

DECISION 17 - 036

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

1. Origin and course of the proceedings

On 23 December 2016, the appellant handed in her final assignment for the Research in Public Administration course component. This paper was awarded a grade of 5.0.

The appellant also received a 5.0 for the resit. This grade was registered in uSis on 26 January 2017.

In an email dated 31 January 2017, the appellant made known that she did not agree with the assessment for the Research in Public Administration course component.

In a decision dated 15 February 2017, the respondent rejected the appellant's request for another resit for the Research in Public Administration course component, as no irregularities in the assessment and determination of the grade were found.

In a letter dated 15 February 2017, which was received on 17 February 2017, the respondent sent the appellant's appeal dated 31 January 2017 to the Examination Appeals Board.

In short, the appellant argued that allowing her to participate in an extra resit was justified since she claims that, had she already received the feedback of the resit after the first examination, she would have passed the resit.

A letter of defence was submitted on 13 March 2017. The appellant submitted an additional appeal on 30 March 2017. In this appeal, she argued that the the course

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component was not organised adequately. She explained that one of the three webinars was cancelled and that her resit was not assessed by a person appointed for this purpose. Furthermore, there was uncertainty about the content of the final assignment and there were no opportunities to ask the examiners questions by email. Finally, she stated that the feedback provided was inadequate.

The appeal was considered on 12 April 2017 during a public hearing of a chamber of the Examination Appeals Board. The appellant appeared at the hearing, accompanied by [name]. [names], respectively member and administrative secretary of the Board of Examiners for the bachelor's programme in Public Administration Science, and [names], both examiners, appeared on behalf of the respondent.

At the hearing, the appellant submitted a memorandum of oral pleading.

2. Considerations with regard to admissibility

The appellant lodged a timely appeal against the decisions of 26 January 2017 and 15 February 2017 by means of the letter received on 17 February 2017. Furthermore, the letter of appeal also meets the requirements as stipulated in the General Administrative Law Act ("Awb", *Algemene wet bestuursrecht*) and the Higher Education and Academic Research Act ("WHW", *Wet op het hoger onderwijs en wetenschappelijk onderzoek*). The administrative appeal is consequently admissible.

3. Relevant legislation

Pursuant to Article 7.12c, first paragraph, of the WHW, the Board of Examiners appoints examiners to set examinations and to determine the results of these examinations.

As far as relevant, the Course and Examination Regulations ("OER", *Onderwijs en examenregeling*) of the Master's Programme in Public Administration state the following:

4.1.1 Examinations are held twice during the academic year for each component offered in that year. The Board of Examiners determines the manner of resit for practicals.

4.1.6 In departure from Article 4.1 and at a student's request, the Board of Examiners may in exceptional circumstances allow an additional resit.

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The Board of Examiners' Rules and Regulations ("R&R") of the Public Administration Master's Programme state the following:

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.

4.3.5 The Board of Examiners can, in accordance with Article 4.1.6 of the OER, grant a student a single additional opportunity to take an examination, if it judges that the student was unable to make use of the examination and the resit for the course component concerned, due to demonstrable, exceptional circumstances, as referred to in Article 4.1.1 of the OER.

4. Consideration 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.

In accordance with Article 7.6.1, paragraph three, of the WHW, the Examination Appeals Board requested the respondent to discuss with the appellant the possibility of reaching an amicable settlement for the dispute. The respondent had apparently ignored this request.

Pursuant to Article 7.6.1, paragraph three, of the WHW, having a discussion to assess whether an amicable settlement can be reached is a condition for treating the administrative appeal by the Examination Appeals Board. It is therefore not up to the respondent to decide whether a discussion is considered appropriate. The respondent should have contacted the appellant, if only to explain and elaborate the motivations behind the contested decision and to answer any of her questions.

Having stated this, both parties had the opportunity to exchange views during the hearing. The respondent explained in detail why the contested decision was made; the respondent also answered the appellant's questions and removed any ambiguities. The Examination Appeals Board therefore proceeded with a substantive assessment.

The Examination Appeals Board stated that the appellant's appeal is twofold. The appeal is against the assessment of the resit paper and against the rejected request

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for an extra resit. The Examination Appeals Board discusses the two components of the appeal in the following paragraphs:

4.1 Considerations with regard to the appeal against the assessment

The Examination Appeals Board remarked that it became clear during the hearing, which was also confirmed by the respondent, that the resit was assessed by a student assistant who, although in the final phase of a Master's in Political Science, had at that time not yet graduated from this programme. Furthermore, it was established that the student assistant was not appointed as a member of the university's academic staff in the period concerned; the student assistant was also not explicitly appointed as an examiner for the Research in Public Administration component. This is apart from the question of whether providing a student assistant with the authority to have students take exams and assess these exams with grades is in accordance with the WHW. For the sake of completeness, it should be noted that the defendant did not argue that this student-assistant was authorised to assess the examination and determine the grade..

