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Decision in Dutch**

EXAMINATION APPEALS BOARD

No. 2024/41/1183

THE EXAMINATION APPEALS BOARD

Ruling on the appeal by [appellant], against the decision of the Dean of Amsterdam University College (AUC), respondent, dated 22 July 2024, to issue a negative binding study advice to the appellant.

I. Course of the proceedings

On 1 September 2024, the appellant filed a notice of appeal with the Examinations Appeals Board (hereinafter, the Board) against the respondent's decision of 22 July 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 12 September 2024. No settlement was reached. The defendant filed a statement of defence on 26 September 2024.

The appeal was heard at the hearing of the Board on 14 October 2024. The appellant was present. On behalf of the respondent, Dr M. Schraven (member of the BSA Committee) and Dr A. Lankreijer (chairman of the Examination Board) were present.

II. Facts

Based on the documents and the proceedings at the hearing, the Board assumes the following facts. Appellant started the Liberal Arts and Sciences bachelor's programme on 1 September 2023. At the end of her first year of study, the appellant obtained 48 credits (EC). To avoid a binding study advice, the appellant needed to have obtained 54 EC.

In addition to the appeal, the appellant applied for interim relief. The appellant requested to remain in the student residential accommodation for the duration of the hearing of her appeal. In response to this request, the respondent decided that the appellant could continue to use the student residential accommodation for the duration of the hearing of the appeal.

III. Views of the parties

The appellant feels that her personal situation was incorrectly assessed by the respondent and that she should have been granted a postponement of the binding study advice.

The appellant argues that she moved to the Netherlands from another continent for her studies and subsequently experienced adjustment problems. Appellant was supposed to study in Amsterdam together with some family members, but that turned out differently than expected so appellant came to the Netherlands on her own. Appellant had to get very used to living in a different environment and

stressed that she was living on her own for the first time. During this period, appellant had frequent contact with her family and expressed the adjustment problems and resulting stress to her tutor.

Due to the difficult circumstances, appellant failed one of her exams. She drew up a study plan together with the tutor. Appellant thought it was sufficient if she kept in touch with the tutor about her study progress and therefore did not raise her problems with AUC's Student Life Officer (SLO).

Appellant also experienced problems with her laptop during the first semester, which caused her to lose a large amount of her notes and teaching materials. This affected her study performance and her ability to keep up with subjects and course assignments.

Appellant also argues that personal circumstances also came into play during the second semester, namely that her mother, who is the breadwinner and provides for appellant's living expenses and study costs, lost her job. This created a lot of stress for appellant. Appellant was forced to look for a job alongside her studies to support herself. As a result, appellant was less able to concentrate on her studies.

As a result of the stress that appellant experienced due to her personal circumstances, she uploaded an incorrect file for an assignment she had to hand in. This was a subject that appellant had taken on as an additional study load to make up for the study delay, she had incurred. Because appellant failed this course, she narrowly missed the required standard for a positive binding study advice.

The appellant points out that her study performance and her results improved significantly from the time the personal circumstances were no longer an issue. Appellant is confident that she will be able to successfully continue her studies, having prepared well for the second year of study and having a job with stable and manageable working hours. Appellant has been in contact with her tutor and study advisor about this and has prepared for all subjects over the summer.

The respondent maintains that it was right and justified in awarding the appellant a negative binding study advice. The appellant earned 48 credits and failed to meet the BSA standard in the 2023-2024 academic year.

As a result of the appellant's appeal and the grounds put forward by her, the respondent saw no reason to review the decision on the negative binding study advice. The appellant was invited to a hearing with the respondent on 8 July 2024 at which she presented her circumstances. Appellant's tutor was also present at this meeting. The tutor confirmed the circumstances put forward by the appellant during this conversation. However, the defendant takes the position that the appellant did not report the circumstances to the appropriate officers, namely the Student Life Officers, who can assist students with problems. If personal circumstances are involved, students should turn to an officer qualified to do so.

The respondent takes the position that the circumstances raised by the appellant are not personal circumstances as referred to in Article 2.1(1) of the HRA Implementation Decree. The respondent points out that it is difficult for all students to adjust and that a significant proportion of students come from abroad. The respondent finds the circumstances put forward by the appellant plausible but cannot assess the connection between the circumstances and the appellant's study progress. That would require supporting material from professionals and the Student Life Officers. Appellant has not submitted such material. Regarding the appellant's argument that her study results improved after the circumstances improved, the respondent argues that the appellant tried to catch up with her study arrears and succeeded in part, but that the appellant still failed to meet the standard.

The respondent argues that, in accordance with the law, it applies an objective standard of 54 credits for the binding study advice. This objective standard is applied to all students. Only if there are personal circumstances as referred to in Article 2.1 of the WHW Implementation Decree, in which there is a link between the personal circumstances and the study delay, may the defendant make an exception to giving

a negative binding study advice. The defendant looks at the situation of each individual student when assessing with regard to granting a binding study advice but needs underlying documents to substantiate any exception to the norm of 54 credits. Appellant did not provide any personal circumstances as referred to in Article 2.1(1) of the WHW Implementation Decree, nor did she provide any documents confirming her circumstances.

IV. Considerations of the Board

The appellant's appeal was timely filed and also otherwise meets the legal requirements. The appeal is admissible.

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 caused 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 HRA Implementation Decree, and the causal link sufficiently plausible.

Article 3.7 of the Academic Standards and Procedures AUC 2023-2024 provides that the study advice issued at the end of the academic year will be subject to a rejection with a binding character if the student has not achieved the standard for a positive advice. This standard has been set by the Faculty Board at 54 credits.

Article 3.7.8 of the Academic Standards and Procedures 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 as a result the student concerned cannot reasonably be considered to have met the set BSA standard.

In the opinion of the Board, the circumstances put forward by the appellant, in particular the adjustment problems in the first semester and the family circumstances as a result of which she had to look for a job in the second semester, should be taken into consideration in the assessment regarding the issuing of a binding study advice. If this is done, in the opinion of the Board, the respondent cannot then reasonably come to the decision that the appellant is unsuitable for the study programme.

In the opinion of the Board, the appellant has made it sufficiently plausible that she experienced stress and mental problems as a result of the adjustment problems and financial problems in her family, and that she was unable to meet the standard as a result. The Board takes into consideration that the appellant reported the adjustment problems from the first semester to the tutor, that the tutor stated at the hearing on the binding study advice that these problems had played a role, and that study planning was done to make up for the study delay.

That there was a causal link between the circumstances and the appellant's study progress is, in the opinion of the Board, also sufficiently plausible if the appellant's significantly improved study results in the second semester and the fact that she managed to make up some of the study delay incurred are taken into account. The significantly improved study results in the second semester indicate that the appellant's study progress in the first semester was hampered by adjustment problems and associated mental problems.

In view of the foregoing, the Board is of the opinion that the appellant has sufficiently plausibly demonstrated the causal link, as alleged by her, between the personal circumstances she invoked and the failure to achieve the BSA norm.

The above considerations lead to the following ruling.

V. Ruling

The Board upheld the appellant's appeal and set aside the respondent's decision.

Done in Amsterdam, on 5 November 2024, by dr. A.J.G.M. van Montfort, chairman, dr. 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.