

DECISION 21 - 374

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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 [X], respondent.

The course of the proceedings

In its decision of 12 July 2021, the Board of Examiners of [X] issued the appellant with a negative advice on continuing his studies on behalf of the respondent in respect of the continuation of the Bachelor's Programme in [X] (hereinafter to be referred to as: "the Programme"). Pursuant to article 7.8b, paragraph 3, of the Higher Education and Academic Research Act (*Wet op het hoger onderwijs en wetenschappelijk onderzoek*, hereinafter "WHW"), this entails an exclusion from further study.

The appellant sent a letter on 4 August 2021 to lodge an administrative appeal against this decision.

The respondent informed the Examination Appeals Board that it investigated whether an amicable settlement could be reached between the parties. No amicable settlement was reached.

The respondent submitted a letter of defence on 9 August 2021.

The appeal was considered on 18 August 2021 during a public hearing of a chamber of the Examination Appeals Board. The appellant did not attend the hearing. [name], Chair of the Board of Examiners, attended the hearing on behalf of the respondent.

**Decision
21-374**

Page 2/4

On 31 August 2021, the Examination Appeals Board informed the appellant and the respondent about the decision in this matter, stating that the grounds for this would be indicated at a later stage.

Considerations

1 – The grounds for the appeal

The appellant does not agree with the contested decision. He holds that the respondent should have taken into account the consequences of Brexit and the Corona pandemic on his study results. He has been in touch with his study adviser throughout the academic year in this respect. The appellant pays privately for his studies and works alongside his studies.

In the autumn of 2020 he provided 12-hour care to the father of a friend who suffered from a medical condition ([X]) and was seriously ill. This person passed away in February 2021 after contamination with Covid 19. Due to the financial consequences of Brexit, the appellant travelled to [X] before Christmas 2020 to find accommodation there. He was then forced to quarantine and was unable to attend the interim examination for the first semester. Due to the rise of the English variant and his care duties, he later lost his residence permit. This had a significant impact on his study results. Brexit also had financial consequences for his family, which had an impact on his study progress too.

The appellant understands the BSA decision but is of the opinion that he can now proceed with his studies successfully as his care duties have discontinued. He invested heavily in this programme and is really interested in the upcoming course units. He wants to complete this programme in order to start a career.

2 – The position of the respondent

The respondent issued a negative binding study advice to the appellant as he had achieved 23 ECTS in the programme. No petition for a statement of functional impairment was made to the BSA committee. The study adviser contacted all students, irrespective of the number of study credits achieved. The study adviser also pointed out to the appellant that he could ask for a statement of functional impairment.

The respondent stated that this was not a case of informal care. The appellant was employed as a care provider and indicated that he was hampered in his studies as his work intensified. He indicated only after the contested decision that he would have been hampered in achieving study results. The consequences of Brexit and the Corona pandemic, which the appellant believes he suffered, do not constitute

**Decision
21-374** grounds to obtain a statement of functional impairment according to the respondent.

Page 3/4 3 - Considerations with regard to the dispute

The appellant was awarded a total of 23 ECTS in the 2020-2021 academic year and, as such, he did not meet the BSA standard of 40 ECTS that applies at Leiden University (the relevant standard was lowered in respect of Corona).

The respondent indicated that the Study Adviser contacted all students who had a shortfall in study results, irrespective of the number of ECTS achieved. The respondent also indicated that the Board of Examiners reviewed whether there are grounds to apply the hardship clause. The respondent holds that this is not the case. The circumstance that the appellant had to cope with restrictions in the academic year due to the Corona crisis is not different for him compared to other students. The Board of Examiners also took into account that it was possible for the appellant - who apparently returned to [X] - to participate online in the interim examinations for the first semester.

The Examination Appeals Board agrees with the reasoning of the respondent and endorses it. This means that the respondent has rightfully and on proper grounds taken the position that it lacks confidence that the appellant will be able to complete the Bachelor's Programme in [X] within a reasonable term.

As the Examination Appeals Board has not been informed of any other facts or circumstances that would entail that issuing a binding negative study advice constitutes an exceptional case of extreme unfairness, the appeal must be held unfounded. This means that the contested decision is upheld and that the appellant cannot continue the programme in [X] at Leiden University.

**Decision
21-374**

The decision

Page 4/4

The Examination Appeals Board of Leiden University

holds the appeal unfounded

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

Established by a chamber of the Examination Appeals Board, comprised of: O. van Loon, LL.M., (Chair), Dr A.M. Rademaker, Dr C.V. Hylkema, M.C. Klink MJur (Oxon.) BA, and E.L. Mendez Correa, LL.B. (members), in the presence of the Secretary of the Examination Appeals Board, I.L. Schretlen, LL.M.

O. van Loon, LL.M.,
Chair

I.L. Schretlen, LL.M.,
Secretary

Certified true copy,

Sent on: