

DECISION 20 - 063

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of the Examination Appeals Board of Leiden University
in the matter of
the appeal of [name], appellant
against
[name], in her capacity of Examiner, respondent

The course of the proceedings

The course unit [X] (hereinafter: the course unit) is assessed by an interim examination which is weighted at 70% and a tutorial grade which is weighted at 30%.

On 5 February 2020, the respondent informed the appellant that he was awarded a grade 6 on a scale of 10 in respect of the interim examination of the course unit.

On 13 February 2020, the respondent informed the appellant that he was awarded a grade 9 on a scale of 10 in respect of the tutorial of the course unit. This resulted in a final grade of 7.

The appellant sent a letter on 23 March 2020, which was received on 26 March 2020, to lodge an administrative appeal against this decision with the Examination Appeals Board.

The respondent investigated whether an amicable settlement could be reached with the appellant on 20 April 2020. No amicable settlement was reached.

The respondent submitted a letter of defence on 23 April 2020.

The appeal was considered on 27 May 2020 during an online hearing of a chamber of the Examination Appeals Board. The appellant participated in the hearing. [names], Chair and Secretary, respectively, of the Board of Examiners appeared on behalf of the respondent.

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Considerations

1 – Facts and circumstances

5 ECTS can be achieved in respect of the course unit.

On 23 January 2020, the appellant sat the interim examination of the course unit. The resit of the interim examination was scheduled for 31 March 2020.

On 13 March 2020, Leiden University decided to proceed with remote teaching and examination in view of the COVID-19 outbreak.

On 17 March 2020, the institution's Director and the Chair of the Board of Examiners sent an email message to all examiners about the mode of operation for examinations. They attached guidelines that were drafted in consultation with the Faculty Board and the Student Services Centre (Onderwijs Servicecentrum, OSC).

The examiner of the course unit decided that the tutorial grade was to be the final grade for students that had not passed the interim examination on 23 January 2020 or those who failed to sit this exam, but did attend the course unit during this academic year and did pass the theoretical tests in the tutorials. All other students (those that have not passed the theoretical tests in the tutorials, or those who have attended the tutorials in an earlier academic year) must sit an online exam from home.

2 – The grounds for the appeal

The appellant adopted the position that he should be awarded a grade 9 in respect of the course unit. He holds it to be unjust that his final grade was lowered because the grade of the interim examination of 23 January 2020 was considered when calculating the final grade. This creates inequality when compared to students who failed the interim examination of 23 January 2020 and yet passed this course unit when they were awarded a satisfactory grade in respect of the course unit's tutorial.

3 – The position of the respondent

The respondent adopted the position that assessment of the course unit for the appellant was executed in the manner as referred to in the prospectus. This is because he passed both the interim examination and the tutorial. The respondent

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is not in favour of withdrawing or reviewing in retrospect any grades that were awarded in a proper manner. Since the present academic year (2019-2020), theoretical tests are obligatory in tutorials. This means that the learning objectives of the course unit have already been examined in the tutorials. The respondent maintains the decision to regard the tutorial grade in the academic year to be decisive for the final grade when students have passed the theoretical tests in the tutorials. Although the respondent does not hold this to be an ideal mode of examination, the exceptional situation that arose due to the COVID-19 outbreak justified an approach that also had to be practicable administratively. The focus was and is to prevent study delay for students. The respondent offered to explain to the appellant how this course unit was completed and how the grade was arrived at in case he intends to participate in a competitive selection for a master's programme and would not qualify for a cum laude graduation. The appellant refused this offer.

At the hearing, the respondent clarified several matters, including the following. A total of 614 students had participated in the course unit. After the assessment method had been altered, 66 passed the course unit who had either not sat the interim examination of 23 January 2020 or had not passed this examination. A group of 581 students were awarded a different grade in the interim examination and the tutorial. Since these 581 students have completed the course unit in the manner as described in the prospectus, the respondent does not want to alter these assessments. Besides, altering 581 grades would entail a work load for the examiners that is too high. The procedure that was chosen meant that the grades of only 66 students had to be altered. The respondent acknowledged that this alteration of the assessment of the course unit was a "second best" option. Students passed the interim examination of 23 January 2020 with an average grade of 6. The average grade of the tutorial was 7.4. The three learning objectives as described in the prospectus were tested in the tutorial assignments. The respondent holds that this justified the decision to cancel the resit for those who did not sit the interim examination, and for those who did not pass that examination but were awarded a satisfactory grade in the tutorial. The difference in GPA to the appellant would be 0.056 if his final grade of this course unit were to be a 9. The fact that the appellant was awarded a grade 7 does not have to be an obstacle to a possible cum laude final grade.

4 – Relevant legislation

The Rules and Guidelines (of the Board of Examiners of the Public Administration Programme stipulate, in so far as relevant in this case:

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2.3.5 The standards

The Board of Examiners, or the examiner, will apply the following standards as a guideline when making decisions and will balance the interests of the criteria with one another:

- 1) Upholding quality requirements and selection requirements of an examination or interim examination;
- 2) Efficiency requirements, namely:
 - as far as possible, to limit loss of time to students when preparing an examination or interim examination;
 - to encourage students to halt their studies as soon as possible when it has become unlikely that they will pass an examination or interim examination;
 - to protect students against their better judgement when they intend to take on a study load that is too high;
 - to exercise leniency in respect of students that were faced with delay in the progress of their studies through no fault of their own;
 - to prevent overburdening of Examiners.

