



DECISION 21 - 155

Rapenburg 70
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of the Examination Appeals Board of Leiden University
in the matter of the appeal of

[name] from [place], appellant,

against

the Board of Examiners of [X], respondent.

The course of the proceedings

On 12 April 2021, the appellant asked for the 10-EC [X] course unit [X] to be included in her Bachelor's Programme in [X], specialisation [X] as an exemption.

The respondent rejected the appellant's request in its decision of 14 April 2021.

On 15 April 2021, the appellant submitted an administrative appeal against this decision. The appellant requested an urgent decision.

The respondent informed the Examination Appeals Board that it investigated whether an amicable settlement could be reached on 20 April 2021. No amicable settlement was reached.

The respondent submitted a letter of defence on 22 April 2021.

The appeal was considered on 12 May 2021 during an online hearing of a chamber of the Examination Appeals Board. The appellant appeared in person at the hearing. [names], Chair and Secretary of the Board of Examiners respectively, attended on behalf of the respondent.



**Decision
21-155**

Considerations

Page 2/7

1 – Facts and circumstances

The appellant started the Bachelor's Programme in [X] at Leiden University College (hereinafter to be referred to as "[X]") in the 2014-2015 academic year.

In the 2017-2018 academic year, she followed the Bachelor's Programme in [X] and completed a 10-EC [X] course unit in [X].

On 1 October 2020, she requested asked for the 10-EC [X] course unit [X] to be included in her bachelor's programme. This request was rejected.

2 – The grounds for the appeal

The appellant indicated that the circumstances have changed, since it is now an urgent matter. This is why she disagrees that her petition was rejected. At the time when she submitted the previous petition on 1 October 2020, she was not aware that petitions for exemption must be submitted to [X] in the first semester of the programme.

The appellant intended to conclude this semester by completing the [X] ([X]) requirement with the course unit of 10 EC [X] course unit in Block 4. However, both course units were taught at the same time in the same block, so she was unable to attend both course units. The [X] component at [X] is intended to assist students in developing [X] in communications in a [X] context. This [X] component can be completed in the 2020-2021 academic year by attending a [X] course unit of 10 EC, according to the appellant. This is why the appellant wants to include the 10-EC [X] course unit in [X].

The decision has very harsh and disproportionate consequences for her: it prevents her from starting the master's programme in the 2021-2022 academic year, even if she were to attend a summer school [X] course unit. Moreover, she will have to borrow extra money and will incur higher study costs. She will also be unable to maintain the contact with her fellow students. Besides, she will have to attend a [X] course unit next year which is similar to the one she has already completed.

She does not hold it realistic that students that study in the first semester of the programme are expected to be aware of all the details of the requirements of six majors, the various options for the [X] component and the options to complete the elective courses.



Decision

21-155

Page 3/7

At the hearing, the appellant indicated that she did not appeal against the decision of October 2020 regarding the request for an exemption as she believed at the time that she could resolve the matter by attending another course unit. This proved to be impossible, as she only found out in early 2021. She appealed to Article 4:84 of the General Administrative Law Act (*Algemene wet bestuursrecht*, Awb) and requested that the policy rules be waived since the consequences weigh disproportionately for her. In fact, she did already meet the request to complete a [X] course unit, as she completed the course unit in [X]. Besides the fact that the contested decision entails a study delay - and, as such, extra costs - it is highly demotivating for her to attend yet another [X] course unit given that she has already acquired the required academic skills. In that respect, she appeals to Article 3:4 of the Awb and holds the weighing of interests unreasonable for the intended object.

She was not aware that the requirement to request an exemption in the first semester of the programme was already in effect at the time.

3 – The position of the respondent

The respondent rejected the request as the appellant had already petitioned on 1 October 2020 to include the same course unit, [X]. This request was rejected by the respondent as it had not been filed within the relevant deadline. This follows from Article 3.2.1 of the Course and Examination Regulations (*Onderwijs en Examenregeling*, OER), the Student Manual (Student Handboek) and the application form. A maximum of 30 ECs attended at an approved or accredited institution of higher education may be included during the first semester of registration. [X] then investigates whether the petition meets the conditions.

On 27 August 2018, the appellant asked for an exemption for the [X] course unit. The respondent granted this exemption on 19 September 2018. According to the respondent, this demonstrates that she is aware of the relevant deadline.

The respondent is not aware of any special circumstance that could warrant an alternative decision. The respondent holds that a study delay and being able to graduate in time is no reason to treat the appellant differently from other students. These circumstances are rather the consequence of the appellant's actions. After the rejection of the petition of 1 October 2020, the appellant could have chosen to attend another 10-EC [X] course unit in the second semester. She chose to meet the final 10-EC requirement of [X] by attending the [X] course unit. However, she also had to complete the [X] course unit in order to graduate. These course units were taught at the same time. Nevertheless, such was



**Decision
21-155**

foreseeable, as it had been announced in advance. This is why the respondent saw no reason to refrain from its earlier decision.

Page 4/7

At the hearing, it was argued on behalf of the respondent that the rules are clear. Article 3.2.1 of the OER states that exemptions must be requested in the first semester of the programme since a student knows at this point in time which course units were attended previously and for which course units an exemption may be requested. When assessing a request for exemption, the respondent checks whether the relevant topic had not been used already to meet the admission requirements. This relates to a so-called “transfer credit” from another programme. The respondent must investigate this due to the nature and structure of the programme and incorporation in the study plan. Although the respondent does understand that this situation is difficult for the appellant, the respondent holds that it is the student’s responsibility to plan her studies carefully. Had she submitted the petition in time in the prescribed manner, the petition would have been granted in all probability, since she has not used these study credits before. It was foreseeable that the two course units the appellant wants to attend coincide. The respondent does not wish to make an exception in order not to create a precedent.

4 – Relevant legislation

The Course and Examination Regulations of the Bachelor's Programme in [X]:
[X] of the [X] 2020-2021 (“OER”) state, in as far as relevant here:

Article 3.2.1 In addition to the components referred to in 3.1.1, students select components from those on offer worth a total study load of 135 credits. At least 105 of these credits must be earned within the College, except in cases where the Board of Examiners decides otherwise. [X] courses taken at Leiden University that are used to fulfil the [X] requirements are considered to be earned within the College. (...) s. Upon enrollment at the College, students may request to transfer a maximum of 30 credits completed at a recognised and/or accredited institution of higher education. This includes any credits obtained at [X] as a non-degree student (exchange student, visiting student or independent study abroad student). Such requests must be filed to the Board of Examiners during the first semester of enrollment. (...)

Article 3.2.2 The Board of Examiners must approve the student’s selection of components. The Board of Examiners bases its evaluation of the student’s selection solely on the coherence and level of the components selected. The approval of the Board of Examiners is not required for minor programmes with a study load of 30 credits that are recognised as such by Leiden University nor for



**Decision
21-155**

the minors recognised by Delft University of Technology and Erasmus University Rotterdam.

Page 5/7

Article 4:6 of the General Administrative Law Act stipulates that:

1. If a new petition is made after a fully or partially negative decision has been issued, the petitioner is held to state evidence of new facts or circumstances or altered facts and circumstances.
2. If no new evidence of new facts or circumstances or altered facts and circumstances are stated, the administrative body may reject the petition without applying Article 4:5 by referring to its earlier negative decision.

5 - Considerations with regard to the dispute

In accordance with article 7.61, paragraph two, of the Dutch Higher Education and Academic Research Act (*Wet op het hoger onderwijs en wetenschappelijk onderzoek*), the Examination Appeals Board must consider whether the contested decision contravenes the law.

The Examination Appeals Board considers that Article 3.2.1 of the OER clearly demonstrates the point in time when a “transfer credit” may be requested. The request must be made in the first semester after enrolment in the programme. It was established that the appellant enrolled in the programme on 1 September 2018. This means that her petition for “transfer credit” should have been submitted by 31 December 2018 at the latest. She could include at maximum 30 ECs and requested on 27 August 2018 (which is within the deadline) that study credits for the [X] course unit be included. This request was granted by the respondent.

At the hearing, the respondent explained why it is important for [X] that a request to include study credits should be submitted at the earliest possible stage. This is due to the verification of the petition, because this may also concern study credits from other Dutch or foreign universities, or study credits from a course unit that qualifies as an admission requirement to [X]. Moreover, the education schedule of the programme is aligned to the structure of the course units.

The Examination Appeals Board established that the Parties do not dispute that on 1 October 2020 the appellant asked for the 10-EC [X] course unit in [X] to be included in the programme as an exception to the rule of Article 3.2.1 of the OER. The Examination Appeals Board remarks that it does not know the reasons given by the appellant to substantiate that petition of 1 October 2020. However, it was



Decision 21-155 not refuted that the respondent rejected that petition, as it was not submitted within the deadline laid down in Article 3.2.1 of the OER.

Page 6/7 The Examination Appeals Board stated that it would have been up to the appellant to appeal against that decision if she disagreed with the rejection of that request. In that context, she could have invoked the hardship clause of Article 4:84 Awb and weighing of interests of Article 3:4 Awb. She could also have argued that the information on the website about “credit transfer” may not have been clear in the fall of 2018, when she was first enrolled in the programme. She failed to do this, so that decision became final and not open to appeal.

Although the Examination Appeals Board understands the difficult situation in which the appellant finds herself at present, the Examination Appeals Board agrees with the respondent that this situation was caused by the actions and choices of the appellant herself. Added to that, the respondent stated at the hearing that the petition would have been granted had the appellant submitted the petition for “credit transfer” in respect of the 10-EC [X] course unit in [X] in time (which is before the deadline of 31 December 2018). The Examination Appeals Board can second the reasoning of the respondent that the structure of the study programme at [X] is a responsibility of the student itself. This is why it is not appropriate to submit the same request for a “credit transfer” for the same course unit ([X]) once again on 13 April 2021. This is precluded by Article 4:6 of the Awb. This means that the respondent could reject the appellant’s request of 13 April 2021 on the proper grounds, referring to the earlier decision on the petition of 1 October 2020.

This leads to the decision by the Examination Appeals Board that the respondent took the decision on proper grounds. The other arguments put forward the appellant do not give grounds for the Board to alter its decision. Consequently, the appeal is unfounded and the contested decision is to be upheld.



Decision

21-155

The decision

Page 7/7

The Examination Appeals Board of Leiden University,

holds the appeal unfounded

in view of article 7.61 of the Higher Education and Academic Research Act.

Established by a chamber of the Examination Appeals Board, comprised of:
H.J.G. Bruens (Chair), LL.M., Dr A.M. Rademaker, Dr J. Nijland, M.C. Klink and
J.J. Christiaans (members), in the presence of the Secretary of the Examination
Appeals Board, I.L. Schretlen, LL.M.

H.J.G. Bruens, LL.M.,
Chair

I.L. Schretlen, LL.M.,
Secretary

Certified true copy,

Sent on: