

VRIJE UNIVERSITEIT AMSTERDAM



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EXAMINATION APPEALS BOARD

No. 2019/63/907

EXAMINATION APPEALS BOARD

Pronouncing its ruling on the appeal of Ms [name], appellant, resident in [residence], against the decision of the Dean of Amsterdam University College (AUC), defendant, to issue the appellant with a negative binding study advice.

I. Course of the proceedings

On 31 August 2019 the appellant submitted an appeal against the decision of the defendant dated 30 July 2019. The notice of appeal was received on 13 September 2019, and therefore in good time, but did not fulfil the legal requirements. On 19 September 2019 the appellant was requested to supply the missing details before 30 September 2019. The appellant complied with this request on September 30. The other conditions were also fulfilled. The appeal is therefore admissible.

On 30 September 2019 the defendant was notified on behalf of the Board that the prescribed procedure requires that the defendant, in consultation with the appellant, investigates whether an amicable resolution of the dispute is possible. However, an amicable resolution did not come about.

The defendant subsequently submitted a notice of appeal on 15 October 2019. The appeal was handled at a meeting of the Board on 12 November 2019.

The appellant appeared in person. The defendant was represented by Prof. M. Pratt, Dean of AUC. Dr A. Brown and Dr A. Lankreijer, respectively vice-chairperson and member of the binding study advice (BSA) committee, were also present on behalf of AUC. The parties made an oral presentation of their standpoints.

II. Facts and dispute

On the basis of the documents and the proceedings of the session, the Board has proceeded on the assumption of the following facts.

In the past academic year the appellant attained insufficient course results in order to receive a positive study advice. As a reason for this the appellant stated that personal circumstances had prevented her from studying optimally. She has suffered from depression for several years. The appellant has received treatment for this in the past. For reasons in connection with insurance the appellant is not currently receiving treatment.

The appellant furthermore complains that she was not properly informed of the documents she had to produce during the meeting aimed at reaching an amicable resolution. Because she is not currently following a course of treatment, the appellant could not provide any current documentary evidence to the defendant. If she had understood the importance of this she would have sought contact with her earlier therapists. The appellant is, however, in possession of a referral from her general practitioner, but she did

not provide this to the defendant because her tutor had not drawn her attention to the importance of this prior to the hearing.

The tutor also did not draw the appellant's attention to the possibility of requesting a reduction of the study load in view of her condition.

The defendant pointed out that in the second semester the appellant had not successfully completed three subjects. The defendant attained 42 of the minimum 54 ECs required. The appellant had therefore not fulfilled the requirements. As a reason for this the appellant stated that psychological problems prevented her from studying optimally. The appellant also had to contend with procrastination behaviour, and she had problems with planning. The appellant did not demonstrate a clear causal connection with her academic results, and she did not make use of the possibilities offered by the defendant, such as a reduction of the study load. The guidelines on how to act in the event that a student cannot fulfil the requirement of attaining 54 ECs in the first academic year are set out in the Academic and Examination Regulations and the study advice guidelines. The appellant has shown no sign of having taken note of these documents. The circumstances described have not been substantiated, so there is no basis for applying the hardship clause.

III. Standpoints of the parties

The appellant explained that she suffers from mental problems. This was particularly the case in the second semester. The appellant's tutor was aware of her problems, and advised her to discuss her health condition with the BSA committee.

Because the appellant did not have the appropriate insurance, she could not call on any help from a psychologist in the Netherlands. In October 2019 the appellant visited a psychologist in her homeland, who gave her a medical certificate of her illness, which she introduced at the hearing. The chairperson of the Board permitted the introduction of this document. The appellant had appended a document with medical details from 2015 to her notice of appeal. The appellant had not sought any further medical assistance since that time, in view of her earlier experiences with healthcare professionals.

The appellant was not aware that she could have requested a reduction of the study load.

The defendant explained that the standard for the first academic year is 60 ECs. In case of exceptional circumstances, 54 ECs can be sufficient. The student must submit a request in this respect to the defendant. The appellant had not submitted such a request. She attained 42 ECs.

All students – and therefore also the appellant – are well informed from the introductory week onwards of the requirements that are connected with a positive study advice. Reference is also made to the study advice guidelines in letters, and students who are faced with exceptional circumstances are referred to messages on Canvas. Students who experience problems can also call upon the Student Life Officer. The appellant had not made use of these possibilities.

Two issues play a role in the appellant's case: the appellant has not submitted any documentary evidence of her circumstances. The defendant has understood from the tutor that the appellant has difficulty with planning, and displays procrastination behaviour. The relationship of these factors with the academic results is unclear.

IV. Considerations of the Board

In pursuance of article 7.8b of the Higher Education and Research Act, the board of the institution can connect a rejection to the advice on the continuation of the studies no later than at the end of the first academic year, or at the end of a subsequent academic year in the case of personal circumstances. This rejection can only be given if the student, in the opinion of the board of the institution, taking due account of his or her personal circumstances, cannot be considered to be suitable for the programme because his or her academic results do not fulfil the requirements that the board has established in this respect. A limitative list of circumstances that can form a reason for disregarding a negative study advice can be found in article 2.1 of the Higher Education and Research Act. Furthermore, in order to make an exception to the study advice regulations on the basis of these circumstances it is required that a causal connection exists between the existence of those circumstances and the delay in the studies. The student is also required to make the existence of circumstances as referred to in the implementation regulations of the Higher

Education and Research Act and the existence of such a causal connection sufficiently plausible. The defendant had sent information on the study advice procedure in good time. It is the appellant's responsibility to take note of this, but she had not done so.

The Board determines that the appellant has not fulfilled the requirements for a positive study advice. She had indeed invoked personal circumstances, but the documentary evidence she had supplied is not considered by the Board to be sufficient to be able to establish a causal connection between these circumstances and her academic results. In the opinion of the Appeals Board the defendant was therefore also able to arrive at his decision in a reasonable manner.

Perhaps superfluously, the Board notes that article 7.1 of the Binding Study Advice Guidelines incorrectly states that an appeal can be made 'to the Board of Examiners (BoE) or the VU Examination Appeals Board (VU COBEX)', in view of the fact that an appeal against a decision to issue a negative binding study advice can only be submitted to the COBEX. This does not however affect the appellant in this case.

V. Ruling

The Board declares the appeal unfounded.

Pronounced in Amsterdam on 12 December 2019 by Prof. F.J van Ommeren, chairperson, and Dr M. de Cock and Prof. W. van Vlastuin, members, in the presence of J.G. Bekker, secretary.

Dr F.J van Ommeren,
chairperson

J.G. Bekker,
secretary

The person concerned can submit an appeal against a ruling of the Examination Appeals Board, stating a sound justification, to the Higher Education Appeals Tribunal, Postbus 16137, 2500 BC The Hague. The term for the submission of a notice of appeal is six weeks. The registry fee is €47.00.