

DECISION 18-275

Rapenburg 70
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of the Examinations Appeals Board of Leiden University

regarding the appeal by

[name], appellant,

versus

the Board of Examiners of the Faculty of Humanities, defendant.

1. The course of the proceedings

- In a decision of 26 September 2018, the defendant issued a statement that the appellant had failed to obtain the required number of ECTS credits for the 2017-2018 academic year and that no excusable circumstances could be found.
- Between 27 September 2018 and 08 November 2018, the appellant, the defendant and the Student and Educational Affairs Expertise Centre (SEA) had contact with each other by e-mail.
- In an e-mail dated 08 November 2018, the appellant informed the defendant that he would lodge an administrative appeal against the defendant's decision of 26 September 2018.
- In a letter dated 15 November 2018, the Board advised the appellant that the notice of appeal must be signed and that it has to be accompanied by the decision against which the administrative appeal is lodged. The appellant was given the opportunity to correct these omissions within ten (10) days, i.e. before 25 November 2018.
- The defendant submitted a letter of defence on 07 February 2019.
- The Board is not aware of any amicable settlement having been agreed between the parties. The defendant tried to contact the appellant, but without success.

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- The appeal was dealt with during a public hearing of a chamber of the Board on 13 February 2019. The appellant did not appear at the hearing. The defendant was represented at the hearing by [name].

2. Facts and circumstances

The appellant is an international student who has been following the International Studies BA degree programme since September 2013. Between September 2013 and September 2017, the appellant obtained 150 ECTS credits. During the 2017-2018 academic year, he should have obtained at least 15 ECTS credits, however, since September 2017, he has not obtain a single credit.

The defendant issued a so-called negative “MoMi statement” because not enough credits had been obtained for the 2017-2018 academic year. This statement explains that the appellant did not make sufficient academic progress. The defendant informed the appellant that the Immigration and Naturalisation Service (“IND”) has to be notified of the appellant’s insufficient study results. This decision, therefore, has consequences for the appellant’s residence permit.

3. The contested decision

In a decision of 26 September 2018, the defendant declared that the appellant obtained insufficient credits during the 2017-2018 academic year.

In the letter of defence, the defendant explained that by virtue of the Modern Migration Policy Act (*Wet modern migratiebeleid* (MoMi)), in conjunction with the Aliens Act 2000 (*Vreemdelingenwet 2000*), the Aliens Decree 2000 (*Vreemdelingenbesluit 2000*) and the Regulations to standardise study progress on the grounds of a study-related residence permit (*Regeling normering studievoortgang vanwege verblijfsvergunning in verband met studie*), Leiden University is obliged to monitor the study progress of international students residing in the Netherlands on the basis of a residence permit. During an academic year, a non-EU student has to achieve at least 50% of the nominal study load. However, the appellant did not obtain a single credit during the 2017-2018 academic year. The defendant is not aware of any personal circumstances that could give cause for considering the failure to obtain the required number of credits excusable.

At the hearing, the representative of the defendant also indicated that in 2015, the same issue occurred with regard to the expiry of the residence permit. The appellant received a warning about this. The defendant is not aware of the appellant allegedly having applied for an internship. The appellant was seen at the University until December 2018 even though his residence permit expired on 25

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November 2018. The appellant's registration as a student at Leiden University was terminated on 31 August 2018 on account of payment arrears. This means the appellant was no longer registered as a student for the 2018-2019 academic year.

4. The reasons for the appeal

The appellant indicated that - apart from an internship or a course - he has passed all the necessary subjects. The appellant suffered from serious health problems during the 2017-2018 academic year, which meant he was unable to complete his internship. The appellant says he can substantiate this. The appellant has said he will do his best to graduate in 2018-2019. His studies are very important to him and they cost him a lot of effort.

In the e-mails sent to SEA after receiving the contested decision, he indicated that he suffered from health problems and that he will take measures to reverse the termination of his registration with Leiden University. The appellant has also indicated that he will appeal against the decision of 26 September 2018.

5. The considerations regarding admissibility

According to Sections 6:7 and 6:8, subsection 1 of the General Administrative Law Act (*Algemene wet bestuursrecht* (Awb)), a notice of appeal must be filed within six (6) weeks of the announcement of the decision.

The contested decision was announced to the appellant on 26 September 2018. This means the notice of appeal should have been filed no later than 07 November 2018. The appellant's appeal of 08 November 2018 was, therefore, filed too late.

The appellant did not take the opportunity to explain why he had exceeded the appeal period, neither did he make use of the hearing to explain himself, even though a notice to appear was duly sent to the last address held on record.

Since no evidence has become apparent of circumstances that constitute a reason to excuse the excusable failure to meet the deadline within the meaning of Section 6:11 of the General Administrative Law Act, the appeal is inadmissible.

Furthermore, the notice of appeal was not signed, whereas this is required under Section 6:5, subsection 1 of the General Administrative Law Act and neither was a copy enclosed of the decision against which the appeal is made. Nor were these omissions remedied, despite opportunities being offered to do so.

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This leads the Board to conclude that the appeal must be declared inadmissible. The Board is therefore unable to subject the appeal to a substantive assessment within the meaning of Section 7.61 of the Higher Education and Research Act (*Wet op het hoger onderwijs en wetenschappelijk onderzoek (WHO)*).

6. The decision

The Examinations Appeals Board of Leiden University,

pursuant to Section 7.61 of the Higher Education and Research Act, together with Sections 6:5, 6:6, 6:7, 6:8 and 6:11 of the General Administrative Law Act,

declares the appeal **INADMISSIBLE**.

Determined by a chamber of the Examinations Appeals Board, consisting of H.M. Braam, LL.M., (chairman), Dr A.M. Rademaker, Dr K. Beerden, Y.D.R. Mandel and L.N. Kluinhaar LL.B. (members), in the presence of the secretary of the Board, I.L. Schretlen, LL.M.

H.M. Braam, LL.M.
Chairman

I.L. Schretlen, LL.M.
Secretary

A certified true copy,

Sent on