

**DECISION 17 - 329**

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of the Examination Appeals Board of Leiden University

in the matter of

the appeal of [name], appellant

against

the Board of the Faculty of Humanities, respondent

**1. Origin and course of the proceedings**

In a decision dated 12 July 2017, the Board of Examiners of the Faculty of Dutch Studies issued a negative advice to the appellant on behalf of the respondent in respect of the continuation of the Bachelor's Programme in Dutch Studies, to which a rejection is attached pursuant to article 7.8b, third paragraph, of the Higher Education and Academic Research Act (*Wet op het hoger onderwijs en wetenschappelijk onderzoek*, "WHW").

The appellant sent a letter on 14 September 2017, which was received on 20 September 2017, to lodge an administrative appeal with the Examination Appeals Board against this decision.

In short, the appellant argued that he intended to find a job after completing the first year successfully. The appellant stated that he was impaired by exchange students who participated in the same tutorials. These students already had a reasonable command of the Dutch language. As such, it was difficult for him to keep up with the tutorials. The appellant pointed out that he is from Japan and, consequently, finds it more difficult to master the Dutch language. The appellant submitted a number of statements that show that he has some mental limitations. The appellant holds that he was insufficiently supported by the Study Adviser and the Coordinator of Studies.

A letter of defence was received on 4 October 2017. It stated that appellant obtained 20 study credits. Besides, he failed to pass a key course unit, *Cultuur en Maatschappij* (Culture and Society). This is not merely an additional requirement, but a key element of the propaedeutic year. The respondent pointed

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out that the appellant stated that he suffered impairment in the first semester, but that the SOZ statement (Student and Educational Affairs, SOZ) indicates that his impairment was only relevant in the second semester. This means that he was able to study at 75% of capacity in the second semester and should have achieved at least 15 study credits. However, he did not obtain any study credit in the second semester. The submission that the appellant finds it more difficult to master the Dutch language in view of his mother tongue is not accepted as relevant by the respondent, since the appellant himself decided to study at a European University. Students are expected to master the language sufficiently in a limited period. The respondent pointed out that the appellant did indeed receive support from the Study Adviser.

The appeal was considered on 6 December 2017 during a public hearing of a chamber of the Examination Appeals Board. The appellant appeared in person at the hearing. [names], appeared on behalf of the respondent.

## **2. Considerations with regard to admissibility**

The appellant lodged an appeal against the decision of 12 July 2017 by means of the letter that was received by the Examination Appeals Board on 14 September 2017. In his letter of 25 August 2017, the respondent adhered to the advice, in spite of the statement of functional impairment that was later received from SOZ. The letter of appeal meets the requirements as stipulated in the General Administrative Law Act (*Algemene wet bestuursrecht* "Awb") and the Higher Education and Academic Research Act (*Wet op het hoger onderwijs en wetenschappelijk onderzoek*, "WHW"). Consequently, the administrative appeal is admissible.

## **3. Relevant legislation**

Pursuant to article 7.8b, first paragraph, first sentence, of the WHW, the Institution's Board of a publicly funded University or University of Applied Sciences will issue an opinion on the continuation of a student's studies inside or outside the bachelor's programme, ultimately by the end of the first year of enrolment for the propaedeutic phase of a full-time or part-time dual bachelor's programme.

Pursuant to article 7.8b, third paragraph, of the WHW, the Institution's Board may attach a rejection to an advice as referred to in the first or second paragraph with regard to programmes that have been designated accordingly by the

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Institution's Board, within the period as referred to in the second paragraph, though no sooner than by the end of the first year of enrolment. This rejection may only be issued if the student must be deemed unfit for the programme, at the discretion of the Institution's Board, taking into account his personal circumstances, as his study results do not meet the requirements that were stipulated accordingly by the Board. The Institution's Board may attach a set period to the rejection.

Pursuant to article 7.8b, sixth paragraph, of the WHW, the Institution's Board will stipulate detailed rules with regard to the implementation of the previous paragraphs. These rules at least pertain to the study results and facilities as referred to in paragraph three, as well as to the period as referred to in paragraph four. Leiden University has laid down these rules in the Regulation on the Binding Study Advice (*Regeling Bindend Studietoelichting*) and the corresponding Procedure for personal circumstances in respect of the Binding Study Advice (*Procedure persoonlijke omstandigheden in het kader van het bindend studietoelichting*, hereafter: "the Regulation").

Pursuant to article 5.2.2 of the Regulation, the binding study advice as referred to in 3.1.7 is negative and excludes full-time students from further study if fewer than 45 study credits of the propaedeutic phase of the relevant bachelor's programme have been achieved at the time when the advice was issued.

Pursuant to article 5.7 of the Regulation, no rejection will be attached to the negative advice as referred to in 3.1.7 if the personal circumstances of the student as referred to in article 5.8 which have been included in the student's file as referred to in 4.2, caused non-compliance with the standards as referred to in article 2. The Board of Examiners bases its decision on whether or not to attach a rejection to said opinions by comparing the study results achieved with the personal study plan as referred to in article 4.3.

#### **4. Considerations 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.

A negative study advice was issued to the appellant along with the contested decision against which he filed an administrative appeal, with regard to continuation of the Bachelor's Programme in International studies; this negative study advice stipulates exclusion from the relevant programme in line with article 7.8b, third paragraph, of the WHW. Attaching an exclusion to the negative study

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advice means that the enrolment of the appellant in this programme at Leiden University will be discontinued and that he cannot re-enrol for this programme at this University for a period of four years.

It was established that the appellant achieved 20 study credits and - as such – did not meet the requirement as laid down in article 5.2.2 of the Regulation.

The appellant has a statement of functional impairment by SOZ which states that he was impaired in achieving study results during the second semester of the study year due to personal circumstances (physical capacity limited by approximately 25%).

The respondent explained that the appellant did indeed demonstrate by means of the statement of physical impairment from the Student Counsellor (SOZ) that personal circumstances had an impact, but that this statement cannot remedy the deficiency in study credits. The appellant achieved 20 study credits when he could have - and should have - achieved at least 35 in view of the statement of functional impairment.

Since the appellant's study results do not meet the requirements set by Leiden University and the statement of functional impairment does not cover the lack of study credits achieved by the appellant, the respondent has rightfully taken the position that it is unlikely that the appellant will be able to complete the programme within a reasonable term, and, consequently that he must be deemed unfit for the programme. The appellant's submissions in his appeal do not alter this fact. The Examination Appeals Boards seconds the relevant substantiation that has been provided by the respondent in the letter of defence.

Furthermore, the Examination Appeals Board considered that an inherent effect of a negative and binding study recommendation is that the programme will be discontinued and that this may have major consequences. However, these consequences alone may never be a reason to refrain from issuing a negative and binding study recommendation.

For the sake of completeness, the Examination Appeals Board considered that the respondent communicated after the hearing that the website of the programme states that students may decide to attend only the first year of the programme (propaedeutic year). If this year is completed successfully, students will receive a "transcript" and the propaedeutic diploma. In that case, the programme states that students do not have to attend the three-year master's programme and will be allowed access to other bachelor's programmes by means of the propaedeutic diploma.

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The Examination Appeals Board pointed out that the appellant may have had the impression that he enrolled in a one-year programme to which, in view of the text of article 7.8b, first paragraph, of the WHW, the negative and binding study advice does not apply. Therefore, the Examination Appeals Board advised the respondent to adapt the text on the website to such an extent that it is clear to prospective students that they are enrolling in a full bachelor's programme, even if they want to follow only the 'one-year programme'. This means that they will also have to abide by the rules that apply to the BSA (Binding Study Advice). However, the above cannot result in a decision whereby this appeal is founded. Furthermore, the Examination Appeals Board takes into account that the respondent informed the appellant on three different occasions as of 5 September 2017 about the BSA and reminded him of the existence of this regulation and of the fact that this also applies to students in the 'one-year programme'

Since the Examination Appeals Board has not been informed of any other facts or circumstances that could lead to an alternative decision, the appeal must be held unfounded. This means that the contested decision is upheld and that the appellant cannot continue the programme in Dutch Studies at Leiden University.

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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 **UNFOUNDED**

Established by a chamber of the Examination Appeals Board, comprised of: O. van Loon, LL.M., (Chair), C. de Groot, LL.M., Dr K. Beerden, M. Heezen and D.E. Mulder, LL.M., BA (Members), in the presence of the Secretary of the Examination Appeals Board, W.J. de Wit, LL.M.

O. van Loon, LL.M.  
Chair

W.J. de Wit, LL.M.  
Secretary

Certified true copy,

Sent on: