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DECISION 22 - 128

of the Examination Appeals Board of Leiden University

in the matter of

the appeal of [name], appellant,

against

The Board of the Faculty [X], respondent.

The course of the proceedings

On 27 January 2022, the Examiner of the course unit [X] has informed the defendant about the suspicion of plagiarism in the resit of the paper (*literature review*) of this course unit.

The respondent imposed a sanction to the appellant in this respect in its decision of 1 February 2022.

The appellant sent a letter on 7 March 2022 to lodge an administrative appeal against this decision with the Examination Appeals Board.

The respondent contacted the appellant on 25 March 2022 to investigate whether an amicable settlement could be reached. This did not lead to an amicable settlement.

The respondent submitted a letter of defence on 5 April 2022. The letter contained a response to the grounds for appeal.



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On 14 April 2022, a response to the letter of defence was sent on behalf of the appellant.

The appeal was considered on 20 April 2022 during a hybrid hearing of a chamber of the Examination Appeals Board. The appellant did not attend the hearing. Her father, [name] attended the hearing online and spoke on her behalf. [names]., Chair and Administrative Secretary, respectively, of the Board of Examiners attended the hearing on behalf of the respondent. Furthermore, [name], Examiner, attended the hearing.

Considerations

1 – The position of the appellant

The appellant does not agree with the contested decision. She contests that plagiarism occurred. She holds the procedure that was used to be incorrect, as Turnitin was applied in an incorrect manner. The appellant submitted the paper on 3 January 2022. It is not clear to her whether the resit paper was entered in the correct manner in Turnitin. This is why the high score on plagiarism does not relate to her and it cannot be used to derive that plagiarism occurred.

Furthermore, she holds the contested decision to be substantiated in an inaccurate manner. A number of the extracts mentioned by the respondent contain simple facts, according to the appellant, such as names of Treaties, Committees, Presidents and dates. When stating these, it cannot qualify as plagiarism. The appellant stated all sources in accordance with the *University's Do's and Don'ts*.

The appellant is unable to provide proof of her innocence. In her response to the intended decision she has indicated sufficiently that she did not consult the relevant sources. In her response to the letter of defence she provided an explanation on all extracts referred to by the respondent as plagiarism.

It was also stated at the hearing on behalf of the appellant that the matter was discussed throughout her family and that they cannot agree to the decision. The



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appellant has drafted several papers and completed several programmes (including a double major in [X], in which she achieved the maximum GPA score) and no single case of fraud has ever occurred. She chose the programme in Leiden intentionally and has suffered high stress levels due to the respondent's decision. It might be true that she has stated an incorrect source, but it is definitely not true that she consulted external sources. She refers to a decision by the CBE, which states that fraud is only proven when both the source reference and quotation marks are missing. However, the appellant did state the sources.

2 – The position of the respondent

The Examiner allowed the appellant to resit the first version of the paper, which also scored high on plagiarism. A conversation took place between the appellant and the Examiner on the topic. However, a high plagiarism score was detected in the resit once more. These were mainly sentences that were quoted directly from the indicated source, however, without quotation marks. This is why the Examiner informed the respondent about the suspicion of fraud (plagiarism).

In view of the appellant's statement and the Turnitin report the respondent established that the suspicion of plagiarism is correct. With regard to the sanction imposed on the appellant, the respondent holds that it has taken the interests of the appellant into account when imposing the sanction, by not ordering her to submit a new paper, but rather allowing her to submit an adapted version. The appellant has done so meanwhile. The paper (*literature review*) is in preparation of the thesis and a new assignment would mean that she would have to find a new topic for her thesis. Now that this means that the appellant would be able to draft the same paper for the third time and submit it by means of the feedback provided, the respondent holds that this final version cannot merit a grade higher than 6.0. The entry of fraud will be recorded and she will be excluded from obtaining a *cum laude* distinction.

The respondent has stated a number of problematic extracts in the letter of defence on which the suspicion of plagiarism was based.

At the hearing, the respondent has argued that the relevant five extracts that contain plagiarism were merely stated as an example. It is likely that many other



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extracts also qualify. The policy of the respondent is that they assume that plagiarism has occurred when three suspected cases of plagiarism were detected. In this case, no fewer than five extracts were detected in a rather short paper. A master's student may be expected to quote any extracts from other sources in a correct manner. This means that verbatim extracts must be put in quotation marks. The respondent scrutinized the paper and agreed to the findings of the Examiner. The respondent holds that it took a fair and proportional decision and has weighed the interests of the appellant sufficiently in its decision. The Examiner decided that the appellant could resit the paper and did not have to attend the course unit once again nor have to find a new topic for her thesis.

In the so-called "fingerer" (corrective meeting) that took place after fraud was detected in the first version of the paper, the Examiner explained clearly to the appellant how she should refer to these extracts. She also stressed the importance of using quotation marks. This is part of the level of a master's programme. Meanwhile, the appellant has submitted a second version to resit the paper.

3 – Relevant legislation

The relevant legislation is included in the annex to this decision.

4 – Considerations with regard to the dispute

In accordance with article 7.61, paragraph two of the Higher Education and Academic Research Act ("WHW", *Wet op het hoger onderwijs en wetenschappelijk onderzoek*), the Examination Appeals Board must consider whether the contested decision is contrary to the law.

It is disputed whether the respondent imposed a sanction on the appellant in a justified manner and on proper grounds due to plagiarism.

General Provisions

Imposing a measure within the meaning of Article 7.12b, paragraph two of the WHW must be qualified as a punitive measure that must be assessed in respect of proportionality by the Examination Appeals Board without any reluctance, both with regard to the question whether a student committed fraud, as well as to the



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question whether the measure imposed is proportionate to the conduct. The basic principle of the Examination Appeals Board, and of the University itself, is that fraud in any shape or scope whatsoever, cannot be tolerated in an academic environment. Plagiarism is a type of fraud that is deemed very serious by the University. Academic enterprises will only be respected as long as the integrity of scientists is undisputed.

As the Examination Appeals Board has considered before (see the decision in case CBE 20-396), a student is responsible for its own work and in that context it may be expected that the student itself will always verify whether plagiarism has been committed and whether all sources within the academic world in general or in its own field of expertise in particular have been stated in the usual manner. Consequently, it is not required that a student committed fraud/plagiarism intentionally in order to impose a sanction for fraud, including plagiarism (see the decision in the case CBE 21-072). When fraud was not committed intentionally or only intentionally to a limited extent, such much be taken into account to determine the nature and scope of the sanction to be imposed. In exceptional cases, as for instance in a case where a student commits a less serious type of fraud for the first time, an Examiner always has the discretion - irrespective of what the OER (Course and Examination Regulations) or R&R (Rules & Regulations) state - not to report its observation to the Board of Examiners in order to have a sanction imposed, but to assess an interim examination/assignment/paper as unsatisfactory as a consequence of fraud and to have a corrective meetings with the student. The intention of this corrective meeting is to make sure the student understands how incorrect he or she has acted, what may be the – serious – consequences of such conduct and to help the student to prevent such errors in future.

Assessment of plagiarism

The Examination Appeals Board holds that this was established in the first version of the paper. During the hearing, the Examiner indicated that she discussed the manner of referring to extracts comprehensively with the appellant in November 2021. She mentioned in particular what extracts would be relevant and stressed the use, or rather, correct use of quotations marks. In doing so, she explained that the paper was verified for plagiarism by means of Turnitin and that the software detected a high score on plagiarism. In the conversation, the



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appellant stated that she understood it and was happy with the opportunity that she was given to resit the paper.

Apparently, the clarification of the Examiner was not sufficiently effective, as the Examination Appeals Board established that the Examiner detected once more, with the second version of the paper, that plagiarism was an issue. The appellant copied text extracts verbatim without indicating that it was not her own writing, since quotation marks are missing.

The Examination Appeals Board considers that not using quotations marks is deemed a type of plagiarism in the academic field. Contrary to what the appellant seems to hold, fraud/plagiarism does not mean that both source reference and quotation mark should have been omitted. This was different in the case referred to by the appellant, in which the Board of Examiners argued that both the source reference and quotation marks were missing. Consequently, the decision in that case is not comparable to the appellant's case.

The Examination Appeals Board considers, based on the documents and the explanation given by the parties during the hearing, that the respondent established in the correct manner that plagiarism occurred in the second version of the paper. It has not been established that the procedure applied by the respondent following the report of the Examiner about a suspicion of fraud in the resit of the paper has been defective or incorrect.

Consequently, the Examination Appeals Board holds that this qualifies as fraud by means of plagiarism and will now proceed to assess whether the respondent has imposed the right sanctions to the appellant in this respect.

The respondent imposed the following sanctions to the appellant:

- (a) rendering the paper invalid;
- (b) capping the final grade at 6.0;
- (c) entry in the fraud register;
- (d) ban to award "cum laude" distinction

The Examination Appeals Board considers that the legal grounds for imposing these sanctions are laid down in Article 6.5.1 of the R&R (Rules & Regulations)



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and Article 4.2.7 of the OER (Course and Examination Regulations). The respondent may render the paper invalid based on Article 6.5.1, under (b). Based on Article 6.6.1 of the R&R (Rules & Regulations) the respondent can include a record of plagiarism in the fraud register. The Examination Appeals Board holds both measures proportionate to the plagiarism committed by the appellant. Moreover, it cannot be ignored that the Examiner already had a corrective meeting with the appellant following the earlier version of the paper. Consequently, the appellant could and should have known what was expected of her.

Article 4.12.7 states that it is no longer possible to award the 'cum laude' distinction upon establishing fraud. However, as the Examination Appeals Board has considered before, this cannot be part of the sanction. Awarding the 'cum laude' distinction is exclusively at the discretion of the Board of Examiners and cannot be limited by the OER.

At the time when the appellant completes the programme and graduates, the respondent will have to assess whether or not she qualifies for the 'cum laude' distinction. It may be relevant that the appellant has attracted negative attention from the respondent at an earlier stage due to fraud, but that cannot be a decisive consideration for the respondent.

Neither are there legal grounds in the OER (Course and Examination Regulations) or R&R (Rules & Regulations) to cap the final grade at 6.0, set aside whether such limitation would be allowed pursuant to the WHW. Therefore, The Examination Appeals Board holds that the respondent was not authorized to impose these conditions to the appellant. The contested decision of 1 February 2022 cannot be upheld, therefore, also in respect of this imposed sanction.



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The decision

The Examination Appeals Board of Leiden University,

- I. holds the appeal founded;
- II. quashes the decision of 1 February 2022, as far as it stated that a third resit of the paper can only be graded by 6.0 at maximum and that the appellant be excluded from the 'cum laude' distinction;
- III. holds the appeal unfounded in respect of other aspects

in view of article 7.61 of the Higher Education and Academic Research Act.

Established by a chamber of the Examination Appeals Board, comprised of: O. van Loon, LL.M., (Chair), Dr A.M. Rademacher, Dr J.J. Hilleman, R.A. Brouwer and G.S. Cornielje (members), in the presence of the Secretary of the Examination Appeals Board, I.L. Schretlen, LL.M.

O. van Loon, LL.M.,
Chair

I.L. Schretlen, LL.M.,
Secretary

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Annex - Relevant legislation



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As far as relevant, the Course and Examination Regulations (*Onderwijs- en Examenregeling*; OER) of the Master's Programme in [X] state the following:

Article 4.12.7 If a student has been subject to a disciplinary measure as a result of irregularity, fraud or plagiarism, as set out in the Rules and Regulations, (s)he is not awarded a distinction.

The Rules and Regulations (*Regels en Richtlijnen*; R&R) of the Board of Examiners of the Master's Programme in [X] stipulate the following, as far as relevant:

Article 6.3 Mode of operation when plagiarism is detected

6.3.1 The Examiner will review all papers that qualify as partial test or interim examination and which 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 held 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 attaches his/her own findings. 6.3.4 In case of suspicion of plagiarism the Board of Examiners may hear the Examiner, the students, and others. 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. Assessment of the interim examination will only be effected after a decision of the Board of Examiners in which it releases this interim examination to be graded.

Article 6.5 Measures and sanctions to be imposed by the Board of Examiners 6.5.1

The 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;
- a. to render the partial or interim examination, project, paper, thesis, or research assignment invalid, or establish the grade 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 drafting the paper, for which the irregularity, the fraud and/or plagiarism was established for the duration of one year at maximum;
- d. and/or exclusion of sitting other partial or interim examinations for a maximum period of one year;
- e. and/or exclusion of 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.

6.5.2 In case of serious fraud, the Institution's Board may terminate the registration of the relevant person for the programme permanently on proposal of the Board of Examiners and in view of Article 7.42, paragraph three of the Act.

Article 6.6 Plagiarism- en fraud register

6.6.1 There is a faculty register in which all measures following irregularities, plagiarism, and other types of fraud will be recorded. This register comprises the following data (i) name and student number of the related student, (ii) the programme of the student, (iii) the examination component to which the imposed measures apply, (iv) the characteristic of the file that pertains to the imposed measures (v) a brief description of the measures imposed. The file that pertains to the measures imposed will remain with the relevant Board of Examiners.

6.6.2 The administrative office of the Boards of Examiners will keep the register. Boards of Examiners will report measures, taken by themselves or reported to them by Examiners as soon as these have become final. If an imposed measure is quashed in appeal proceedings the measure will be deleted from the register.

6.6.3 The register is confidential. Boards of Examiners can, in case they have to deal with suspected irregularities, plagiarism, or any other type of fraud, investigate whether measures have been imposed before on a student following irregularities, plagiarism, or other types of fraud. Students are entitled to inspect the register as far as it pertains to records about themselves. The register will be closed to all other parties.