



DECISION 21 - 426

Rapenburg 70
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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

The Board of Examiners of [X] issued a negative advice (BSA) to the appellant in respect of his continuation of the [X] Bachelor's Programme in [X], 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*, hereinafter "WHW").

The appellant sent a letter on 23 August 2021 to lodge an administrative appeal against this decision. In its letter of 29 August 2021, the appellant added further grounds to the administrative appeal.

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 14 September 2021.

The appeal was considered on 20 October 2021 during an online hearing of a chamber of the Examination Appeals Board. The appellant attended the hearing. [names], members of the Board of Examiners, attended the hearing on behalf of the respondent.



**Decision
21-426**

Blad 2/9

Considerations

1 – The grounds for the appeal

The appellant does not agree with the contested decision. He suffered from mental issues that impaired his studies. In addition, he was hampered by the Corona restrictions. Since March 2020, he has been on daily medication and he is not used to studying online. The appellant suffered serious trauma in his youth. At the time, he was unable to come to terms with it. After completing secondary school in [X], he moved to the Netherlands and started the Programme. That is when he realized that his mental condition was deteriorating. He felt alone, helpless, and required professional assistance. Next, the Corona crisis broke out. After consulting his parents, he was treated by a psychiatrist. The psychiatrist diagnosed him with [X] and [X] and the appellant started therapy and medication. At present, the appellant is not fully recovered, but has indeed improved. He is confident that he will succeed in continuing his programme with assistance from his doctor, the right therapy, support from his family, and counselling by his Study Adviser. For some course units he only needs to sit the interim examinations and he wants to draft a study plan with his Study Adviser. Currently, he attends a minor and course units in the third year. Indeed, he must still complete course units from the first and second year. He does not want to return home to recover. He has been in touch with the Study Adviser but did not feel properly involved. No study plan was drawn up.

2 – The position of the respondent

The respondent issued a negative binding study advice to the appellant as he had achieved 30 ECTS of the 45 ECTS that are required for the programme. In the 2019-2020 academic year he achieved 25 ECTS and received a suspended BSA. In the 2020-2021 academic year, the appellant achieved 5 ECTS. Although the personal circumstances of an appellant are not relevant after a suspended BSA, the respondent did consider these when taking its decision. The appellant obtained a statement of functional impairment, which stated that serious impairments existed in the 2020-2021 academic year (33%) in achieving study results.

The appellant has not been in touch with the Study Adviser since September 2019. The grade list showed that the appellant did already have difficulties with his studies before the Corona pandemic struck. The Programme comprises some 15 contact hours on campus and students are expected to spend the rest of their time on their studies. The respondent holds that improvement of the appellant's study results over the recent period is not demonstrated by the grades he was awarded. In semester 2 he failed to pass a number of interim examinations.



Decision

21-426

3 – Relevant legislation

Blad 3/9

See Annex “Legal Framework.”

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 by means of the decision against which he appealed, regarding continuation of the Bachelor's Programme in [X]. A rejection is attached to this negative study advice pursuant to article 7.8b, third paragraph, of the WHW. Attaching a rejection to the negative study 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 four years.

It was established that the appellant achieved a total of 30 study credits and - as such – did not meet the requirement as laid down in article 5.7.2 of the Regulation.

The appellant started the Programme in the 2019-2020 academic year and completed 25 ECTS of course units in that academic year. Due to the outbreak of the Corona crisis, the appellant received a suspended BSA in respect of the Bachelor's Programme in [X] for the 2019-2020 academic year.

The Examination Appeals Board established that the appellant did not refute that he did not have good contacts with the study adviser in the 2020-2021 academic year. He does have a statement of functional impairment: the Student Dean did indicate on 8 July 2021 that the appellant was seriously impaired in achieving his study results in the period from 1 September 2020 through 31 August 2021.

The Examination Appeals Board remarks that it does appear to be plausible that Corona restrictions have had an impact on students' study results. Without further information, which is missing in this case, it cannot be established that the appellant differs from other students in this respect and that the Corona crisis has impacted him more seriously than it impacted other students.

The Examination Appeals Board considers that the appellant has actually made it impossible for the Board of Examiners to assess personal circumstances that impaired his study results and to consider these when deciding about the BSA, as the appellant failed to report any such circumstances. Since the appellant did not



**Decision
21-426**

Blad 4/9

notify anyone of these circumstances, these cannot be assessed in hindsight. This also explains why the appellant did not receive assistance that he might in hindsight have needed.

The respondent clarified at the hearing that there is no reason to lower the decreased BSA (Binding Study Advice) standard even further in connection with the statement of functional impairment. The Examination Appeals Board holds this position of the respondent to be correct. The Examination Appeals Board does not deem it impossible that the personal circumstances of the appellant will improve over time, in view of the professional assistance and medication that the appellant has obtained in the meantime. In addition, the Examination Appeals Board considers that the respondent is not opposed to a possible earlier re-enrolment of the appellant when he has recovered his health. In that respect, the appellant himself also indicated that he has not fully recovered.

The Examination Appeals Board considers that since the appellant's study results do not meet the requirements set by Leiden University and as the statement of functional impairment submitted by the appellant does not cover the lack of study credits he has achieved, the respondent has rightfully taken the position that it lacks confidence that the appellant will be able to complete the programme in [X] within a reasonable term. The respondent does not have any grounds at present to review the negative BSA and the rejection attached to it. Furthermore, the Examination Appeals Board holds that the respondent has no reason to grant an exemption from the rule on the grounds of hardship. The responsibility for not asking for help with his personal problems in time must rest with the appellant. As such, he made it impossible for the Board of Examiners to take his personal circumstances into account.

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 Bachelor's Programme in [X] at Leiden University.



**Decision
21-426**

Blad 5/9

Further, the Examination Appeals Board notes that the appellant is permitted to submit a substantiated request for early enrolment in the Bachelor's Programme in [X] at Leiden University in a subsequent academic year pursuant to article 7.8b, fifth paragraph, of the WHW. On these grounds, the respondent can reconsider the four-year term of exclusion of the programme. In such a request, the appellant must make it plausible to the respondent that he will be able to complete the programme successfully.



**Decision
21-426**

Blad 6/9

The decision

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: H.J.G. Bruens (Chair), LL.M., Dr A.M. A.M. Rademaker, Dr K. Beerden, Z.I. de Vos, LL.B., and P. Kemeling (members), in the presence of the Secretary of the Examination Appeals Board, I.L. Schretlen, LL.M.

H.J.G. Bruens, LL.M.,
Chair

I.L. Schretlen, LL.M.
Secretary

Certified true copy,

Sent on:



**Decision
21-426**

Blad 7/9

Legal Framework Annex

Following article 7.8b, first paragraph, first sentence of the WHW, the Institution's Board of a subsidized University or University of Applied Sciences will issue an advice on the continuation of his studies inside or outside the bachelor's programme, ultimately by the end of his first year of enrolment for the propaedeutic phase of a full time or part time dual bachelor's programme.

Following 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 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 period to the rejection.

Following article 7.8b, sixth paragraph of the WHW, the Institution's Board shall stipulate detailed rules with regard to the execution of the previous paragraphs. These rules shall at least pertain to the study results and the facilities, as referred to in the third paragraph, as well as to the period as referred to in the fourth paragraph. Leiden University has laid down these rules in the Binding Study Advice Regulation Leiden 2019 (*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").

Article 2.1 of the Regulation stipulates that a full time student must at least have achieved 45 study credits at the end of his first year of enrolment in a bachelor's programme and have met the additional requirements that were imposed for the relevant bachelor's programme as these are stipulated in the Course and Examination Regulations (*Onderwijs- en Examenregeling*).

Article 4.1 of the Regulation stipulates that the Board of Examiners of each bachelor's programme will keep a file on each student that is enrolled in a bachelor's programme. This file includes: a brief description of each formal contact of the bachelor's programme with the student, which includes at least the initial meeting, advice contacts, and the study plan.

Article 4.2 of the Regulation stipulates that each student must report in time, but ultimately by 15 July to the Study Adviser of the bachelor's programme about



**Decision
21-426**

personal circumstances that may provide grounds to refrain from attaching a rejection to the advice as referred to in Article 7.8b, paragraph one.

Blad 8/9

Article 4.3 of the Regulation stipulates that the file will include a description of the personal circumstances of the student, as referred to in Art. 7.8b, paragraph three, as well as the study plan adapted to the personal circumstances as laid down by the bachelor's programme and the student.

Article 5.2.2 of the Regulation stipulates that the binding study advice as referred to in 3.1.10 will be negative and rejecting for full time students 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.

Article 5.2.3 of the Regulation stipulates that the first binding study advice, as referred to in Article 3.1.10, will be negative and rejecting if the full time student did achieve 45 study credits or more in the propaedeutic phase, but did not meet the additional requirements that were imposed for the propaedeutic phase of the relevant bachelor's programme as these are stipulated in the Course and Examination Regulations.

Article 5.3 of the Regulation stipulates that rejection applies for a period of four study years after the year in which the advice was issued, unless the relevant person requests to be admitted to the relevant programme at a later time than the end of the study year and also manages to make a reasonable case that he will be able to continue this programme successfully to the satisfaction of the Board of Examiners of the relevant programme.

Article 5.7.1 of the Regulation stipulates that no rejection will be attached to the negative advice as referred to in 3.1.10 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 achieved study results to the personal study plan as referred to in article 4.3.



**Decision
21-426**

Blad 9/9

Article 5.7.2 of the Regulations stipulate that, if the Board of Examiners is unable to pass judgment based on Article 5.7.1. on the ability of the student, due to insufficient availability of information with regard to such personal circumstances that prevailed in the first study year, may decide to postpone its decision until 15 August ultimately of the second year of enrolment.

In order to obtain a positive advice in such cases, the student must have achieved at least 45 study credits in the propaedeutic phase including the additional requirements set for the propaedeutic phase of the relevant bachelor's programme as included in the OER.

Article 5.8 of the Regulation stipulates that paragraph 3 of Article 7.8b has been executed in the WHW Implementation Decree (Article 2.1). The decision will specify which personal circumstances must be taken into account when issuing the advice as referred to in Article 3.1.10, namely:

- illness;
- functional impairment;
- pregnancy;
- special family circumstances;
- board membership;
- top-class sport.

Whether these do indeed qualify as personal circumstances in the context of this Regulation and to what extent such circumstances affect the study result, must be submitted by the student to the Executive Board. "Student and Educational Affairs" (SOZ, *Studenten- en Onderwijszaken*) will decide on behalf of the Executive Board whether personal circumstances apply.

To this end the student will send a personal statement about the severity, the duration, and nature of the circumstances with evidence to: Executive Board Leiden University, SOZ/BSA, PO Box 9500, 2300 RA LEIDEN.

In case of an impairment or illness the evidence will comprise a statement by a doctor or paramedic professional registered in the Dutch BIG register, which demonstrates the severity and the period that applies to said circumstances.

Article 6.3 of the Regulation stipulates that the Board of Examiners of a bachelor's programme may decide not to apply Article 5 or deviate from it if application would lead to predominant unreasonableness in view of the interest that this Regulation aims to protect.