

DECISION 19 - 308

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of the Examination Appeals Board of Leiden University

in the matter of

the appeal of [name], appellant

against

[names] in the capacity of Examiners of the Master's thesis and the Board of Examiners of [X], respondents

The course of the proceedings

[name], informed the appellant in an email message of 6 June 2019 in the capacity of one of the Examiners of her Master's thesis that the thesis did not meet the required level of a Master's thesis and was assessed to be unsatisfactory.

On 30 June 2019, the appellant emailed the respondent with a request to have her thesis assessed by a third Supervisor.

The respondent rejected the appellant's request in its decision of 11 September 2019.

The appellant sent a letter on 17 October 2019, which was received on 25 October 2019, to lodge an administrative appeal with the Examination Appeals Board against both the email message of 6 June 2019 and the decision of 11 September 2019.

On 15 November 2019, the respondent investigated whether an amicable settlement could be reached. No amicable settlement was reached.

The appellant submitted a more detailed document on 28 November 2019.

The respondent submitted a letter of defence on 10 December 2019.

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The appeal was considered on 18 December 2019 during a public hearing of a chamber of the Examination Appeals Board. The appellant appeared in person at the hearing. [name], Secretary of the Board of Examiners of [X], as well as [names], Examiners, appeared on behalf of the respondent.

The appellant lodged a notice of default on 9 June 2020.

Considerations

1 – Facts and circumstances

The appellant attends the Master's Programme in [X], with specialisation [X].

On 6 May 2019, the appellant submitted her thesis for assessment.

On 6 June 2019, the appellant received an email message from her first Supervisor that her thesis did not match the required level of a Master's thesis. The appellant failed to achieve satisfactory results on each of the assessment criteria.

The respondent rejected the request by the appellant to appoint a third Supervisor on 11 September 2019.

2 – The position of the respondent

The Examiners adopted the position that the thesis procedure has been ongoing for 2.5 years due to personal circumstances. First of all, the appellant combined writing her thesis with a job in [X] and, later on, with a job in [X]. Besides functional impairments, the appellant had to deal with health issues too. It is common not to award a numeric grade to the various elements on which a thesis is assessed. In this case, the Examiners opted to confine themselves to establishing that the Master's thesis is unsatisfactory and not to award a numeric final grade to the appellant with the intent not to hurt her feelings. The Board of Examiners takes the position that there is no reason to appoint a third Supervisor as the first and second Supervisor agree on the assessment.

3 – The grounds for the appeal

The appellant argued that the assessment of her Master's thesis was not executed on proper grounds. She holds that the assessment was obscured due to an earlier issue she experienced with the second Supervisor. She takes the position that she was - erroneously - not alerted that her thesis would be sub-standard. Furthermore, she does not agree to the fact that the Examiners did not award a grade to her thesis.

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4 – Relevant legislation

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

Article 4.6 Assessment

4.6.4 The examination result is expressed as a whole number or a number to a maximum of one decimal place up to and including 1.0 and 10.0. The result is not be expressed as a number between 5.0 and 6.0.

Article 6.3 Supervision of the Master's project

6.3.1 The student draws up a plan for the Master's project together with the first reader, as referred to in 3.3.2. This plan is based on the study load for this component, as specified in the Prospectus.

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 degree programme's Bachelor [X], Master [X] and Research Master [X] state the following, in as far as relevant:

Article 1.2

Third assessor A third examiner who is appointed by the Board of Examiners in the event that the first and second assessors are unable to agree on the assessment of the thesis / final paper / final report.

Article 4.8a Assessment of final paper

4.8a.1 The Board of Examiners establishes the criteria for the assessment of the final paper (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. If the examiners are unable to reach agreement, the Board of Examiners will appoint a third examiner as third assessor. The third assessor will have the deciding vote.

De Prospectus for Master's project van de Master's programme in [X] (hereinafter: “Prospectus”) states, in as far as relevant:

2.3.2 Assessment

The first supervisor decides when the thesis is sufficiently advanced to be submitted to the second supervisor for assessment. This version can still be

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modified to take into account any feedback by the second supervisor before the final grade is determined. The first and second supervisors will assess the thesis on the basis of a number of assessment criteria (see *Appendix 1*). The first supervisor will determine the grade, taking into account the grade proposed by the second supervisor. The supervisors have three working weeks to assess the definitive version of the thesis, provided that preliminary arrangements have been made about the moment of handing in the final version. Upon handing in your thesis please clearly state that this is the final version you are handing in for assessment.

A hardcopy of the final version should be submitted to your first supervisor. In addition this version should also be mailed to your first supervisor. He will upload your thesis in *Turnitin* (a plagiarism detection programme) to check for plagiarism. You can not upload your thesis yourself. If plagiarism is suspected, the Fraud protocol will enter into effect.

5 – Considerations with regard to the dispute

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

First and foremost, the Examination Appeals Board holds that the appellant did not succeed in even making it plausible that the second Supervisor did not perform the assessment of her Master’s thesis in an unbiased manner. This also means that the Board of Examiners did - rightfully - not see a reason to meet the request of the appellant to appoint an alternative second Supervisor. Nor can the assertions by the appellant about the second Supervisor lead to quashing of the decision of 6 June 2019.

At the time of the hearing of the Examination Appeals Board, the thesis procedure of the appellant had taken 2.5 years. As the respondent stated in the letter of defence, this constitutes 2.5 times the time scheduled for this procedure in the Prospectus. The documents demonstrate that the delay is partially due to personal and medical circumstances that apply to the appellant and which cannot be held against her.

On the other hand, the delay was also caused by alterations in the schedule that have been requested by the appellant repeatedly, since she was unable to spend sufficient time on her thesis due to her job and the respondent has been very generous in allowing these requests. Moreover, the appellant also failed to meet

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agreed submission deadlines. Consequently, the Examination Appeals Board finds it easy to understand that both the Examiners and Board of Examiners want to end this Master's thesis procedure. Even more so now that the number of hours spent by the first Supervisor in particular on counselling the appellant has been considerably higher than the hours allocated to that task and to which the appellant was 'entitled'. In hindsight, it might have been better when the respondent had not been so generous in allowing the appellant's requests and had been more strict in respect of the agreed submission deadlines.

Having said so, the assessment must - also in such cases - be executed in accordance with the provisions of the Dutch General Administrative Law Act (Algemene wet bestuursrecht, "Awb") and the rules provided by or pursuant to the WHW.

The documents demonstrate that the Examiners offered the appellant an option - by email in February 2019 - to submit the chapters by means of a pre-agreed submission schedule, to get feedback per chapter, and next, to submit her final version, or, alternatively, to submit a draft version of the entire thesis, to receive feedback on that document, and, next, to submit the final version. The appellant chose the first option, and, next, received feedback by chapter, and submitted the final version on the agreed deadline.

As is demonstrated from the documents, the first Supervisor graded the submitted thesis version as 'unsatisfactory' and, next, sent it on to the second Supervisor who also graded the thesis to be 'unsatisfactory'. Although this is not contrary to the OER or the R&R, these acts were contrary to paragraph 2.3.2 of the Prospectus. This paragraph reads that the first Supervisor will only send the thesis on to the second Supervisor when the thesis is of a 'sufficiently advanced' level. It cannot be understood how a thesis that is so unsatisfactory that the Examiners refrain from awarding a grade so as not to hurt the student's feelings can be 'sufficiently advanced' in itself, as intended in paragraph 2.3.2. Students must also be allowed, based on this provision, to adapt the thesis, if so desired, to the feedback given by the second Supervisor, at least. This option was not offered by the Examiners to the appellant. Although the prospectus is not a generally binding instruction, students may assume in respect of the respondents that they will be treated in accordance with the Prospectus.

Furthermore, the Examination Appeals Board seconds the position held by the appellant that the Examiners have wrongfully failed to award a numeric grade to her thesis. By merely awarding the assessment 'unsatisfactory', without attaching a numeric grade to this assessment they acted contrary to Article 4.6.4 of the OER.

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It follows from the above that the assessment of the Master's thesis was not arrived at with the required due care and, consequently, contrary to Article 3:2 of the Awb. By not granting a numeric grade, but in the alternative to merely award the assessment 'unsatisfactory', the Examiners also acted contrary to Article 4.6.4 of the OER. Hence, the appeal is founded and the decision of 6 June 2019 must be quashed. The Examiners must assess the Master's thesis anew, with due regard for the considerations of this decision. This means that they must offer the appellant – at her discretion – the option to adapt the final version of the thesis following the feedback received and to submit it once again. The Examiners are free to set a deadline for the appellant to submit the adapted version. The Examination Appeals Board does not hold a term of two weeks to be unreasonable. This offers an opportunity to finalize the thesis procedure by ultimately 31 August 2020.

As quashing the decision of 6 June 2019 entails that said assessment is considered not to have taken place, the situation that the first and second Supervisor will not reach one decision does not present itself right now. Therefore, the appointment of a third Supervisor lacks ground for that reason alone. This means that the appeal against the decision of 11 September 2019 is unfounded.

Now that the Examination Appeals Board has decided within the statutory term of two weeks after receipt of the notice of default no penalty is due, in view of Article 4:17, paragraph three of the Awb.

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The decision

The Examination Appeals Board of Leiden University

- I. holds the appeal against the decision of 6 June 2019 to be founded;
- II. quashes that decision;
- III. holds the appeal against the decision of 11 September 2019 to be 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: O. van Loon, LL.M., (Chair), Dr J.J.G.B. de Frankrijker, Dr J.J. Hylkema, M. Heezen, LL.B., and Z.I. de Vos, LL.B. (Members), in the presence of the Secretary of the Examination Appeals Board, M.S.C.M. Stoop - van de Loo, LL.M.

O. van Loon, LL.M. ,
LL.M.
Chair

M.S.C.M. Stoop - van de Loo,
Secretary

Certified true copy,

Sent on: