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DECISION 22 - 391

of the Examination Appeals Board of Leiden University

in the matter of the appeal of

[name], appellant,

against

the Board of Examiners of [X], respondent

The course of the proceedings

The respondent imposed a sanction on the appellant in respect of established fraud (plagiarism) in the thesis he submitted for the bachelor's programme in [X] (hereinafter: the Programme).

The appellant lodged an administrative appeal against this decision with the Examination Appeals Board on 27 July 2022.

The respondent informed the Examination Appeals Board that it investigated whether an amicable settlement could be reached between the parties. No amicable settlement was reached.

The respondent submitted a letter of defence on 23 August 2022.

The appeal was considered on 14 September 2022 during a public hearing of a chamber of the Examination Appeals Board. The appellant attended the hearing



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online. [names], Chair and Administrative Secretary, respectively, of the Board of Examiners, appeared on behalf of the respondent.

Considerations

1 – Facts and circumstances

The thesis submitted by the appellant raised a suspicion of plagiarism with the Supervisor; the Supervisor reported this suspicion to the respondent. The respondent consequently, in line with its policy, invited the appellant for an interview to discuss this suspicion and to give the appellant an opportunity to defend himself. This conversation, which took place on 22 June 2022, did not allay the defendant's suspicions; the appellant's thesis was therefore not graded, but declared invalid for reasons of plagiarism.

2 – The position of the appellant

The appellant does not agree with the conclusion by the respondent that plagiarism was committed. He argues that plagiarism constitutes presenting someone else's ideas as one's own and that this does not apply to his case. The passage discussed during the conversation on 22 June 2022 contained a correct reference and the sentence had been changed from the original sentence. Aside from the fact that it is subjective as to how much one should change a sentence, that example is, according to the appellant, at most an error in paraphrasing and not plagiarism. Furthermore, he argues that he never saw the corrected version of the thesis, which should demonstrate other mistakes. The appellant stresses that he wrote his thesis under his own steam, built his own narrative on the subject, and drew his own conclusions.

The appellant also complains about the proceedings prior to and during the conversation on 22 June 2022. He was caught off guard by this conversation and did not receive sufficient information beforehand. Consequently, it remained unclear to him for quite some time what he was being accused of. After explaining what he believed to be the only example discussed during the



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conversation, he thought that agreement had been reached with the respondent that no plagiarism had been committed.

3 – The position of the respondent

According to the respondent, the appellant fell short on two counts: most often, he failed to quote his sources correctly, and he did not indicate when he quoted rather than paraphrased them. The respondent holds this strongly against him. After all, the thesis is the final assignment of the bachelor's programme. The importance and technique of accurate source citation and correct paraphrasing have already been covered in academic skills in the first year of study. The appellant can be expected to refer to sources in a proper manner in his thesis and to indicate accurately whether he is quoting or, alternatively, paraphrasing. The respondent realises that invalidating the thesis will result in the appellant being unable to graduate this academic year. However, the respondent cannot accept a thesis that involves plagiarism.

The respondent holds that during the conversation of 22 June 2022 not one, but several examples of the observed plagiarism were explained. Although the Turnitin report was not forwarded to the appellant directly, it was shown to him and discussed with him during the conversation. The respondent was under the impression that the situation was not clear to the appellant even after the hearing, so the Chair of the Board of Examiners explained to the appellant by e-mail once again why the thesis had been declared invalid.

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 Higher Education and Academic Research Act (*Wet op het hoger onderwijs en wetenschappelijk onderzoek*, hereafter referred to as "WHW"), the Examination Appeals Board must consider whether the contested decision contravenes the law.



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It is disputed 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.

General considerations

Imposing a measure within the meaning of Article 7.12b, paragraph two, of the WHW is 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 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 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 can only flourish as long as the integrity of scientists is undisputed.

As the Examination Appeals Board had considered previously (see the decision in case CBE 20-396), a student is responsible for his or her own work and in that context it may be expected that the student him- or herself will always verify whether plagiarism has been committed and whether all sources within the academic world in general or in their own field of expertise in particular have been stated in the usual manner. Consequently, it is not necessary for a student to have committed fraud/plagiarism intentionally in order to impose a sanction for fraud, including plagiarism (see the decision in the case CBE 21-072). If fraud was not committed - or only to a limited extent - with intention, this must be taken into account in the nature and scope of the sanction to be 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 Education and Examination Regulations (*Onderwijs- en Examenregeling*; OER) or the Rules and Regulations (*Regels en Richtlijnen*, R&R), to choose not to report his discovery to the Board of Examiners, to reject an examination/assignment/paper 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 sure the student understands how incorrectly he or she has acted, what may be the –



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serious – consequences of such conduct and to help the student to prevent such errors in future.

Assessment of plagiarism

The Examination Appeals Board established that it is apparent from the documents and the explanation given at the hearing that the respondent followed the procedure prescribed in the R&R of the Board of Examiners when determining the plagiarism alleged against the appellant. The thesis submitted 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 mentioning a source, or rather, a correct source. It was found that the appellant failed to refer to sources properly on a number of occasions and that he quoted sources instead of paraphrasing them on a number of occasions, without making this known by using inverted commas. In doing so, the appellant used formulations of others but suggested that they were his own interpretations of those formulations. This raised the suspicion of plagiarism, which the Examiner reported to the respondent. After hearing the appellant, the respondent imposed the sanction currently under appeal.

The Examination Appeals Board understands the respondent in arguing that several examples of the plagiarism identified were discussed during the consultation on 22 June 2022, something that was also not refuted by the appellant at the hearing before the Examination Appeals Board. The fact that the appellant found it unclear what he was accused of was, in the view of the Examination Appeals Board, in all likelihood not due to poor disclosure by the respondent, but to the appellant's lack of understanding of the scope of the term plagiarism. In this respect the following is also relevant.

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 thesis submitted by the appellant. In the Turnitin report, the respondent highlighted nine instances of misreferencing or quoting without inverted commas. At the hearing, the Examination Appeals Board discussed these nine cases specifically and in detail with the appellant. In doing so, the appellant indicated that some of the errors were based on a lack of discipline. Furthermore, he believes that none of the mistakes made indicate that he is incapable of academic writing and, above



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all, he wants an opportunity to correct the mistakes. When questioned further, the appellant has no convincing explanation for the specific instances of missing source citation or incorrect quoting. In particular, he appears to argue that failure to correctly cite sources or to quote them correctly does not qualify as plagiarism. He feels that this only applies if he were to present someone's idea as his own invention.

Consequently, the appellant does not deny the defects; he understands them differently. In doing so, he fails to recognise that quoting sources without inverted commas - in particular - also raises questions about the ownership of a written text and the ideas presented therein.

The Examination Appeals Board therefore assumes that plagiarism was committed. After all, this is the case even if it happened unconsciously. The Examination Appeals Board then proceeded to 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 that must be tested for proportionality. 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 finds that the respondent has sufficiently justified its decision to declare the appellant's thesis invalid and not to award a grade as a consequence. The plagiarism found is serious. At least nine major errors in source use were identified. As the respondent explained at the hearing, these were errors which had already been outlined to the appellant in first-year course units. As such, it is a cause for concern that the appellant does not seem to recognise the seriousness of the errors, as became clear at the Examination Appeals Board hearing. The respondent explained at the hearing that it considers a student's number of years of experience when imposing a sanction; in cases of substantial fraud in a final paper of a bachelor's programme, it can no longer waive a sanction. At the same time, the sanction imposed on the appellant is lenient to the extent that the appellant will be allowed to write another thesis and



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to still demonstrate that he has sufficient academic skills to complete the programme. In doing so, the respondent recognised the consequences that the appellant will no longer be able to graduate in the 2021-2022 academic year and that he will no longer be able to achieve cum laude, and was correct in not considering this as a decisive factor in its decision. This follows from the nature and extent of the plagiarism, the circumstances in which the plagiarism was committed, and the extent to which it is attributable to the student.

The Examination Appeals Board finds that the respondent's decision to invalidate the thesis submitted by the appellant appears correct in the light of the above.

Conclusion

In view of the above, the Examination Appeals Board upholds the decision of the respondent. The administrative appeal against this decision is unfounded.



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The decision

The Examination Appeals Board of Leiden University

holds the appeal unfounded

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 F.M.J. den Houdijker, LL.M., Chair, Dr A.M. Rademaker, J.H.M Huijts, Z.I. de Vos, LL.B., and J.J. Christiaans, BA (Members), in the presence of the Secretary of the Examination Appeals Board, I.L. Schretlen, LL.M.

F.M.J. den Houdijker, 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 7.12b Duties and powers of the Board of Examiners

(...)

2. In case a student or external candidate plagiarizes the Board of Examiners may deprive the relevant person of the right to attend one or more tests or exams, during a period of at maximum one year, at the discretion of the Board of Examiners.

3. The Board of Examiners sets out rules about (...) paragraph two, and about the measures it can take in this respect (...).

(...)

As far as relevant, the Course and Examination Regulations (“OER”) of the Faculty of Humanities state the following, as far as relevant here:

Article 4.5.1

In accordance with Article 7.12b (3) of the Act, the Board of Examiners establishes rules concerning the performance of its tasks and responsibilities and the measures it can take in the event of fraud.

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, he/she is not awarded a distinction.

The Rules and Regulations of the Board of Examiners of the Faculty of Humanities 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



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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 finds 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 in case of plagiarism 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;
 - b. 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;
 - 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 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.



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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 contains the following data

- (i) name and student number of the student concerned,
- (ii) the programme of the student,
- (iii) the part of the examination to which the measures taken relate,
- (iv) the characteristic of the file that pertains to the measures taken, and
- (v) an abbreviated description of the measures taken.

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 remain closed to all other parties.