



EXAMINATION APPEALS BOARD

No 2019/10/854

THE EXAMINATION APPEALS BOARD

Decision on the appeal of Ms [name], appellant, residing in [residence], against the decision of the Examination Board of the Amsterdam University College of Vrije Universiteit Amsterdam, the respondent, denying the appellant permission to register for the course entitled Literature and Social Exclusion.

I Course of the proceedings

On 7 November 2018, the appellant lodged an appeal against the respondent's decision dated 16 October 2018. The notice of appeal was received in good time, but did not meet the statutory requirements. On 9 November 2018, the appellant was requested to submit the disputed decision before 19 November 2018. The appellant fulfilled this request on 11 November 2018. The other conditions were also met. The appeal is thus admissible. On 13 November 2018, the respondent was notified on behalf of the Examination Appeals Board that the prescribed procedure required the respondent to consult the appellant to determine whether the dispute could be resolved amicably. The respondent issued a timely invitation to the appellant to that end. No amicable solution was reached, however. The respondent filed a written defence on 20 December 2018. The appeal was heard at a hearing of the Board on 31 December 2018. The appellant appeared in person, accompanied by Dr [name 2], lecturer for the Literature and Social Exclusion course. The respondent was represented by Dr C. Zonneveld, acting chairperson of the Examination Board of the Amsterdam University College. The parties presented oral explanations for their positions.

II. Facts and dispute

Based on the documents and the explanations presented at the hearing, the Board assumes the following facts. The appellant registered for the course entitled Cultural Studies of Affect and Emotion. This course proved to be the wrong choice, and the appellant therefore registered, before the deadline, for another course: Literature and Social Exclusion (LSE). The tutor sent the appellant an email inquiring as to why she no longer wished to take the Cultural Studies course. The appellant interpreted this email as confirmation for her registration for the LSE course. It was not until after the deadline that the appellant realized that she should have received confirmation of the change from the registrar. The appellant saw on Canvas that she was not registered for the LSE course. On the advice of her LSE lecturer, the appellant therefore contacted her tutor. The tutor informed her that the registrar rejected the registration for the LSE course because the course was full. By that time, the course was already at an advanced stage. The appellant asked the respondent to proceed with registering her for the LSE course. The respondent was unwilling to do so. As a consequence, the appellant will have to take an extra course in the next semester. The

appellant had assumed that she would be graduating at the end of that semester. Now, she will not graduate until at least six months later. In addition to the appellant's other study obligations and her work, however, taking an extra course would become too heavy a load for her to carry.

The respondent explains that students consult their tutors to decide which courses they will take the next semester. Should a student still decide that they wish to take another course, a change can be implemented in the add/drop period, provided that the tutor consents. In such cases, the student must then receive a confirmation from the registrar. The appellant changed her previous choice and decided to take the LSE course during the add/drop period, but on 6 September 2018 she was notified that the registrar had denied her request because the course was full. The appellant continued to take the LSE course, however. She told the lecturer that there had been a misunderstanding with her registration. The appellant could have been expected to have contacted her tutor or the registrar if she had any doubts as to whether she was registered for the LSE course. The appellant failed to do so. The appellant has acknowledged to the respondent that she did not follow the correct registration procedure. She states that she is unaware of the email containing the registrar's decision. The appellant had followed the same process for the previous academic year, however. She then also received a decision from the registrar by email (in that case, the decision was in her favour). The appellant states that she is also unaware of that email. The respondent notes that the registration procedure is published both in the Academic and Examination Regulations (Articles 2.10.3 and 2.10.4) and on BlackBoard (now Canvas). The registration procedure is necessary in order to optimally divide the limited number of places for each course among those who are interested in them. Dismissing the requirement to follow the registration procedure would complicate the organization of the educational programme.

III. Positions taken by the parties

The appellant explains how one registers for a course and how much leeway is allowed for changing courses. Students can change courses during the first week after classes start. That means that the lecturers do not have a final list of students at that point. The appellant did not see the email from the registrar informing her that there were no places left for the LSE course. The LSE lecturer did not object to the appellant's participation, even when the appellant's name was absent from the finalized list of participating students. The appellant then took the course and sat for the corresponding parts of the examination. It is in the appellant's interest that the LSE course counts towards her results because otherwise she will have to take an additional course, which will delay her studies and render her unable to graduate on schedule. Mr [name 2] confirms that the lecturer also bears responsibility for enforcing the maximum number of students in a course. He did not take this sufficiently into account.

The respondent agrees with the appellant's explanation of the course of events, noting that the maximum number of students allowed to participate in a course is 25. That is an absolute limit. The LSE course was already full when the appellant submitted her registration request. The appellant was immediately notified of that fact by the registrar. The registration rules state that a student must await the registrar's decision before taking a course other than that for which the student previously registered. A copy of that decision is sent to the student's tutor. It is not the tutor's responsibility to determine whether the student is complying with the registrar's decision. The appellant did not heed the consequences of the registrar's decision. The respondent emphasizes that procedures must be followed in order to avoid chaos. The respondent explains that the registrar reports to the Director of Education, not to the respondent. The Director of Education reports to the Dean. There is no legal remedy available regarding the registrar's placement decision.

IV. Findings of the Board

The Examination Appeals Board finds that the registration procedure is described in Article 2.10 of the Academic and Examination Regulations. A crucial aspect of this provision is that a student requires her tutor's consent to change their previous choice of course. The registrar then decides on the request on behalf of the Director of Education, who, in turn, reports to the Dean, as the respondent expressly stated at the hearing. The tutor's role is clearly described. No mention of the registrar's role is made, however. The Board recommends that the respondent should amend the Academic and Examination Regulations

on this point. The appellant instituted an appeal against the decision of the respondent, the Examination Board. As the foregoing indicates, however, the Examination Board is not authorized to decide this appeal. After all, the registrar issues decisions on behalf of the Dean, not on behalf of the respondent. The respondent should therefore have acknowledged its lack of authorization. Since the respondent failed to do so, the appeal must be considered as well-founded. If students disagree with a decision taken by or on behalf of the Dean, they can lodge an objection with the Executive Board of VU Amsterdam. This is no different for the appellant. Finally, the following must be stated by way of explanation. At the hearing, the Examination Appeals Board asked the appellant whether she had received a grade for the LSE course. In her response, which was later substantiated in writing, the appellant referred to her lecturer, who stated in an email dated 7 February 2019 that the appellant had earned a grade of B+ for the LSE course. The case law of the Higher Education Appeals Tribunal [College van Beroep voor het Hoger Onderwijs] (see case number CBHO 2013/160) entails that once an examination result has been announced, the Examination Board does not have the discretion to refuse to accredit that result and include it in its administrative records.

V. Decision

The Board considers the appeal to be well-founded and vacates the disputed decision. The Board charges the respondent to issue a new decision, consistent with the Board's findings, within two weeks of the publication of this decision.

Thus decided in Amsterdam on 28 February 2019 by Prof F.J. van Ommeren, Chair, Dr J.R. Hulst, Prof H.A. Verhoef and Prof W. van Vlastuin, members, in the presence of J.G. Bekker, Secretary.

Prof F.J. van Ommeren,
Chair

J.G. Bekker
Secretary

An appeal against a decision by the Examination Appeals Board may be lodged with the Higher Education Appeals Board, PO Box 16137, 2500 BC The Hague, by the relevant party and accompanied by proper justification. The term for lodging an appeal is six weeks. The registry fee is €47.