



DECISION 21 - 499

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of the Examination Appeals Board of Leiden University
in the matter of the appeal of

[name] from [place]([country]), appellant,

against

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

The course of the proceedings

The Board of Examiners of [X] issued a binding negative study advice (BSA) to the appellant on 12 August 2021 in respect of the continuation of the Bachelor's Programme in [X] (hereafter 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*, hereafter "WHW").

On 25 September 2021, the appellant lodged an administrative appeal against this decision.

The respondent informed the Examination Appeals Board that it investigated whether an amicable settlement could be reached on 5 October 2021. An amicable settlement was not reached.

The respondent submitted a letter of defence on 14 October 2021.

On 2 November 2021, the appellant submitted additional information of a medical nature.

The appeal was considered on 3 November 2021 during an online hearing of a chamber of the Examination Appeals Board. The appellant did not attend the hearing. [names], Chair and Member, respectively, of the Board of Examiners appeared at the hearing on behalf of the respondent.



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Considerations

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1 – The grounds for the appeal

The appellant does not agree with the contested decision. The first year of the programme was hard for the appellant. She was far away from home and the Corona limitations had an impact on her. She felt lost but did not want to ask for assistance. This affected her mental health. She did achieve proper grades in the working groups, but lost motivation in respect of the interim examinations, which resulted in poor grades. It caused stress and anxiety for her. She was afraid that her [X] would flare up, and became depressed by a burn-out and inability to study. She could not sleep at night, became exhausted, and lost motivation. This explains why she stayed in bed during the day. She had a conversation with the Study Adviser, after which she contacted the university psychologist. Only then was she able to face her issues. She wants to continue the programme and to have an opportunity to prove herself.

2 – The position of the respondent

The respondent issued a negative binding study advice to the appellant as she had achieved only 5 ECTS in the 2020-2021 academic year. Nor does she meet the condition that one of the three course units in [X] must have been completed successfully. The BSA standard was lowered from 45 ECTS to 40 ECTS to take account of the Corona pandemic.

On 22 July 2021, the appellant was granted a statement of functional impairment for the period of 1 September 2020 up to and including 31 August 2021. According to the statement of functional impairment, the appellant was impaired during the entire study year for 25% in achieving study results.

Taking the statement of functional impairment into account, the appellant should have been able to achieve 30 ECTS in the 2020-2021 academic year. In August 2021, the Study Adviser reported that the appellant would not be able to complete the programme within a reasonable period.

The respondent then reviewed the test results that had been achieved by the appellant. The average grade achieved was 2.92 on a scale of 10 and no improvement was demonstrated during the year. The test results provide a proper picture of the level of understanding that the appellant has of the substance of the course units. The other grades rather pertain to attendance during the working group sessions.



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Furthermore, plagiarism was established twice this year in the [X] course unit. This indicates that the appellant finds it hard to work individually, which is important in the bachelor's and master's programme.

Moreover, the appellant failed to respond to an attempt by the Study Adviser to contact her and did not take any initiative herself to contact the Study Adviser during the second semester.

The letter sent by the appellant to the respondent and the amicable conversation did not convince the respondent to review the negative BSA decision.

3 – Relevant legislation

See “Legal Framework” Annex.

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 is contrary to the law.

A negative study advice was issued to the appellant by means of the decision that she 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 she cannot re-enrol for this programme at this University for four years.

It was established that the appellant achieved a total of 5 study credits and - as such - did not meet the requirement as laid down in article 5.7.2 of the Regulation. Nor did the appellant meet the additional requirement that at least one of the three [X] course units must have been completed successfully in the 2020-2021 academic year.

In view of the statement of functional impairment that was issued on 22 July 2021, the Examination Appeals Board established that the appellant must be deemed capable of achieving 30 ECTS in the 2020-2021 academic year. The respondent indicated that the test results that were achieved by the appellant in the academic year were extremely low, which, in the opinion of the respondent, gives an indication of the likelihood of successful completion of the programme within a reasonable period.



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The Examination Appeals Board considers that since the appellant's study results do not meet the requirements set by Leiden University, the respondent has rightfully and on proper grounds adopted the position that it lacks confidence that the appellant will be able to complete the International Bachelor's Programme in [X] within a reasonable period. The respondent therefore does not have any grounds at present to review the negative BSA and the rejection attached to it.

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



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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 M.G.A. Berk, LL.M., MA (Chair), Dr J.J. Nijland, Dr B. Siegerink, Z.I. de Vos, LL.B., J.J. Christiaans, BA, (Members), in the presence of the Secretary of the Examination Appeals Board, I.L. Schretlen, LL.M.

M.G.A. Berk, LL.M., MA
Chair

I.L. Schretlen, LL.M.
Secretary

Certified true copy,

Sent on:



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Legal Framework Annex

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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 its 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 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 at least have achieved 45 study credits at the end of its 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



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

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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 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.



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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 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 if 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 severity and 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.