4.1.1 The mode of examination has been laid down in the Course and Examination Regulations (*Onderwijs- en Examenregeling*; OER) and the prospectus. In exceptional cases, the Board of Examiners may decide in consultation with the examiner that the interim examination will take place in another mode than laid down. At least 25 working days before the scheduled examination, the Examiner will announce on behalf of the Board of Examiners in what form this examination will take.

The prospectus states the following in respect of the course unit, in as far as relevant:

Teaching mode

8 lectures of 2 hours each (web lectures available).

8 tutorials of 2 hours each (attendance mandatory).

Attendance at tutorials is mandatory. In case of force majeure, students may be absent from a maximum of 2 tutorials. If students are absent from a tutorial in which they have to give a presentation, this will lead to a deduction of 2 grades on this partial grade. Being at least 10 minutes too late is regarded as absence.

Examination

The lectures will be completed by an interim examination that will consist of approximately 90 multiple choice questions (two options) (70% of the final grade). The tutorials will be completed by a tutorial grade (30% of the final grade). Compensation is possible if the interim examination grade and the tutorial grade are both ≥ 5.0 .

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The tutorial grade consists of 0.25 homework assignments, 0.25 presentation, and 0.5 final paper. Homework assignments and presentations cannot be resat. If the tutorial grade < 5.0 a resit assignment can be made which will replace the final paper grade.

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*), the Examination Appeals Board must consider whether the contested decision contravenes the law.

First and foremost, the Examination Appeals Board would like to express its understanding for the difficult situation faced by the respondent Leiden University decided on 13 March 2020 to proceed with remote teaching and examination in view of the COVID-19 outbreak. The resit of the interim examination was scheduled for 31 March 2020. Consequently, there was little time to make a decision.

The Examination Appeals Board concludes from the submitted documents and the discussions at the hearing that the respondent had indeed made an effort to reach the best possible solution. As such, the respondent weighed multiple interests. The focus was to prevent study delay to students. The respondent was faced with students who returned to their country of origin due to the measures following the COVID-19 outbreak. At the same time, he had to observe that examiners would not have to cope with a workload that was too high. The respondent considered that the learning objectives of the course unit had already been tested fully in the tutorials, so that cancelling the resit would not infringe the quality requirements of examination. Ultimately, the respondent considered other modes of assessment, but these did not provide a viable alternative.

The Examination Appeals Board considers that - in view of the above considerations and in view of the guidelines provided by the institution with regard to adapted examination in times of corona - the choice of cancelling the resit in respect of a group of students that had indeed acquired a satisfactory result in the tutorial seemed justified in itself. However, there is a downside to this choice. It entails that students who have participated in the same course unit in the same cohort will not be assessed in the same manner. The tutorial grade will be the final grade for one group, while another group will have a final grade that is a weighted average of the tutorial grade and the interim examination grade.

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The Examination Appeals Board established that the respondent has explained that students who have merely achieved a satisfactory result in the tutorial grade have fully met the final terms of the course unit. This means that an assessment by means of the tutorial grade exclusively will not impair the quality of the diploma in any manner - according to the respondent. It cannot be understood why this would only apply to students who did not sit the interim examination or did not pass that examination but were awarded a satisfactory grade in the tutorial. However, this is the consequence of the choice that was made by the respondent. By creating such a huge difference in assessment in one single cohort of students that have either passed both parts of the course units and students that were merely awarded a satisfactory tutorial grade, the respondent has assessed similar cases differently (since this concerns the assessment of students in the same cohort attending the same course unit) and, consequently, acted contrary to the principle of equality.

The appellant was affected adversely by this choice. In this respect it is also relevant that a GPA at the highest level is relevant to the competitive selection of various master's programmes. In the appellant's case, the grade of the interim examination has adversely affected his final grade, though this examination criterion is missing for those students that have only achieved a satisfactory grade in the tutorial. This means that the appeal is founded and that the decision of 13 February 2020, in which the final grade of the appellant was determined at 7, must be quashed. Since no other decision can be taken, the Examination Appeals Board will instruct the respondent to establish the final grade of the appellant in this course unit at 9, which is the tutorial grade achieved by the appellant, within four weeks after dispatch of this decision and to announce this to him in the usual manner.

Possibly unnecessarily, the Examination Appeals Board would like to make the following remark. Both the appellant and the respondent have referred to other students that are in a similar position to the appellant. The appellant has stepped forward as an advocate for these students and the respondent has referred to the large numbers of other students in order to substantiate its choice. However that may be, this decision only pertains to the appellant. Therefore, the respondent is not obliged to alter – on his own initiative and based on this decision - the final grades of the students that did not file an administrative appeal. It goes without saying that the respondent must take a decision if other students request reconsideration of their final grade based on this decision. Such decisions to be taken yet will be open to appeal with the Examination Appeals Board.

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The decision

The Examination Appeals Board of Leiden University,

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

- I. holds the appeal founded;
- II. quashes the decision of 13 May 2020 in as far as the final grade was announced in the decision;
- III. instructs the respondent to ensure that the final grade of the appellant will be awarded in respect of the course unit within four weeks of dispatch of this decision, with due regard for the considerations of this decision.

Established by a chamber of the Examination Appeals Board, comprised of K.H. Sanders, LL.M., MA (Chair), Dr A.M. Rademaker, Dr C.V. Weeda, J. Nijland, LL.M., and E.L. Mendez Correa, B.A. (members), in the presence of the Secretary of the Examination Appeals Board, M.S.C.M. Stoop - van de Loo, LL.M.

K.H. Sanders, LL.M.,
Chair

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

Certified true copy,

Sent on: