

**DECISION 21 - 468**

Rapenburg 70  
Postbus 9500  
2300 RA Leiden  
T 071 527 81 18

of the Examination Appeals Board of Leiden University

in the matter of the appeal of

[name] from [city], appellant

against

the Board of the Faculty [X] ([X]), respondent.

**The course of the proceedings**

The Board of Examiners of [X] issued a negative advice (BSA) to the appellant in respect of the continuation of the Bachelor's Programme in [X], with a specialisation in [X] (hereinafter to be referred to as: "the Programme"), 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 5 September 2021 to lodge an administrative appeal against this decision.

The respondent submitted a letter of defence on 23 September 2021.

The appeal was considered on 17 November 2021 during an online hearing of a chamber of the Examination Appeals Board. The appellant attended the hearing. [names], Chair and Administrative Secretary, respectively, of the Board of Examiners, appeared on behalf of the respondent.

**Considerations**

1 – The grounds for the appeal

The appellant does not agree with the contested decision. Indeed, he did not pass the [X] course unit, but he believes that the Board of Examiners has not taken his personal circumstances sufficiently into account. They only addressed the statement of functional impairment. That statement does not

**Decision** show that his personal circumstances have changed since then, so that he is  
**21-468** able to perform better in his studies now. He hopes to graduate by end of  
December 2022, or June 2023. The appellant was recently diagnosed with  
[X] and he has started visiting a [X] for this [X] and now receives [X] for it.

Page 2/9 The appellant failed to pass the BSA as the course units were lectured online  
at the end of block 3 in the first year due to Corona. He finds it difficult to  
cope with online lectures. It also appears that he has suffered from [X] since  
his youth, which had not been diagnosed at that time. This constituted an  
obstacle in his personal and academic life. As a result he was unable to  
perform certain tasks. Moreover, the appellant failed to ask for assistance. He  
is now supported by a [X], a Study Adviser, the “[X]”, his friends, and his  
parents.

At the hearing, the appellant stated that he became demotivated when he  
realised that he would not pass the BSA. As a consequence, he did not pass  
several course units. He assumed that he would have to pass 45 ECTS in the  
relevant study year. Although he did discuss this with the Study Adviser, he  
misunderstood the situation. He is currently following an [X] programme (in  
[X]), but would like to continue the programme at [X]. He found it difficult to  
cope with the academic structure of the programme at [X].

## 2 – The position of the respondent

The respondent issued a negative binding study advice to the appellant as,  
although he had achieved 55 ECTS in the programme, he did not meet the  
additional requirement of passing the [X] course unit.

The appellant started the programme in the 2019-2020 academic year. At  
the end of this year, a suspended study advice was issued to him due to the  
Corona pandemic.

Article 6.3.2 of the Course and Examination Regulations (*Onderwijs- en  
Examenregeling*; OER) stipulates that students are also required - in order to  
meet the BSA threshold - to pass the [X] course unit in the first year. He had  
four opportunities to pass the course unit. The Study Advisers pointed out  
several times to him that he needed to pass this course unit.

The statement of functional impairment does not demonstrate that the  
appellant would not have been able to pass the course unit, in the opinion of  
the respondent. In the 2020-2021 academic year he achieved 30 ECTS.

**Decision**            The Study Adviser advised the appellant to ask for an extension of the  
**21-468**                    deadline for the last assignment of the [X] course unit. The appellant did not  
                              make use of that opportunity.

Page 3/9                The respondent stated at the hearing that it must have been clear to the  
                              appellant that he had to meet the additional requirement and that it was also  
                              indicated to him clearly that he could ask for an extension of the deadline in  
                              respect of that course unit. However, the appellant failed to do so. New  
                              enrolment into the programme will have to be effected by the appellant in  
                              the same manner as for other students. There is a selection procedure. The  
                              procedure does not merely address the grades he achieved, but also the  
                              study results achieved in the [X] programme.

### 3 – Relevant legislation

See Annex “Legal Framework”.

### 4 – Considerations with regard to the dispute

In accordance with article 7.61, paragraph two of the Higher Education and Academic Research Act (*Wet op het hoger onderwijs en wetenschappelijk onderzoek*, "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 that he appealed against, with regard to continuation of the Bachelor's Programme in [X], to which a rejection is attached 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.

The Examination Appeals Board established that the appellant has a statement of functional impairment, stating that his study capacity was 75% in the 2020-2021 academic year. It was established that the appellant achieved a total of 55 ECTS in the programme, of which 30 ECTS in the 2020-2021 academic year. However, he failed to meet the additional requirement of this programme, namely that he also had to pass the [X] course unit .

The respondent argued that the Study Advisers pointed out to the appellant several times that he needed to pass the course unit with a view to the BSA and advised him that he could request an extension of the deadline for this course unit. However, the appellant did not make use of that opportunity.

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The Examination Appeals Board can imagine that the appellant did not feel at his best as a consequence of the circumstances he has put forward, but this does not entail that the failure to meet the additional requirements is not attributable to him. Moreover, it cannot be ignored that the appellant failed to contact the Study Adviser or the Board of Examiners when it became clear to him, or should have been clear to him, that he would fail to meet the additional requirement. Besides, it is also relevant that the level of impairment was not such that the appellant was fully disabled to study.

Since the appellant failed to meet the additional requirement that applies to this programme, 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. Hence, the appeal is unfounded. This means that the contested decision is upheld and that the appellant cannot continue the programme in [X] at Leiden University.

The Examination Appeals Board remarks that it does not seem unreasonable - in view of the number of ECTS that the appellant has achieved in the programme - for the respondent to reconsider a request for re-admission within a period of four years, if the appellant makes it plausible that he will be able to complete the programme within the applicable term. The results he has achieved in the [X] programme may provide an indication to that effect. At that time, the appellant will be subject to the selection procedure for the programme. As the respondent clarified at the hearing, the results of his secondary education examinations will be taken into consideration, in the same way as for other applicants.

**Decision      The decision**

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The Examination Appeals Board of Leiden University

holds the appeal unfounded

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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 J.J. Nijland, Dr K. van Beerden, M.C. Klink MJur  
(Oxon.) BA and F. van Wetten (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:

**Decision**      Legal Framework Annex

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Pursuant to article 7.8b, first paragraph, first sentence, of the WHW, the Institute Board of a government funded University or University of Applied Sciences will issue an advice on the continuation of a student's studies within 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 Institution's Board, within the period referred to in the second paragraph, but not earlier 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 the individual's personal circumstances, because his study results do not meet the relevant requirements that stipulated by the Board. The Institution's Board may attach a period to the rejection.

Pursuant to article 7.8b, sixth paragraph, of the WHW, the Institution's Board stipulates 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 referred to in the fourth paragraph. Leiden University has laid down these rules in the Binding Study Advice Regulation Leiden 2019 (*Regeling Bindend Studieadvies*) and the corresponding Procedure for Personal Circumstances in respect of the Binding Study Advice (*Procedure persoonlijke omstandigheden in het kader van het bindend studieadvies*, hereafter: "the Regulation").

Article 2.1 of the Regulation stipulates that a full-time student must have achieved at least 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 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 dossier on each student enrolled in a bachelor's programme. This dossier includes: a brief description of each formal contact with the student during the bachelor's programme, which

**Decision** includes at least the initial meeting, contacts regarding advice, and the study plan.  
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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 regarding personal circumstances that may provide grounds to refrain from attaching a rejection to the advice as referred to in Article 7.8b, paragraph one.

Article 4.3 of the Regulation stipulates that the dossier 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 is 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 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 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 mentioned in 4.2, were the cause of the failure to comply 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 the advice by comparing the study results achieved with the personal study plan referred to in article 4.3.

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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 ultimately 15 August 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-level 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, 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 registered in the Dutch BIG (professionals in individual care) register, which demonstrates the severity and the time period applicable to the circumstances in question.

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 may deviate from it if application would lead to evident unreasonableness in view of the interest that this Regulation aims to protect.

The Course and Examination Regulations of the Bachelor's Programme in [X]: [X] (BA and BSc) of [X] ([X]) stipulate, in so far as this is relevant, the following:



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6.3.2 In addition to the required minimum of 45 ECTS credits for a positive binding study advice as referred to in the Leiden University Regulation on the Binding Study Advice, [X] imposes requirements concerning certain components that students must pass, in order to obtain the positive binding study advice.

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For students who started before the 2018-2019 Academic Year:

- All students are required to pass the [X] course, and
- At least 35 ECTS credits of the other compulsory courses ([X] courses, [X], [X], [X], [X]) in the first year of enrolment.

For students who started in the 2018-2019 Academic Year:

- All students are required to pass the [X] course, and
- At least 30 ECTS credits from the other compulsory courses ([X] courses, [X], [X], [X]) in the first year of enrolment.

For students who started in the 2019-2020 Academic Year and onwards:

- All students are required to pass the [X] and [X] courses in the first year of enrolment.