

DECISION 17 - 035

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of the Examination Appeals Board of Leiden University
in the matter of
the appeal by [name], appellant
against
the Public Administration Board of Examiners, respondent

1. Origin and course of the proceedings

The appellant obtained a 5.1 for the first sitting of the examination for the Public Policy education component. The grade was announced on 2 January 2017.

On 18 January 2017, the appellant was informed that he had obtained a 4.1 for the re-sit.

The appellant sent an e-mail on 27 January 2017 in which he stated that he did not agree with the assessment for the Public Policy course component and requested a statement that he completed the exam successfully or be granted an additional re-sit.

By decision of 7 February 2017, the respondent rejected the appellant's request for an additional re-sit of the Public Policy course component and indicated he had no reason to offer an alternative solution.

The appellant lodged an administrative appeal against this decision.

The respondent forwarded the appellant's appeal to the Examination Appeals Board by letter of 15 February 2017, received on 17 February 2017.

In short, the appellant argued that allowing him to participate in an additional re-sit is justified given that the testing method was changed in the intervening period. He also takes the view that the re-sit did not have the same level of difficulty as the first examination. Finally, he stated his dissatisfaction with how the course component was organised.

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On 13 March 2017, the respondent lodged a defence.

The appeal was considered on 12 April 2017 during a public hearing of a chamber of the Examination Appeals Board. The appellant was present at the hearing. On behalf of respondent, [names], appeared.

2. Considerations with regard to admissibility

The appellant lodged a timely appeal with the Examination Appeals Board with his letter received on 17 February 2017 against the decision of 7 February 2017. The appeal also complies with the requirements laid down in the Higher Education and Academic Research Act (WHW); the administrative appeal is consequently admissible.

3. Relevant legislation

Article 4.2 of the Rules and Guidelines of the Examination Board of the degree programme Public Administration ("R&R") defines:

Article 4.2 Quality assurance of examinations

4.2.1 Each examination will comprise an investigation of the knowledge, understanding and skills of the student, and the evaluation of the outcome of this investigation.

4.2.2 The questions and assignments of an examination will be clear and unambiguous, and will contain sufficient instructions on the detail required in the answers.

4.2.3 The examination will be appropriate and will serve exclusively to investigate whether the student has developed the qualities that were determined in advance as the aim of the course component concerned, and were laid down in the e-prospectus.

4.2.4 The examination will be so specific that only the students who have a sufficient command of the material will be able to provide adequate answers to the questions and assignments. The examination will correspond to the level of the course component.

4.2.5 The questions and assignments of the examination will be distributed as evenly as possible over the prescribed examination material.

4.2.6 The questions and assignments of the examination will relate only to the examination material that has been announced in advance. It will be clear for students in advance how they will be assessed, and on what they will be assessed.

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4.2.7 The questions and assignments of components of the examination for which no compensation is allowed will be designed by an examiner and approved by at least one other lecturer ('four-eyes' or 'dual control' principle).

4.2.8 The duration of each constituent examination or practical will be such that the student may reasonably be expected to have sufficient time to answer the questions and/or complete the assignments.

4.2.9 Written examinations will be assessed on the basis of pre-determined, written criteria.

4.2.10 The procedure relating to the quality assurance of examinations will have been established by the Board of Examiners.

4.2.11 The Board of Examiners will evaluate the validity, reliability and usability of the examinations on a random basis. The outcome of this evaluation will be discussed with the examiner(s) concerned.

4.2.12 In addition, the Board of Examiners can investigate the validity, reliability and usability of the examinations, if evaluations or results give cause for this.

4.2.13 In making the evaluation referred to in 4.2.11 and 4.2.12, the Board of Examiners can request the assistance of experts.

4. Considerations with regard to the dispute

In accordance with article 7.61, paragraph two, of the WHW (Higher Education and Academic Research Act), the Examination Appeals Board must consider whether the contested decision contravenes the law.

In accordance with article 7.61, paragraph three, of the WHW (Higher Education and Academic Research Act), the Examination Appeals Board requested the respondent to consult with the appellant to determine whether an amicable settlement of the dispute was possible. It appears that the respondent took no action in response to this request.

According to article 7.61, paragraph three, of the WHW (Higher Education and Academic Research Act), consultation to determine whether an amicable settlement is possible is a prerequisite for the handling of the administrative appeal by the Examination Appeals Board. It is therefore not for the respondent to decide whether he deems it appropriate or not to have this discussion. The respondent should therefore have contacted the appellant, even if it only to explain the grounds for the contested decision to him and, if necessary, to answer any remaining questions. By failing to do so, the respondent has acted in breach of the law.

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Having said this, the parties did have the opportunity to exchange views at the hearing. The respondent explained in greater detail why the contested decision was taken, answered questions raised by the appellant and cleared up remaining ambiguities. Returning the administrative appeal to the respondent merely to examine whether a reasonable settlement is possible would lead to a repetition of proceedings and delay the procedure, which would not be in the appellant's interest. Therefore, the Examination Appeals Board decided to move to a substantive assessment of the administrative appeal.

The Examination Appeals Board acknowledges that the state of affairs surrounding the organisation of this pre-master's has room for improvement. For example, the appellant stated that there was a timetable change in which his exam date was moved forward due to an examiner falling ill, there was a lack of clarity on the part of the Public Management and Organisations course component regarding the commitment to compensate marks and feedback from the Public Policy intermediate test was received only one day prior to the follow-up interview due to a technical malfunction. These complaints were also known to the University's ombudsman and, at the hearing, the respondent voiced regret that these circumstances had taken place.

The Examination Appeals Board finds that, despite the above, it did not have the impression that the appellant would have achieved a substantially different mark than 4.1 in the absence of the above events. In this context, the Examination Appeals Board points out that the appellant obtained a higher mark (5.1) in the first examination than in the re-sit (4.1). The respondent further explained that the results of the first examination and the re-sit were compared by a third party. No major discrepancies between the first examination and the re-sit were detected. The respondent took the view that there was no difference between the first exam and the re-sit. The College considers that, even if there had been a difference in level between the first exam and the re-sit, this would not necessarily render the assessment invalid. A student who participates in the re-sit has more time to study the material than students who only sit the first examination chance, and has also gained experience with the testing method.

At the end of the hearing, the respondent submitted the assessment form of the first examination's intermediate test that the appellant had taken to the Examination Appeals Board. The appellant received a 3.0 on the intermediate test. The Examination Appeals Board finds that this assessment form was drawn up sufficiently carefully so that it does not give rise to invalidity. In addition, the appellant obtained a 5.5 on the re-sit of the intermediate test.

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In light of the preceding, the respondent's rejection of the appellant's request for a further re-sit or a different assessment was justified. No other facts or circumstances have emerged that could lead to a different opinion, and the appeal must therefore be rejected as unfounded.

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5. The decision

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

holds the appeal to be **UNFOUNDED**.

Established by a chamber of the Examination Appeals Board, comprised of O. van Loon, LL.M., (Chair), Dr A.M. Rademaker, L.N. Kluinhaar, S.A.K. d'Azevedo, LL.B., and G. Boogaard, LL.M., (members), representing the Secretary of the Examination Appeals Board, M.S.C.M. Stoop - van de Loo, LL.M.

O. van Loon, LL.M.
Chair

M.S.C.M. Stoop – van de Loo, LL.M.
Secretary

Certified true copy,

Sent on: