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EXAMINATION APPEALS
BOARD

No. 2024/40/1182

THE EXAMINATION APPEALS BOARD

Ruling on the appeal by [appellant], against the decision of the BSA Committee of the Faculty of Science, respondent, to issue a negative binding study advice to the appellant.

I. Course of the proceedings

The appellant filed an appeal with the Board of Examinations on 29 August 2024 against the respondent's decision of 22 August 2024. On 5 September 2024, the Board asked the respondent to explore, in consultation with the appellant, the possibility of an amicable settlement of the dispute. The respondent met with the appellant on 11 September 2024. No settlement was reached. The defendant filed a statement of defence on 30 September 2024.

The appeal was heard at the hearing of the Board on 14 October 2024. The appellant was present. Dr M.P. Bokhorst (chair) and Dr P.S. Kuiper (official secretary) were present on behalf of the respondent. The parties explained their positions orally.

II. Facts

Based on the documents and the proceedings at the hearing, the Board assumes the following facts. The appellant started the bachelor's programme in Artificial Intelligence on 1 September 2023. At the end of his first year of study, the appellant obtained 36 credits (EC). To avoid a negative binding study advice, the appellant needed to have obtained 42 EC.

III. Views of the parties

The appellant felt that a negative binding study advice was wrongly issued to him as his personal circumstances were not sufficiently taken into account. The appellant's personal circumstances lay in the fact that during the first semester of the academic year, the appellant was informed that his grandfather was seriously ill. A year earlier, the appellant's other grandfather died of a serious illness. The appellant explained that he had a strong bond with his grandparents. As a result, the news that a tumor had been found in his grandfather affected the appellant's mental state and study progress. The appellant had serious concerns for his grandfather, especially since his grandfather might have to undergo severe treatment and would suffer from his illness and treatment. That appellant would possibly lose both grandfathers within one year led to him feeling depressed and anxious during that period.

The appellant submitted documentation to the respondent about his grandfather's situation, but did not report his circumstances to a student counsellor or another professional such as a GP or a psychologist.

The appellant has an introverted personality and does not readily share his concerns with others. He does not like to make himself vulnerable. Appellant was mostly alone at home during the period when he thought his grandfather was ill.

During the Christmas holidays, the appellant returned to his family. There, he learned that the tumor found on his grandfather was not malignant. As his grandfather's health improved, the appellant was able to focus on his studies again. This was reflected in his study progress. From the time his grandfather's health improved, the appellant failed only one subject and was only 0.1 point away from a passing grade for the Introduction to Psychology and Methods subject.

The appellant was made aware of his study delay by the programme in notices about his study progress. Friends of the appellant received messages to the same effect. Since they said they did not have study delays, the appellant assumed the messages were general in scope. The appellant first tried to catch up with the study delay, which was partly successful. He wanted to wait for the result for the Introduction to Psychology and Methods course, because by passing that course he would have met the study progress standard.

After it turned out that the appellant had not passed the aforementioned course, he tried to contact the study advisor. The appellant also searched for the contact details of a student advisor back in April, but was unable to find them on the VU's web pages at the time. The appellant did not follow up on that then. The appellant stressed that he would like to complete his studies at the VU. At present, he is not pursuing a degree programme. The appellant would like clarity on the appeal process, as he has been called up for military service in his home country. To avoid having to enter military service, he must provide a letter showing that he is enrolled in a course.

The defendant maintains its position that it was right and justified in awarding the appellant a negative binding study advice. The appellant earned 36 credits in the 2023-2024 academic year and thus failed to meet the BSA standard.

The respondent explained that, in accordance with the BSA Framework Regulation, students receive notification of their study progress and its possible consequences for the binding study advice on three occasions. The appellant had received three notifications informing him that his study progress was so unsatisfactory that he was at risk of receiving a negative binding study advice. After the first two periods, the appellant had achieved 3 EC, by the second letter in April the appellant had only achieved 9 EC and in the third letter he was informed that he had achieved 36 EC. Finally, in the academic year 2023-2024, the appellant did not obtain more than 36 EC.

A negative binding study advice may be waived if there is evidence of personal circumstances that affected study progress. This requires a causal link between the circumstances and the failure to achieve sufficient study results. In the appellant's case, the respondent ruled that the circumstances put forward by the appellant were not causally related to the failure to meet the BSA standard. The appellant did not provide any supporting evidence showing that the personal circumstances prevented him from meeting the stipulated BSA standard.

The notices students receive alert them to the possibility of contacting a student advisor if there are personal circumstances hindering their study progress. The appellant did not make timely use of this possibility and did not report to a student advisor until the end of the academic year. Nor did the appellant otherwise show that he had tried to improve his study progress at the time of the circumstances cited by the appellant.

In view of the above, the respondent takes the view that the causal link between the circumstances cited by the appellant and the failure to achieve the standard of 42 EC has not been sufficiently plausibly established and that, consequently, a negative binding study advice need not be waived.

IV. Considerations of the Board

The appellant's appeal was lodged in good time and also meets the legal requirements for it.

Pursuant to article 7.8b of the Higher Education and Scientific Research Act (WHW), the institutional board may attach a rejection to the recommendation on the continuation of studies no later than at the end of the first year of enrolment or at the end of a subsequent academic year in case of personal

circumstances. This rejection can only be given if the student, in the opinion of the institutional board, taking into account his personal circumstances, should not be considered suitable for the study programme because his study results do not meet the requirements set by the board in this respect. Article 2.1 paragraph 1 of the WHW Implementation Decree provides a list of circumstances that may be cause to waive a negative binding study advice. Moreover, making an exception to the binding study advice scheme on the basis of these circumstances requires a causal link between the circumstances and the study delay. Furthermore, it is up to the student to make the existence of circumstances, as referred to in the WHW Implementation Decree, and the causal link sufficiently plausible.

Section 5.3 paragraph 1 of the Teaching and Examination Regulations bachelor's programme Artificial Intelligence 2023-2024 (the TER) stipulates that the study advice issued at the end of the academic year will include a rejection with a binding character if the student has not achieved the standard for a positive recommendation. A recommendation will not be issued if the student demonstrates that he was unable to meet the standard due to personal circumstances as described in article 2.1 of the WHW Implementation Decree. The norm is described in part B. Article 14.1 paragraph 1 of part B of the TER stipulates that in order to receive a positive recommendation regarding the continuation of studies, a student must have obtained at least 42 EC at the end of the first year of enrolment.

Article 5.4 paragraph 1 of the OER stipulates that the faculty board will not attach a rejection to the study advice if there are personal circumstances as referred to in article 2.1 of the WHW Implementation Decree, and the student in question cannot reasonably be considered to have met the BSA norm as a result.

The Board is of the opinion that the appellant has not sufficiently substantiated the causal link between the personal circumstances he invoked and the failure to meet the standard. The appellant did not submit any supporting evidence to show that the circumstances affected his study progress. He also failed to report the circumstances to a student advisor or other counsellor in a timely manner. In doing so, the appellant has not made it plausible that he was unable to meet the standard as a result of the personal circumstances he alleged. The respondent therefore did not have to make an exception to the rules on issuing binding study advice.

In the opinion of the Board of Appeal, the defendant could therefore reasonably have reached its decision. The above considerations lead to the decision below.

V. Ruling

The Board declares the appellant's appeal unfounded.

Done in Amsterdam, on 30 October 2024, by dr. A.J.G.M. van Montfort, chairman, J.R. Hulst and Prof. W. van Vlastuin, members, in the presence of S.A. Snoeren, secretary.

dr. A.J.G.M. van Montfort
chairman

S.A. Snoeren,
secretary

An appeal against a decision of the Examinations Appeals Board may be lodged by the person concerned with the Administrative Jurisdiction Division of the Council of State, PO Box 20019, 2500 EA The Hague, the Netherlands. The period for submitting a notice of appeal is six weeks. A Safe Mail web form can be used. A court fee is payable. See www.raadvanstate.nl/studentzaken.