

EXAMINATION APPEALS BOARD

Decision of the Examination Appeals Board of Tilburg University

in the case between

X, appellant

and

the Dean of Tilburg Law School, appellee

1. Course of the proceedings

In a decision of August 2, 2018 (“contested decision”), the Examination Committee of Tilburg Law School (“the Examination Committee”), on behalf of the appellee, gave the appellant a negative binding recommendation on continuation of studies (“BSA”).

The appellant submitted a notice of appeal in time against the contested decision.

Because of sickness, the appellant was not able to be present at the scheduled discussion in the context of an attempt to reach an amicable settlement. During the next appointment, there was lack of clarity as to the location, owing to which the discussion did not go through. The appellant was absent without prior notice from the third appointment. Consequently, the parties did not reach an amicable settlement.

The Examination Committee of Tilburg Law School filed a written defense on behalf of the appellee.

The Board handled the appeal at the hearing on October 18, 2018. The appellant – although called in time and properly – was absent without prior notice. Y and Z appeared on behalf of the appellee

2. Facts and circumstances

2.1 The appellant started the Bachelor’s Degree program Global Law in the academic year 2016-2017. In the academic year 2016-2017, she obtained 36 credits. Owing to circumstances, she received a postponed BSA on August 31, 2017, in which it was decided that she would have to obtain all 60 credits from the first year in 2017-2018 to be eligible for a positive BSA.

2.2 In the academic year 2017-2018, the appellant obtained only 6 of the 24 remaining credits from first year courses and 12 credits from the second year curriculum. Consequently, she did not meet the requirements for a positive BSA.

3. Positions of the parties

- 3.1 On appeal, the appellant stated that she had received a postponed BSA and that she did not pass all courses to be eligible for a positive BSA, but that she sent the student counselor a letter from the family doctor from which her medical and psychological condition were evident.
- 3.2 The appellee argued that under Article 31(7) of the Teaching and Examination Regulations of the Bachelor's Degree programs of TLS 2017-2018 ("TER 2017/2018"), special circumstances are taken into consideration only if they are reported to the student counselor as soon as can reasonably be expected. A student who relies on circumstances must demonstrate the existence of the circumstances.
- 3.3 The student counselor stated to the appellee that the appellant had contacted her in April and June, at which times the appellant stated that there were still special circumstances. The appellant did not provide any proof of the existence of these circumstances. In June and July, the student counselor asked the appellant by e-mail how her studies were going and what her study plans were. The appellant did not respond to these e-mails. The appellant sent a document to the student counselor on August 20, 2018. Because this was submitted after July 1, 2018, the student counselor did not initially give the appellee any advice on the appellant's BSA. At the hearing, the appellee stated that the student counselor wanted to have a discussion with the appellant as a result of the document sent, to be able to assess whether there would be reason to advise the appellee to postpone the BSA. The student counselor therefore attempted to contact the appellant, but the appellant did not reply. Consequently, the student counselor was not able to advise or did not advise postponing the BSA again. The appellant was given the opportunity to be heard as a result of the intended negative BSA. She did not take that opportunity.
- 3.4 The Examination Committee stated that, when the circumstances are taken into consideration, it cannot be explained why the appellant had obtained so few credits. In view of her study progress, the student is not expected to be able to complete her studies within a reasonable period.

4. Findings of the Board

- 4.1 Under Section 7.8b of the Higher Education and Research Act ("WHW") a negative binding recommendation on continuation of studies can be given if the university board is of the opinion, taking the student's personal circumstances into consideration, that the student is not suitable for the study program because his/her study results do not meet the requirements the board has set to that effect.
- 4.2 In accordance with Article 31 of the Teaching and Examination Regulations for the Bachelor's Degree program Law 2016/2017 ("TER 2016/2017"), if the binding recommendation on continuation of studies is postponed at the end of the first year because of personal circumstances, the student will receive a binding recommendation on continuation of studies at the end of the next year of studies.

- 4.3 Article 31(7) of the TER 2017/2018 gives a limitative list of the personal circumstances that are taken into consideration in the BSA. The personal circumstances are taken into consideration only if a causal connection can be established between the circumstances and the lagging study results and the circumstances are reported to the study adviser or student counselor as soon as may reasonably be expected.
- 4.4 The Board establishes that it is not in dispute that the appellant, because she received a postponed BSA at the end of the academic year 2016-2017, should have obtained all remaining credits from the first year of study in the academic year 2017/2018 in order to receive a positive BSA. Nor is it in dispute that the appellant has not met that standard.
- 4.5 Regarding the appellant's argument that account should have been taken of special circumstances, the Board finds the following. The Board establishes that the appellant did not report her personal circumstances to the student counselor in time, whereas the appellant should have been aware of the prescribed procedure, because the appellant had received a postponed BSA in the preceding year. The Board establishes as well that the appellant was given the opportunity several times – also still in a later stage – to explain the circumstances in more detail, but that she did not accept a single invitation. The Board finds that the appellant is to blame for the fact that no further investigation could take place into a possible causal connection between the circumstances put forward and the unsatisfactory study progress. In the Board's opinion, the appellee should have concluded that there is no evidence of a causal connection between the circumstances and not obtaining the required number of credits. The Board sees no reason for the opinion that the appellee should not have issued a negative binding recommendation on continuation of studies.

5. Decision

The Examination Appeals Board declares the appeal unfounded.

Decided on October 18, 2018 by the Examination Appeals Board.

You can file an appeal against this decision within six weeks after publication of this decision at the Appeals Tribunal for Higher Education (CvBHO), P.O. Box 16137, 2500 BC The Hague. For more information, see www.cbho.nl.