata* unless a request for reconsideration as applicable hereunder is considered admissible by the Board of Experts.

'Days' shall mean running (not working) days.

'Fresh evidence' means evidence which at the time of the decision at first instance, either did not exist or was not known to a student, parent, guardian or legal representative.

'Point of law' means any point which does not deal with the facts of the case or the evidence produced, but which involves a matter which is predominantly of a juridical nature.

'Student' means the applicant who allegedly suffers from a disability or disabilities and who is requesting a reconsideration of the case after the decision at first instance.

3. Purpose and Applicability:

The purpose of these guidelines is to lay down the pre-requisites required in order to allow a request for the reconsideration of a case which has already been brought to the attention of the ACCESS-Disability Support Committee, a Joint Committee as constituted by Senate and Council of the University of Malta. This request for reconsideration is not tantamount to appellate proceedings.

These guidelines shall be applicable solely and exclusively to cases directly relating to requests dealing with support for students suffering from a disability or disabilities which have already been rejected, *in toto or in partem*, by the

ACCESS-Disability Support Committee, which decisions shall be deemed to be decisions at first instance constituting a *res judicata*, unless a request for reconsideration as applicable hereunder is considered admissible by the Board of Experts.

These guidelines shall therefore supplement and complement any existing guidelines, laws, bye-laws or guidelines relating to support for students suffering from a disability or disabilities. They shall in no manner whatsoever replace, amend, change or repeal any existing guidelines, laws, bye-laws or guidelines relating to support for students suffering from a disability or disabilities.

4. Appointment of the Board of Experts:

There shall be a Board of Experts which shall enjoy exclusive jurisdiction to hear requests filed by students, or their parents, or their guardians or their legal representative, for the reconsideration of cases which have been decided at first instance.

5. Composition of the Board of Experts:

The Board of Experts shall be composed of the following members:

- (a) A representative of the *Kummissjoni Nazzjonali Persuni b'Dizabilita`*;
- (b) A representative of the Department of Education;
- (c) Two *ad hoc* health professionals in the field which is being examined and which constitutes the subject-matter of the disability or disabilities under scrutiny;
- (d) The legal consultant of the University of Malta;
- (e) The Child Commissioner or her delegate;
- (f) A representative of Senate of the University of Malta.

6. Roles, Functions and Powers of the Board of Experts:

The Board of Experts set up by these Guidelines shall:

- (a) take full cognisance of a request for reconsideration and subsequently consider whether this request is admissible or otherwise in accordance with the relative provisions of these guidelines;
- (b) decide on a preliminary basis and in writing, during its preliminary sitting, as to whether such a request is admissible or otherwise;
- (c) hear requests which are considered admissible further to its preliminary decision confirming admissibility, and subsequently decide, in writing, as to whether such requests should be upheld or otherwise.

7. Requests for Reconsideration:

Requests which are inadmissible shall be immediately struck off the list of requests and the applicant shall be notified accordingly about the preliminary decision of the Board of Experts, which decision shall become a *res judicata*.

8. Pre-Requisites for Admissibility:

Requests shall be considered admissible only if filed at the Pro-Rectors' Office within thirty days from the decision of the first instance by the student or his/her parent or his/her guardian or his/her legal representative, and only when either:

- (a) There has been a significant change in the circumstances of the student which entails that his/her disability has deteriorated considerably after the decision at first instance, provided that fresh evidence is produced strengthening and substantiating such contention sufficiently; or
- (b) Two separate affidavits containing reports and/or medical certificates of two different professionals are produced, the contents of which rebut the findings of the decision at first instance; or
- (c) Any point of law, including allegations of an unfair hearing before the first instance.

Provided that for the purposes of sub-paragraph (a) here above, the thirty-day limit shall not be applicable, and any such request based on fresh evidence may be filed when such fresh evidence becomes available.

9. Procedure post-preliminary decision:

Requests which are considered admissible shall be heard by the Board of Experts which shall respect basic procedural rules, including the rules of natural justice throughout proceedings. A decision on admissibility shall not impinge on the merits of the case, which merits shall be considered separately by the Board of Experts which shall hear evidence and submissions by the parties throughout its sittings. Such proceedings shall be *viva voce* and public, unless the Board of Experts decides otherwise upon the request of the student or his/her parent or his/her guardian or his/her legal representative and in the sole and primary interest of the student. During sittings, a student may be assisted by his/her parent or guardian and by his/her legal representative. The decision of the Board of Experts on the merits shall be taken by majority and shall constitute a *res judicata*.