Indeed, during the hearing the respondent explained that the student assistant assessed the paper under the responsibility of the examiners, having received general guidelines. Following this assessment, the examiners conducted a random check on the papers that were not assessed by an examiner. This cannot be equated to an assessment of a paper by an appointed examiner. Inherent in this method is that exams not included in the random check received grades, even though they have not been seen by an examiner.

By determining the grade based on the assessment of the student assistant, the examiners acted in contravention of the law. This means that the decision dated 26 January 2017 must be annulled; and an examiner appointed by the respondent must now assess the appellant's resit paper.

Incidentally, the Examination Appeals Board does not automatically exclude that the use of a student assistant or another member of the academic staff not appointed as an examiner may be acceptable for reasons of efficiency when assessing examinations. This applies in particular to assessing questions based purely on knowledge or knowledge reproduction; in such cases, the answer key determined by the examiners appointed by the relevant teaching department does not allow the correctors any decision-making room to assess an answer as correct or incorrect.

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There is a parallel here with the automated correction of multiple-choice examinations. Grading examinations or parts of exams in which the examiner does have room for decisions (e.g. in open questions, essay questions, papers and theses) and determining the result of those examinations is, however, restricted to the examiners appointed by the Board of Examiners for the course component in question. It should also be noted that the Examination Appeals Board does not want to exclude in advance the possibility that, when grading open questions, an examiner may be assisted by a colleague who has not been appointed as an examiner by the Board of Examiners. It is, however, a requirement that a uniform and unambiguous correction model must be available; general guidelines are thus insufficient. Furthermore, there must be a guarantee that a corrector who is not appointed as an examiner should explicitly present each deviant answer to the examiner. The student and, in the event of an administrative appeal, the Examinations Appeals Board should be able to identify the examiner's decision based on the exam key and/or assessment form.

4.2 *Considerations with regard to the appeal against the rejection of request for an extra resit*

In the decision dated 15 February 2017, the respondent rejected the appellant's request for an extra resit. In the letter dated 30 March 2017, the appellant stated the reasons for her not agreeing with this decision.

The appellant argued that it is in part due to the organisation of the course component that she did not successfully complete the course component. She explains that one of the three webinars was cancelled, without this being offered at an alternative time.

During the hearing, the respondent explained in this context that the content of the first webinar was discussed during the second webinar. The webinar was for this reason longer. Furthermore, an additional video was uploaded for extra support. According to the Examination Appeals Board, the respondent has undertaken sufficient measures to compensate for the cancellation of the first webinar.

Furthermore, the appellant states that students were wrongfully not allowed to ask the examiners questions. The respondent explained during the hearing that students were encouraged to use the online platform to ask questions, because this could be educational for fellow students. This was the underlying reason for stating that students were not allowed to ask examiners questions directly by email. The respondent further explained that after a discussion had taken place

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on the online platform, the question concerned would still be answered if this was deemed necessary. Even though more information about the aforementioned method – that was based on educational motives - would have been helpful, it cannot be argued that, as a result of this choice, the appellant would not be able to have her question answered by the examiners.

Finally, the appellant argued that she was unclear about the content of the final assignment. In her view, the term ‘puzzle’ was not clear enough. In this respect, the respondent referred to the instruction form. This form stated that the student must explain why the research question is relevant. The Examination Appeals Board considers this explanation understandable and sufficiently clear.

The circumstances that the appellant raised can therefore not be classified as extraordinary circumstances in which an extra resit is justified, as stipulated in Article 4.1.6 of the OER and Article 4.3.5 of the R&R.

In view of the above, the Examination Appeals Board holds that the contested decision of the respondent to reject the appellant’s request for an extra resit is justified.

4.3 Conclusion

The appeal against the decision dated 26 January 2017 is founded and this decision will be annulled. The Examination Appeals Board instructed the respondent to have the appellant’s resit paper assessed by a designated examiner, and make the result known to the appellant and the Examination Appeals Board within three weeks after the date of this decision.

The appeal against the decision dated 15 February 2017 is unfounded.

5. The decision

In view of article 7.61 of the Higher Education and Academic Research Act,

the Examination Appeals Board of Leiden University:

- I. holds the appeal against the decision dated 26 January 2017 founded;
- II. annuls the decision dated 26 January 2017;
- III. instructs the respondent to have the appellant’s resit paper assessed by a designated and appropriate examiner, and make the result known to the

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appellant and the Examination Board of Appeals within three weeks after the send date of this decision;

IV. holds the appeal against the decision dated 15 February 2017 unfounded.

Established by a chamber of the Examination Appeals Board, comprised of O. van Loon, LL.M., (Chair), Dr A.M. Rademaker, LL.B., S.A.K. d'Azevedo, LL.B. and G. Boogaard (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.
Chair

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

Certified true copy,

Sent on: