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DECISION 22 - 297

of the Examination Appeals Board of Leiden University

in the matter of

the appeal of [name], appellant

against

the Board of [X] ([X]) of the Faculty [X], respondent.

The course of the proceedings

In its decision of 14 December 2021, the respondent discontinued the supervision of the appellant's thesis project in the Master's Programme in [X] and also stipulated that he cannot claim any supervision in future.

In its decision of 18 March 2022, the respondent imposed a sanction on the appellant in respect of established fraud (plagiarism) in the assignment he submitted for the [X] course unit.

The appellant sent a letter to the Examination Appeals Board on 7 June 2022, lodging an administrative appeal against both decisions.

The respondent contacted the appellant on 15 July 2022 to investigate whether an amicable settlement could be reached. No amicable settlement was reached.

The appeal was considered on 3 August 2022 during a hybrid hearing of a chamber of the Examination Appeals Board. The appellant attended the hearing



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online. [name], Vice-Chair of the Board of Examiners, and [name], Study Adviser, attended the hearing in person on behalf of the respondent.

As agreed during the hearing, the respondent submitted the letter of defence and the annexes to it that had been encrypted at an earlier stage after the hearing and the appellant was allowed to respond to these. The appellant did not make use of this opportunity.

The Chair then concluded the investigation.

Considerations

1 – The position of the appellant

The appellant disagrees with the decision of the respondent not to allow [name] to continue to act as supervisor of his master's thesis and not to appoint a new supervisor. At an earlier stage, two professors already stated that his graduation assignment was satisfactory to be able to graduate in September 2020. The appellant therefore wishes to do a different graduation project. He is too late to lodge an appeal against this decision as he believed the relevant emails to be spam messages or false messages.

Neither does the appellant agree with the decision of 18 March 2022, in which the sanction of exclusion of all interim examinations and examinations for the duration of one year was imposed on him due to plagiarism. He acknowledges that the plagiarism related to some sentences describing terminology. He offers his apologies in this respect and wants to sit the interim examinations and examinations in order to complete the programme.

2 – The position of the respondent

Expiry of the term

During the hearing, the respondent clarified that the appellant received all letters and emails in good time and that he was also informed about the consequences of the decisions. The appellant did not lodge a timely appeal against the decision of



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14 December 2021 regarding supervision. The decision was read out to him and handed to him and also sent by email and registered letter. The appellant was also too late in lodging an appeal with regard to the decision of 18 March 2022. The reasons put forward by the appellant in this respect are not considered convincing by the respondent.

Supervision

The respondent informed the appellant on 14 December 2021 that no further supervision will be provided for his master's thesis project. An important reason for this is that after 4 attempts and 5 supervisors, the appellant was still unable to listen to the feedback of the supervisors. For this reason, the respondent is not confident that the thesis will be completed successfully and holds that the programme department can no longer be expected to provide further supervision. As a consequence of this decision, the appellant cannot complete his master's programme in Leiden. This decision is based on Article 7.34, paragraphs one and four of the WHW. The respondent has not requested the Executive Board to discontinue the enrolment of the appellant in the programme (Article 7.42a of the WHW), in order to give him the opportunity to still obtain a grade list and be able to graduate at another university. The appellant has not yet made use that opportunity.

The appellant received a lot of feedback from the Examiners, but failed to apply that feedback. Various consultations were held with the appellant in this respect. The feedback included a lot of remarks about his command of the English language. The appellant was advised of the possibility of attending a writing course. Rejecting constructive, critical feedback is a structural issue in the course units attended by the appellant and in his master's thesis.

On an earlier occasion, the supervisor was replaced as the appellant ignored the feedback provided and failed to behave in a decent manner in the discussions. The appellant was spoken to in this respect by the respondent and informed about the relevant protocol used by the respondent.

Contrary to what the appellant believes, the Examiners have not stated previously that his research assignment would be satisfactory. In spite of all the attempts to



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supervise the appellant, his work has been assessed as unsatisfactory for the master's thesis due to issues with the academic content and writing and structural rejection of feedback. In addition, fraud was established in one of the drafts of the master's thesis.

Various discussions have taken place with the appellant in this respect. He failed to attend a planned discussion with the study adviser. Finally, it was decided on 14 December 2021 that no new supervisor would be appointed.

Plagiarism

The respondent was informed by the Examiner that [X] submitted by the appellant in the [X] course unit shows clear elements of plagiarism. According to the Examiner, the Turnitin report demonstrated 58% overlap with other sources. These sources have not been referenced by the appellant. As such, he made it appear that it was his own work. The respondent takes very strict measures against fraud. Since the appellant has committed fraud (plagiarism) previously, the respondent decided to impose a heavier measure this time, declaring [X] and excluding him for one year from sitting all interim examinations and examinations of the [X] master's programmes. The appellant continued to attend course units in spite of the exclusion.

At the hearing, the respondent gave an example of the text block [X] which was copied verbatim without stating the source. The respondent informed the appellant of this on 8 March 2022, but the appellant failed to respond. The appellant committed plagiarism at an earlier stage [X] ([X]) in the course unit on 22 December 2021. The appellant did not lodge an appeal against that decision.

4 – Relevant legislation

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

5 – Considerations with regard to the dispute

In accordance with article 7.61, paragraph two of the WHW, the Examination Appeals Board must consider whether the contested decision contravenes the law.



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Before the Examination Appeals Board reaches its decision, it must investigate whether the appeal by the appellant is admissible.

Admissibility of the appeal

The appeal by the appellant on 7 June 2022 is against two decisions by the respondent, one of 14 December 2021 (supervision) and one of 18 March 2022. The respondent has indicated that both decisions were sent to the appellant by email and by registered mail. The decision of 14 December 2021 was also discussed with him verbally and handed to him.

According to the respondent, the appellant is therefore deemed to be aware of the decision, or rather, its content, and its legal consequences, including the right to lodge an administrative appeal.

The appellant argued that he was not properly aware of the content of the decision of 14 December 2021 and that he did not become aware of the decision of 18 March 2022 in time, because that message had ended up in his 'spam' box and he thought it was a false message.

The period for lodging an administrative appeal against the decision of 14 December 2021 expired on Tuesday, 25 January 2022. The period for lodging an administrative appeal against the decision of 18 March 2022 expired on Friday, 29 April 2022.

The Examination Appeals Board establishes that the respondent indicated that the appellant had continued to attend course units despite the decision to exclude him from all interim examinations and examinations. The respondent also indicated that a discussion took place between the respondent and the appellant on 16 May 2022 concerning the decisions, during which the respondent was under the impression that the appellant had not yet fully understood the consequences of the decisions. In view of the very serious consequences of these decisions for the appellant, the Examination Appeals Board considers that, under these circumstances, the appellant cannot be blamed for exceeding the deadline.



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The administrative appeal against both decisions is therefore admissible. This means that the Examination Appeals Board will assess the content of the appeal.

Supervision

According to the respondent, the appellant's right to supervision of his master's thesis has ended because he has already had a number of supervisors and has not applied their feedback and because his master's thesis has so far been marked unsatisfactory four times. The respondent based this decision on Article 7.34, paragraphs one and four, of the WHW.

Notwithstanding the fact that section 7.34, paragraph four, of the WHW already lapsed on 1 April 2020, the provisions referred to by the respondent do not provide grounds for terminating the assistance provided to the appellant with his master's thesis. In fact, the aforementioned provision relates to the core rights that a student derives from his enrolment. One of these core rights is to attend course units and to sit interim examinations and examinations. These core rights can only be restricted by the legislator, or if the legislator has explicitly empowered a university body, such as the Board of Examiners, to lay down further rules in this regard. This did not happen. The failure to appoint a - new - supervisor for the master's thesis also means that the appellant can no longer complete the programme. In fact, this amounts to a *judicium abeundi*. Even if the conditions for imposing a *judicium abeundi* are met, the Executive Board and not the respondent, or, alternatively, the respondent too, is the competent body to make this decision. Nor is the respondent competent to take decisions that have the same legal effect as a *judicium abeundi*.

This means that the appellant, like any other student enrolled in the Programme, is entitled to the usual supervision in writing his master's thesis. As the respondent explained at the hearing, it is common within the Programme that one thesis project can be started per academic year. If the appellant does not manage to complete his master's thesis in one academic year, he is entitled to make a new attempt in a subsequent year and to receive the supervision common within the Programme for students, provided that he has registered as a student and paid the tuition fees. However, this does not mean that the appellant is entitled to repeatedly make a new attempt at the same subject for his master's thesis, which would apply equally for all other students.



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Although the Examination Appeals Board understands the difficult position of the respondent, partly due to the appellant's attitude towards the supervisors assigned to him, the above means that the respondent is not authorised to terminate the supervision of the appellant - unilaterally - and to decide not to assign him any new Supervisor(s). If the appellant wants to make a new attempt to write a satisfactory master's thesis, the respondent is obliged to ensure that he is supervised in the usual way and to assign an Examiner and a Second Examiner. This also follows from Article 7.12.c, paragraph one, of the WHW. Although it follows from Article 3.1.6 of the R&R that the respondent may withdraw the appointment of an Examiner for compelling reasons, this does not release the respondent from the obligation to subsequently appoint a new Examiner/Supervisor.

This means that the administrative appeal is founded and the decision of 14 December 2021 is quashed. Since it is an *ex officio* decision, the respondent is not obliged to make a new decision. However, the respondent is required to ensure that a Supervisor/Examiner is assigned to the appellant. The sanction imposed on the appellant - irrespective of the outcome of the appeal lodged against it - does not alter this. After all, this sanction only concerns sitting interim examinations and examinations and not - also - attending course units, including supervision in writing the master's thesis. Even during the period of the sanction, if the appellant has registered as a student and paid the tuition fees, he is still entitled to attend course units.

Sanction

The dispute relates to whether the respondent imposed a sanction on the appellant in a justified manner and on proper grounds due to plagiarism, and if so, whether the sanction imposed was proportionate.

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 reservation, both with regard to the question of whether a student committed fraud, as well as the question of whether the measure imposed is proportionate to the conduct. The basic principle of the Examination Appeals Board, and of the University itself, is



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that fraud in any form or extent whatsoever, cannot be tolerated in an academic environment. Plagiarism is a type of fraud that is deemed very serious by the University. Academia can only exist by the grace of the trust placed in the integrity of scientists.

The Examination Appeals Board has already previously considered (see the decision in case CBE 20-396) that a student is responsible for his/her own work and that it may be required of a student in that respect to always check whether there is any question of plagiarism and whether all sources used are referred to in the common manner within the academic world in general or within its field of study in particular. Consequently, imposing a sanction for fraud, including plagiarism, therefore does not require that a student has deliberately committed the fraud/plagiarism (see the decision in case CBE 21-072). If the fraud was not committed intentionally, or only to a limited extent, this must be taken into account in the nature and scope of the sanction imposed. In exceptional cases, such as the case in which a student is guilty of a minor type of fraud for the first time, an Examiner is always free, regardless of what is stated in the OER or the R&R, to choose not to report the discovery to the Board of Examiners in order for a sanction to be imposed, but to assess an examination/assignment/paper as unsatisfactory on account of the fraud alone and to hold a “foeigesprek” (corrective discussion) with the student. The intention of this corrective discussion is to make the student aware of the incorrectness of his or her action, what the – serious – consequences of such conduct may be and to help the student to prevent such errors in the future.

Assessment of plagiarism

The Examination Appeals Board established that it is apparent from the documents and the explanation of these at the hearing that the respondent followed the procedure prescribed in the R&R when determining the plagiarism alleged against the appellant. The assignment handed in by the appellant was assessed by the Examiner, who found by means of the Turnitin report that there was a large overlap between the appellant's work and other work without a source being mentioned. This raised the suspicion of plagiarism and the Examiner reported it to the respondent.



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The Examination Appeals Board established that the appellant has acknowledged that plagiarism took place and has apologised for this.

The Board therefore assumes that plagiarism was committed in the assignment ([X]) for the [X] course unit. The Examination Appeals Board will then assess whether the respondent has imposed a proportionate sanction on the appellant for this.

Proportionality of sanction

As noted above, imposing a measure within the meaning of Article 7.12b, paragraph two of the WHW, must be regarded as a punitive measure, which must be assessed for proportionality without reservation. The measure must be explicitly based on facts, circumstances and explanations that can support the measure (see the decision of the CBHO of 7 January 2015 in case CBHO 2014/217, www.cbho.nl).

The Examination Appeals Board considers that the decision of the respondent to exclude the appellant from participation in the examinations and final examinations of the Programme for one year is a heavy sanction, even ranking as the second heaviest sanction available. The respondent argued that this is a matter of a repeated offence.

The appellant was also accused of plagiarism in the [X]/([X]) course on 22 December 2021. This decision has come into force, as the appellant did not lodge an appeal or administrative appeal against it.

The Examination Appeals Board questions the proportionality of escalating to the second most serious sanction that can be imposed for plagiarism on the basis of only one earlier case of plagiarism. The respondent did argue that the appellant had been suspected of plagiarism on more than one occasion, but since those cases did not result in a penalty, they should be disregarded for the present. Nevertheless, the Examination Appeals Board holds that the sanction is still not disproportionate, considering the consequences that the sanction actually has for the appellant.

As a result of the sanction, the appellant may not participate in the interim examinations and examinations of the Programme from 19 March 2022 until 18



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March 2023. As noted above, the sanction does not prevent the student from attending course units, including receiving supervision in writing the master's thesis.

Furthermore, the respondent indicated at the hearing that the appellant only has to attend two more course units, in addition to his master's thesis. These are course units that will be lectured in the second semester of 2023, so it will be possible for him to complete his education in that semester despite the sanction. However, the appellant must have re-enrolled as a student by 1 September 2022. The Examination Appeals Board has not seen any evidence of an unreasonable study delay or any other circumstances that would justify an amended decision. This means that the respondent has, in the opinion of the Examination Appeals Board, reached this decision justly and on proper grounds. The administrative appeal against this is unfounded.

Conclusion

In view of the above, the appeal against the decision of 14 December 2021(*supervision*) is well-founded. This decision is quashed. The appeal against the decision of 18 March 2022(*plagiarism*) is unfounded.

It is conceivable that, due to the sanction imposed on him in combination with the refusal to offer him any more guidance with his master's thesis, the appellant did not consider it worthwhile to enrol as a student for the 2023-2024 academic year. Should that be the case, it is incumbent on the respondent to ensure reparation of rights and to minimise the adverse impact on the appellant. This could include, for example, issuing a statement of no objection to interim enrolment if the appellant indicates that he still wishes to enrol as a student in the study programme. With regard to supervision of the master's thesis, for the period from requesting actual enrolment, the respondent must treat the appellant as if he were registered.



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The decision

The Examination Appeals Board of Leiden University,

- I. declares the appeal well founded as regards the decision of 14 December 2021;
- II. quashes that decision;
- 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. Rademaker, Dr C.V. Weeda, E.L. Mendez Correa BA and S. Cornielle (members), in the presence of the Secretary of the College, Mr I.L. Schretlen, LL.M.

O. van Loon, LL.M.,
Chair

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

Certified true copy,

Sent on:



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Annex - Relevant legislation

The Dutch Higher Education and Academic Research Act (*Wet op het Hoger onderwijs en Wetenschappelijk onderzoek*) stipulates the following, as far as relevant here:

Article 7.12 Board of Examiners and Examiners

1. With regard to the administration of examinations and the organisation and coordination of interim examinations, the board of the institution sets up a Board of Examiners for each programme offered by the institution or for groups of programmes. With regard to the programme compiled by the student, the Board of Examiners is authorised to grant permission as referred to in Article 7.3c, paragraph one.
2. The institutional board appoints the members of the Board of Examiners from the staff members who are charged with lecturing in that programme or programmes.
3. The Board of Examiners appoints Examiners to conduct the examinations. Only staff members charged with lecturing in the relevant unit of study and experts from outside the institution may be appointed as Examiners. The Examiners will provide the Board of Examiners with the requested information.
4. The Board of Examiners lays down rules regarding the proper conduct of examinations and the measures to be taken in this respect. These measures may entail that, in the case of fraud by a student, the Board of Examiners may, for a period of no more than one year to be determined by the Board of Examiners, deny students the right to sit one or more examinations at the institution. The Board of Examiners may issue guidelines and instructions to the Examiners with regard to the assessment of the person sitting the examination and with regard to establishing the results of the examination.



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Article 7.34 Rights of registration as student

1. Enrolment as a student entitles students to:
 - a. to take part in the institution's initial education, subject to the authority of the Executive Board of a university or university college to decide otherwise in the event of application of Articles 7.9, paragraph one, 7.30a, paragraph three, and 7.30b, paragraph one, 7.53, paragraph three, or 7.56;
 - b. to sit the interim examinations of the course units that are part of the programme, as well as to sit the examinations of that programme;
 - c. to gain access to the institution's facilities and collections, unless the nature or interests of education or research prevent such in the opinion of the institution's board;
 - d. to make use of other facilities for the benefit of students, including, except as regards Open University, the services of a Student Dean, and
 - e. with regard to study guidance, the institution's board shall pay special attention to the guidance of students belonging to an ethnic or cultural minority whose participation in higher education lags significantly behind the participation of Dutch citizens who do not belong to such a minority.

The Course and Examination Regulations (*Onderwijs- en Examenregeling*; OER) of the Master's programme in [X]) stipulate the following as far as relevant here:

Article 1.3 Codes of conduct

1.3.1 The Leiden University Code of Conduct on Standards of Behaviour between lecturers and students is applicable. The aim of this code is to create a framework for a good, safe and stimulating work and study environment within Leiden University, in which lecturers and students respect each other and in which mutual acceptance and trust are important values.

Article 6.3 Supervision of the master's thesis

6.3.1 The student draws up a plan for the master's thesis together with the supervisor referred to in 3.3.2. This plan is based on the study load specified in Appendix 1 and e-Prospectus for this component.



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6.3.2 The plan referred to in 6.3.1 also specifies the frequency and manner of supervision.

The Rules and Regulations of the Board of Examiners of the programme in [X] at the Faculty [X] (“R&R”) stipulate the following as far as relevant here:

Article 1.2

First Examiner: the first Examiner, who supervises, reads and assesses the thesis/final assignment/graduation report.

2.2.2 The Board of Examiners has the following tasks and authorisations:

III. Examinations and exemptions

p) To take appropriate measures and impose sanctions if a student or external examination candidate is found to have committed fraud.

r) To appoint examiners.

3.1.1 Prior to the beginning of each academic year, and if and when necessary, the Board of Examiners appoints examiners for setting examinations and determining the results of these examinations, and informs the examiners of this in writing.

3.1.6 The Board of Examiners may withdraw the appointment if there are important reasons for doing so.

Article 4.14 Assessment of the final examination report (thesis)

4.14.1 The Board of Examiners establishes the criteria for the assessment of the final paper (thesis or *eindwerkstuk*), the procedure for the appointment of the first and second Examiner, the assessment form and the division of responsibilities between the first and second Examiner. The final paper will always be assessed independently by two Examiners, and the grade will be determined by agreement between the Examiners or on the basis of a procedure to that effect adopted by the Board of Examiners. If the Examiners are unable to reach agreement, the Board of Examiners will appoint a third Examiner as a third assessor. The third Examiner will have the deciding vote.



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4.14.2 At least one of the Examiners is an expert in the particular field of the subject of the final paper, and one of the Examiners has not directly been involved with the supervision of the student.

Article 5.5 Exclusion from the programme or certain parts of it

5.5.1 If a student demonstrates, in accordance with Article 7.42a of the Act, by behaviour or remarks that he or she is unfit to practise one or more of the professions for which the programme provides training, or for the practical preparation for the execution of his or her professional duties, the Board of Examiners may, if so requested, advise the Executive Board regarding the refusal or termination of the enrolment of the relevant student in the degree programme.

5.5.2 If the student as referred to in Article 5.5.1 is enrolled in another degree programme, and in that context follows courses within a specialisation which corresponds to, or - in terms of the practical preparation for the execution of professional duties - is related to a programme from which the student was excluded on the basis of Article 7.42a, paragraph one, of the Act, the Board of Examiners will, if so requested, advise the Executive Board on whether the student should be allowed to follow this specialisation or other components of the programme in question.

5.5.3 The Board of Examiners will issue its advice as referred to in 5.5.1 and 5.5.2 within ten working days after being requested to do so by the Executive Board.

The *Teacher's Handbook 2021-2022* of the Board of Examiners of [X] stipulates the following as far as relevant here:

3. Thesis project supervision and grading

3.1. Supervision

Master's thesis. An MSc thesis must be supervised by at least two supervisors. The first and ultimately responsible supervisor is a member of the scientific staff (UD, UHD, HL) of [X]; or is an examiner in a specific [X] curriculum and as such appointed by the BoE and thereby allowed to supervise students within that specific curriculum. In addition to the members of the scientific staff, it is possible to have an external first supervisor. In case this might be at hand, please consult your study coordinator regarding the possibilities. The general rule is that both supervisors have a PhD. In exceptional cases it is possible to deviate from this



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requirement; dispensation can only be granted by the Board of Examiners. The first supervisor should be registered as authorised to sign, i.e., appointed as examiner by the BoE. Other assessors can be involved in the (regular) assessment. The names of all assessors involved in the thesis must be mentioned on the assessment form.

4. Plagiarism

The Examiner of each course will explain at the beginning of the course or per assignment what plagiarism is (e.g. to what extent originality of code is a criterion) and what the consequences of plagiarism are. This is a repetition/specification of the information provided for the different curricula in the institute by the Board of Examiners. If the examiner suspects plagiarism in an assignment, report, code, or examination, the following steps should be taken:

1. The Examiner informs the student about the suspicion and asks for a response (preferably by email so that we can include it as a 'rebuttal'; a template email can be found at the end of this document). The grades for this student will not yet be registered
2. The examiner sends all information to [X]: what the assignment was, what the student submitted, any evidence such as Turnitin or MOSS output, the teacher's explanation of why they think it is plagiarism, and how serious they think it is, and the reaction of the student.
3. The BoE assesses the report. The BoE will consult with the Examiner about the sanction.
4. The BoE either sends a letter with the warning or sanction to the student or decides there is no firm proof of plagiarism. The 'Rules and Regulations set by the Boards of Examiners' has a list of possible sanctions (article 6.4). The sanction might be heavier if the student has repeatedly plagiarised. The Board of Examiners will register the name of each student who has plagiarised and, at graduation verifies whether the student qualifies for cum laude. The registration of plagiarism excludes the student from cum laude.