



## DECISION 20-053

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Of the Examination Appeals Board of Leiden University

in the matter of

the appeal of [name], appellant

against

the Board of Examiners of the Bachelor's programme in [X], respondent

### **The course of the proceedings**

In the decision of 29 January 2020, the respondent declared the appellant's essay in respect of the [X] course unit invalid due to plagiarism. The respondent offered the appellant an opportunity to hand in a new essay on a new topic, which would be awarded with a maximum grade of 6.0 on a scale of 10. The respondent decided on this sanction, since it was the first time that plagiarism was established and the course unit constitutes an additional requirement in respect of the binding study advice.

The appellant sent a letter on 9 March 2020 to the Examination Appeals Board, which was received on 12 March 2020, to lodge an administrative appeal.

The respondent attempted to reach an amicable settlement with the appellant on 15 April 2020 but the appellant failed to respond.

The respondent submitted a letter of defence on 11 August 2020.

The appeal was considered on 19 August 2020 during an online hearing of a chamber of the Examination Appeals Board. The appellant participated in the hearing. [name], Administrative Secretary of the Board of Examiners of [X] participated on behalf of the respondent.



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**Considerations**

1 – Facts and circumstances

On 9 December 2019, the appellant submitted her essay for the course unit.

In January 2020, the respondent was informed by the examiner of the course unit that plagiarism was suspected in the essay of the appellant.

On 27 January 2020, the respondent and the appellant discussed the suspicion of plagiarism.

2 – The position of the respondent

The respondent takes the position that the appellant's essay has a striking resemblance to the essay of a fellow student. In view of this, the respondent holds that the examiner was correct in suspecting plagiarism and that the two students must have cooperated or worked together in some way. Since the respondent failed to find out how plagiarism was committed and who copied whom, the same sanction was imposed on both students.

3 – The grounds for the appeal

The appellant adopted the position that she had written the essay herself. She has not copied passages from or shared these with fellow students. The passages that the respondent qualified as plagiarism are references in footnotes and the bibliography. No plagiarism was found in the body of her essay. She holds that it is not surprising that fellow students arrived at similar footnotes, since the sources are part of a prescribed literature list. The respondent has not allowed the appellant to view the essay of the fellow student that matches her essay. The appellant provided metadata to substantiate her innocence and these show that she drafted passages on 11 November 2019, well before the deadline of the essay.



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4 – Relevant legislation

The Rules and Guidelines (*Regels en Richtlijnen*) of the Bachelor's Programme in [X] stipulate, in so far as relevant in this case:

Article 1.2

Fraud: any act (including committing plagiarism) that renders it fully or partly impossible to reach an opinion about the knowledge, insight, and skills of students is considered to be fraud as referred to in Article 7.12b of the Act. This also includes the intention or, alternatively, incitement to such acts and omissions. See the University Protocol on Plagiarism (*Universitair Protocol Plagiaat*);

Article 6.3 Mode of operation when plagiarism is detected

6.3.1 The examiner will review all papers that qualify as partial tests or interim examinations and that are intended to assess knowledge and skills, as well as the final paper, for plagiarism. He/she can use a detection programme as made available by the university. Students are required to provide their written papers digitally and to submit their papers by means of this software on request in order to test for plagiarism.

6.3.2 If an examiner detects plagiarism or, alternatively, suspects plagiarism, he/she will inform the Board of Examiners as soon as possible.

6.3.3 The examiner will submit the relevant paper and, if available, the report generated by the plagiarism detection programme to the Board of Examiners and will also attach his/her own findings.

6.3.4 In case of suspicion of plagiarism, the Board of Examiners may hear the examiner, the students, and other parties. Based on the hearing and the findings of the examiner, the Board of Examiners will determine whether a measure is appropriate and, if so, what measure would be fitting. The interim examination will only be assessed following the decision by the Board of Examiners in which it releases this interim examination for grading.

Article 6.5 Measures and sanctions to be imposed by the Board of Examiners in case of plagiarism

6.5.1 The disciplinary measures and sanctions that may be imposed by the Board of Examiners are:

- a. to issue an official warning and include this in the student file;
- b. to render the partial or interim examination, project, paper, thesis, or research assignment invalid, or establish a grade of 1.0 on a scale of 10 as a grade for the interim examination or partial examination;



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- c. and/or to exclude the student from sitting the partial or interim examination or writing the paper, for which the irregularity, the fraud and/or plagiarism was established for the duration of a maximum period of one year;
- d. and/or to exclude the student from sitting other partial or interim examinations for a maximum period of one year;
- e. and/or to exclude the student from attending classes, sitting interim and final examinations in one or more of the programmes organised by the Faculty for a maximum period of one year.

Course units that have been completed successfully at another faculty or another institution of higher education (which also includes projects, papers, and theses that have been completed successfully) in the period of exclusion cannot be incorporated in the curriculum in any manner whatsoever.

In as far as relevant, the University Plagiarism Protocol stipulates the following: In general, plagiarism is considered to be the presentation of words, thoughts, analyses, reasoning, images, techniques, computer software, etc. that originate from somebody else, as one's own work either intentionally or unintentionally. 'Cut and paste' is not the only form of plagiarism that should be considered here; most students will indeed understand that this is not allowed without indicating the source of the material. However, it also qualifies as plagiarism if you paraphrase somebody else's texts, i.e. by replacing some words by synonyms and moving some sentences around. Even if you repeat a reasoning or analysis by someone else in your own words without adding anything new to it, this may qualify as plagiarism since you make it appear as if you have conceived the reasoning yourself, though this is not true. This also applies if you bring together pieces of texts by various authors without stating the origin.

#### 5 – Considerations with regard to the dispute

In accordance with article 7.61, paragraph two, of the Higher Education and Academic Research Act (*Wet op het Hoger Onderwijs en Wetenschappelijk Onderzoek*, WHW), the Examination Appeals Board must consider whether the contested decision contravenes the law.

In the email message of 15 April 2020 to the appellant, the respondent explained that the essay by a fellow student discussed exactly the same arguments in the same order with nearly identical footnotes. Similarities between the appellant's footnotes and those by her fellow student were found in respect of substance, style (including irregularities) and order.

It follows from case law by the Appeal College for Higher Education (*College van Beroep voor het Hoger Onderwijs*, CBHO) that if similarities between the essays of



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two students are too great to be a coincidence (as in this case), it may lead to the conclusion that fraud must have been committed (see decisions of 21 March 2017, case number 2017/039.5 and 4 February 2020, case number 2019/113). From case law by the CBHO and the Examination Appeals Board (*College van Beroep voor de Examens, CBE*), it also follows that a student who provides information to another student when sitting an interim examination, which includes writing an essay, is committing fraud (see the decision of the CBHO of 11 December 2019, case number 2019/099 and the decision of the Examination Appeals Board of 3 May 2018, case number CBE 2017-397 and 2017-398 and of 29 September 2020, case number CBE 20-210). It is not a requirement that the student provides this information consciously and deliberately to another student. It suffices if the student has accepted the risk that another student could take cognisance of his or her work due to his or her acts or omissions.

This does not alter the fact that, if the respondent intends to impose a sanction on a student on the grounds that fraud was or must have been committed, the respondent has to make it plausible that the students actually cooperated, or, alternatively, that one of them committed acts or omissions by which the other student could take cognisance of his or her work.

The Examination Appeals Board holds that the respondent did not satisfy that requirement in this case. Although the respondent explained at the hearing that the fellow student stated that she had received the appellant's essay, the respondent failed to investigate, subsequently, in more detail how this fellow student had obtained the appellant's essay. The appellant stated that this may have happened because she omitted to log out when she left her computer unattended for some time. Further, the respondent made no effort, or hardly any effort, to uncover who had committed plagiarism from whom. A comparison of study results by both students could have provided clues to this effect. Furthermore, the respondent could have confronted the appellant and the fellow student with each other and their respective statements. However, the respondent failed to take any of these actions and limited himself to establishing that fraud must have been committed in view of the similarities between the two essays. In order to compensate for the lack of investigation, the respondent decided to impose a minor sanction and, as such, accepted the risk of imposing a sanction on an innocent student. The appellant was not confronted with the statement by the student nor was she allowed to respond to it after the respondent had informed her about the identity of that student. Finally, the respondent made little effort or no effort at all to uncover which of the students committed plagiarism. All of this leads the Examination Appeals Board to conclude that the contested decision was



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not prepared with due care and was taken contrary to Article 3:2 of the General Administrative Law Act (“Awb”, *Algemene wet bestuursrecht*). Although the above already results in the decision being quashed, the Examination Appeals Board would like to consider the following in addition. According to established case law by the Examination Appeals Board (see the decision of 6 August 2018, case number CBE 17-322), the respondent is obliged to submit all information to the Examination Appeals Board that could be relevant to assess the appeal. The respondent does not have the discretion to either submit or fail to submit documents. The documents to be submitted must at least include all the documents that were taken into account by the respondent when taking the decision. The respondent does not have the discretion to anonymise documents. However, the respondent may request the Examination Appeals Board to provide the documents only in an anonymised manner to the other party.

In the present case, the respondent did not comply with the requirement. The documents submitted by the respondent to the Examination Appeals Board are concise. The respondent only submitted a single example in which the footnotes by the appellant match the footnotes of the fellow student verbatim. The respondent should have submitted the Turnitin reports of both students to the Examination Appeals Board and should have stated more explicitly in the contested decision that the violation of which the student was accused also pertains to the exchange of information due to which exactly the same arguments appear in the same order in both essays and to which arguments exactly this pertains. The respondent should also have submitted reports of the discussions that were held with the appellant and the fellow student as well as the study results that both students have achieved. During and after the hearing the respondent did indeed submit – some – further details to the Examination Appeals Board, but this does not remedy the above-mentioned omission.

In view of the above, the appeal must be held founded and the contested decision must be quashed. Since this is an ex officio decision, the respondent is not obliged to take a new decision. However, if the respondent refrains from doing so, she is obliged to restore the rights of the appellant by assessing the original essay in the usual manner, whereby the grade will, obviously, not be limited to a maximum of 6 on a scale of 10. If the respondent takes a new decision and imposes a sanction on the appellant, the appellant can lodge an administrative appeal against this decision, if she does not concur with it.



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**The decision**

In view of article 7.61 of the Higher Education and Academic Research Act,  
the Examination Appeals Board of Leiden University,

- I. holds the appeal founded;
- II. quashes the decision of 29 January 2020.

Established by a chamber of the Examination Appeals Board, comprised of: O. van Loon, LL.M, (Chair), Dr A.M. Rademaker, M. Heezen LLB, Dr C.V. Weeda, and E.L. Mendez Correa BA (members), in the presence of the Secretary of the Examination Appeals Board, D.H. Mandel, LL.M.

O. van Loon, LL.M.,  
Chair

D.H. Mandel, LL.M.,  
Secretary

Certified true copy,

Sent on: