

Rules on disqualification

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Description:

This document presents rules on disqualification. The rules document primarily contains a review of the rules that follow from law (national rules), but also the clarified and defined rules that have been decided at Stockholm University (local rules).

Introduction

Representatives of government agencies shall act objectively and impartially in the performance of their duties. This follows from chapter 1 section 9 of the Instrument of Government (1974:152). In order to ensure at the government agency's representatives act impartially and to reduce the risk of suspicion of biased actions, there are for example rules about disqualification in the Public Administration Act (2017:900). This governing document mainly contains information about rules that follow from law (national rules). The information has, with the aid of documents from the Association of Swedish Higher Education Institutions (*Jävsregler i högskolan*, Disqualification rules in higher education, Association of Swedish Higher Education Institutions, 1997-11-25, accessible via: <https://suhf.se/publikationer/rapporter/>) and the Swedish Research Council (*Vetenskapsrådets riktlinjer för hantering av jäv*, The Swedish Research Council's guidelines for handling disqualification, accessible via www.vr.se), been supplemented with examples from the higher education sector. Also determined in the document are rules related to activities at Stockholm University (local rules).

Description of national rules on disqualification

Disqualification

Rules on disqualification may be found in the Public Administration Act (2017:900) and the Personnel Representative Ordinance (1987:1101). The content of the disqualification rules that apply to decision makers, committee members and administrators at the university is given below with examples adapted to the higher education sector that have been produced with inspiration from guiding documents from the Association of Swedish Higher Education Institutions and the Swedish Research Council.

The principle of objectivity

Representatives of Swedish government agencies have an obligation to act objectively. The principle of objectivity is expressed in chapter 1 section 9 of the Instrument of Government and may also be found in section 5 paragraph 2 of the Public Administration Act. The purpose behind the principle is that the general public should be able to have confidence that government agencies act objectively and impartially and do not make decisions that are based on irrelevant considerations.

Series forms of breach of this basic principle are criminal offences under the rules of the Criminal Code (1962:700) on abuse of office and accepting bribes (see Rules on bribery, ref. no. SU FV-1.1.2-3572-20). Serious cases of breaches of the rules on disqualification may also be an irregularity of the type that is handled at Stockholm University under the Rules and procedure for handling suspected irregularities and crime (ref. no. SU FV-1.1.2-1066-20). From the principle of objectivity also follow the principles on disqualification, about which this document aims to give more detailed information.

What is disqualification?

Disqualification refers to circumstances that could damage trust in a decision maker's, committee member's or administrator's impartiality or objectivity in the handling of a case. The circumstances that constitute disqualification may be found in sections 16 and 17 of the Public Administration Act. For there to be a question of disqualification, two conditions are required: 1) that someone participates in the processing of a case in a way that could influence the government agency's decision and 2) that this person has a certain (disqualified) relationship to a party in the case.

The disqualification rules apply to all processing of the case, i.e. not only the decision making.

Participating in the processing of a case in a way that could influence the government agency's decision

The disqualification rules are applied to someone who participates in the processing of a case in a way that could influence the government agency's decision in a case. What is decisive is not if the person is called an administrator or decision maker but the person's actual participation in processing. The persons/roles who are considered to participate in the processing are as follows:

- Decision maker (president, director of administration, dean, head of department or equivalent or other person with decision-making rights, committee member or other person in a body which has decision-making rights, such as a faculty committee or department board)
- Person(s) who prepare the case
- Person(s) who participate in the final processing (as rapporteur for example).

A person who only performs purely administrative tasks, such as copying and despatch, is not covered by the disqualification rules, even if the person would be affected by the case.

Having a certain (disqualified) relationship to a party in the case

Being disqualified means having a certain relationship to a party in the case. What relationships these are is regulated in the Public Administration Act section 16, where these are divided into the following groups:

“A person who, on behalf of an authority, participates in case processing in a way which could influence the authority's decision on a case is disqualified if

1. *he or she or a closely associated person is party to the case or may otherwise be assumed to be affected by the decision to a not insignificant extent,*
2. *he or she or a closely associated person is or has been a representative of a party to the case or of someone else who may be assumed to be affected by the decision to a not insignificant extent,*

3. *he or she has participated in the final processing of a case at another authority and as a result of this has already come to a decision on questions that the authority shall decide in its capacity as a superordinate body, or*
4. *there is some other special circumstance that means that his or her impartiality in the case may be brought into question.*

If it is evident that the question of impartiality has no significance, the authority shall disregard disqualification.”

The four points above can be structured and summarised as

1. Case owner, interested party and close associate disqualification,
2. representative disqualification,
3. two instance disqualification and
4. disqualification for reasons of discretion and delicacy.

Case owner, interested party and close associate disqualification

This group of grounds for disqualification exists if a certain designated person, or a close associate of this person, is affected “to a not insignificant extent” by the decision.

Case owner disqualification (or party disqualification) exists with processing of a case where the case affects the administrator/decision maker him/herself. This refers to cases where the administrator/decision maker is a party in the case. *Examples* of cases where case owner disqualification may arise are that an applicant for a position processes or participates in the processing of the appointment or that a person decides on some form of financial remuneration to him/herself.

Interested party disqualification means that the administrator can be assumed to be affected by the decision. Here it is the administrator’s actual interest in the case that is decisive. *For example*, a teacher who gains financially from a teaching resource as its author cannot be involved in any decision to use the teaching resource as course literature.

Close associate disqualification exists if a close associate of the administrator is a party in the case or could be assumed to be affected by the decision. *An example* of close associate disqualification is to assess one’s own child or another close associate. In such cases disqualification applies to both compiling the test and performing the assessment.

Representative disqualification

With this group of disqualification grounds too, it is a question of being affected “to a not insignificant extent” in order to be considered as disqualification.

Representative disqualification arises if an administrator, or a close associate, is or has been a representative of a party in the case or someone who can otherwise be assumed to be



affected by the decision. This can occur *for example* with a business relationship between a department at the university and a company in which the administrator is an authorised signatory and/or part owner.

Interested party, close associate and representative disqualification can all easily arise in connection with secondary employment. Since government employees themselves have a great personal responsibility when it comes to assessing what secondary employment they can and should take, it is necessary in a case processing situation to consider possible conflicts of interest and disqualification. Note that if a transaction of any kind between a company where a university employee has secondary employment and the university is performed the transaction must, according to the Regulations on secondary employment for employees of Stockholm University (ref. no. SU FV-1.1.2- 0592-16), always be referred to the president for approval.

Two instance disqualification

The purpose of *two instance disqualification* is to prevent anyone who, by participating in the final processing of a case at another agency, has already decided on the question that the agency shall re-examine. This means that no one person may process the case in two instances, *for example* the university's faculty committee and the Higher Education Appeals Board. Note that it is not a question of two instance disqualification in the case of processing at two instances within the university; however, see Local rules below.

Disqualification for reasons of discretion and delicacy

Disqualification for reasons of discretion and delicacy is formulated as a general clause for the purpose of capturing situations that are not covered by other disqualification grounds. This fourth point in section 16 of the Public Administration Act states that a person who processes a case is disqualified if there is any other special circumstance that means that his or her impartiality in the case could be questioned. *Examples* of circumstances that could be covered by this point are close friendships or enmities, engagement in a case in such a way as to conflict with the presumptions for an impartial assessment or some form of dependence on the person that the case relates to. At the university, co-authorship by an administrator/decision maker and an applicant could be grounds for disqualification. Among other things, whether such collaboration has been frequent or recent could be decisive. There could also be disqualification under this point if a person has previously assisted someone in the case (this was previously known as *assistance disqualification*).

Situations where disqualification can be disregarded

Even though, formally speaking, disqualification may exist, in exceptional cases the circumstances may be such that disqualification can be disregarded. For this, the question of impartiality is clearly without significance.

This situation is regulated by section 16 point 2 of the Public Administration Act. This may *for example* be a case of a purely routine action (such as entering information in LADOK after a decision by another person), or something completely uncontroversial.



The effect of disqualification

A person who is disqualified may not participate in the processing of the case and must not be present when the case is decided. As a general rule, this means that no preparatory work may be done and that the disqualified person must leave the meeting room while the case is discussed. He or she may however take measures that nobody else could take over without inconvenient postponement. With urgent cases that cannot be postponed, the disqualified person may even take a decision if this is necessary due to the lack of time. Restrictiveness shall be applied in this regard and such situations must be considered to be extremely rare in the university's activities.

In the first instance, it is the disqualified person who shall advise of the conditions for disqualification him/herself. It is everyone's responsibility to do this immediately when circumstances that could lead to disqualification arise. If any disqualification situation is not advised of, this could be in contravention of professional responsibility. If someone else raises the question of disqualification, the authority must immediately make a decision on this.

A decision that is taken in spite of disqualification is valid until such time as it may be declared invalid.

Considering the question of disqualification

If the question of someone's disqualification arises and no replacement can be made immediately, a formal decision on disqualification must be taken within the authority as soon as possible.

A decision in a question of disqualification may now be appealed even before the case has finally been decided. It is therefore important for administrators to address the question of disqualification before processing of the case begins. It is especially important that the question of disqualification is handled in cases where the decision cannot be appealed.

Local rules

Nobody shall maintain more than one deciding function

An employee of the university shall not normally have decision making functions at more than one level at the same time. For example, it is not appropriate to be both head of department/representative or director of studies and dean or pro-dean in the same faculty.

Nominating committee

A member of a nominating committee shall not participate if he or she has been nominated for a commission of trust. In this situation, the member should offer the place on the committee to someone else.



Appointment cases and defences of doctoral theses

When appointing experts in appointment and promotion cases, as well as members of examining committees, the chair at a doctoral defence and an external reviewer or contact person at a doctoral defence, the question of disqualification must be carefully considered. There must be no disqualification in the defence of a doctoral thesis with regard to either the author of the thesis or supervisors.

The Swedish Research Council's guidelines for handling disqualification at universities

The Swedish Research Council's guidelines for handling disqualification (Accessible via www.vr.se) have been produced for situations where applications for research funding shall be considered by other researchers. The considerations that the Swedish Research Council makes for what represents disqualification in research contexts are also applicable at Stockholm University and guidance may therefore be obtained from the Swedish Research Council's guidelines.

³ Accessible via www.vr.se