



EXAMINATION APPEALS BOARD

Decision of the Examination Appeals Board of Tilburg University

in the case between

X, appellant

and

the Examination Committee of the Tilburg School of Economics and Management, appellee

1. Course of the proceedings

In a decision of December 21, 2016 (hereinafter: “the contested decision”), the appellee did not present the examination of the Services Marketing course taken by the appellant on December 13, 2016 to the instructor for grading.

The appellant submitted a notice of appeal against the contested decision in good time.

The parties did not reach an amicable settlement.

The appellee submitted a written defense.

On February 9, 2017, the Examination Appeals Board handled the appeal at the hearing. The appellant was absent with prior notice. Y and Z appeared on behalf of the appellee.

2. Facts and circumstances

- 2.1 The Board proceeds from the following facts and circumstances. During the Services Marketing examination on December 13, 2016, the appellant was unable to identify himself with either proof of identity or a Tilburg University student card. As a result of that, the proctor made an official report.
- 2.2 In the contested decision, the appellee established that the appellant was unable to identify himself during the aforementioned examination, whereas he was required to do so under Article I7 paragraph 8 of the Rules and Guidelines for the Examination Committee of TiSEM 2016-2017 (hereinafter: R&G). Because the identity of the appellant could not be established during the examination, the appellee decided pursuant to Article 17 paragraph 10 of the R&G not to grade the examination.

3. Positions of the parties

- 3.1 The appellant refers to the “Regulations for written examinations” from the University website. In paragraph 4 of these regulations, it is stipulated that a student must be warned that no grade will be given until the appellee has investigated the matter. The appellant points out that he was not warned. Therefore, the appellant did not attempt to identify himself in different ways, such as a copy of his student card or passport in electronic form or a copy of the call to the examination. In addition, the appellant questions whether the appellee had actually started an investigation before deciding not to grade his examination, because he had not been contacted before he received the decision.
- 3.2 The appellant is of the opinion that the sanction imposed is too heavy, and puts forth several arguments to that effect. The appellant is an exchange student, and was not aware of the rules that apply to Tilburg University. The appellant wonders if it is indeed fair to apply the rule regarding identification during examinations in the same way to all students, given that exchange students usually do not have a driver’s license or public transportation card with a photograph. The appellant is occupied with the last year of his studies. If he does not pass this course, he will have to postpone his graduation by six months. This means that the appellant has to pay additional tuition, which is a heavy financial burden on his family. The appellant was unable to take a re-examination for this course because it was given on January 10, 2017, and the new semester at his own university started again on January 9, 2017.
- 3.3 The appellee argues that it is the student’s responsibility to be able to identify himself during an examination. The appellant was aware that he had to identify himself. The appellee cannot establish the identity of a student afterwards with certainty. The appellee questioned the proctor afterwards about what had happened during the examination before the contested decision was made. So the appellee did indeed conduct an investigation. According to the appellee, the arguments put forth by the appellant are not of such a nature that they lead to a different decision. With respect to the appellant’s comment that he was unable to take a re-examination because the semester at his own university had already started again, the appellee notes that he could have applied for a distance examination.

4. Findings of the Board

- 4.1 Section 7.61 subsection 2 of the Higher Education and Research Act (hereinafter: WHW) provides that appeal can be brought against a decision that is in conflict with the law. It ensues from this that review by the Board must be limited to lawfulness criteria, such as the question whether the decision is in accordance with the rule(s), and/or whether the appellee had acted carefully, or the question whether it would have to be said that the appellee could not reasonably have arrived at the contested decision.
- 4.2 Under Section 7.12b of the WHW, the appellee has the discretionary power to lay down rules and policy in relation to the proper procedure during examinations. This includes the obligation to identify oneself, as laid down in the R&G, pursuant to which a student must identify him or

herself at the request of the proctor by showing a Tilburg University student card, passport, driver's license or valid public transportation card provided with a recent passport photo. If a student who cannot identify him or herself participates in the examination, the Examination Committee decides in accordance with Article 17 paragraph 10 R&G not to grade the examination.

- 4.3 It has been established that the student was unable to identify himself during the examination concerned with one of the means of identification specified in Article 17 paragraph 8 of the R&G, and that the examination was not graded on that basis. The appellee has an interest in strict enforcement of the obligation to identify oneself. The purpose of an examination is, after all, to enable the formation of a correct assessment of the knowledge, understanding and skills of the examinee in question. So, in order to prevent possible fraud during the examination, it must be possible to establish properly that the person who is taking the examination is actually the person whose name is on the examination and the attendance list. The financial objections of the appellant cannot reasonably lead either to the finding that the appellee should have allowed the examination to be graded.
- 4.4 Furthermore, it is the appellant's own responsibility to be aware of and able to comply with the rules pertaining to the obligation to identify oneself. The relevant rules are included in the R&G in understandable words.
- 4.5 Regarding the appellant's argument that it is stated on the university website that he should have been warned that no grade would be given until the appellee had investigated the matter, the Board finds the following. The Board establishes that the text on the website does not match the text from the R&G. The Board is of the opinion that the information provided to students should be unambiguous. The Board is, however, of the opinion that even if the appellant had indeed been warned by the proctor, this could not have led to a different result. After all, the appellant was still unable to identify himself during the examination.
- 4.6 Consequently, the appellee was able to determine that the appellant's identity had not been properly established and was also able in all reasonableness to attach the consequence to this not to grade the examination.

5. Decision

The Examination Appeals Board declares the appeal unfounded

Decided on February 9, 2017 by the Examination Appeals Board.

You can file an appeal against this decision within six weeks after publication of this decision at the Appeals Tribunal for Higher Education (CBHO), P.O. Box 16137, 2500 BC The Hague. For more information, see www.cbho.nl.