

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

Report #376 of the Academic Appeals Committee
October 14, 2014

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Monday, September 22, 2014, at which the following members were present:

Professor Andrew Green (Chair)
Professor Avrum Gotlieb
Mr. Andrew Girgis

Secretary: Mr. Christopher Lang, Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

Ms. M.B. (the Student)

For the Department of Leadership, Adult and Higher Education, OISE and School of Graduate Studies:

Mr. Robert Centa, Counsel
Professor A. Hildyard
Professor T. Chambers
Professor Luc de Nil, SGS

The Appeal

This is an appeal from a decision of the Graduate Academic Appeals Board (“GAAB”) of the School of Graduate Studies (“SGS”) dated June 5, 2014 dismissing an appeal of the Student from a decision of the Graduate Department Academic Appeals Committee (“GDAAC”) of the Department of Leadership, Adult and Higher Education, OISE (the “Department”). The GDAAC had recommended dismissal of an appeal by the student of her failure of her comprehensive Ph.D. examination. As a result of this failure, she was terminated from the program. As will be discussed below, the Student sought a number of remedies including immediate reinstatement to the graduate program.

The Facts

The Student entered the Ph.D. program in the Department in 2010. As part of the degree requirements, she needed to pass a comprehensive examination. Students have an option as to the form of the exam. The Department policy is that if a student fails the initial comprehensive exam, she is permitted to take the exam a second time.

In this case, the Student first took the comprehensive exam in June 2011. She opted for a 10 day take-home exam followed by an oral exam. Her examination committee, composed of Professors Tony Chambers, Angela Hildyard and Reva Joshee, decided that she did not pass the exam. However, they met with her following the oral exam and decided that this first attempt would not count. They gave her feedback on her exam and, in addition, advised her to audit a course by Professor Joshee which was relevant to her exam.

She sat the exam the second time in the summer of 2012. She again chose to have a take-home exam followed by an oral exam before the committee. The examination committee again found that she had failed the exam. They met with her following the exam to give her feedback on the exam. In addition, Professor Chambers met with the Student and attempted to help prepare her for a third attempt at the exam. He clearly informed her that this next exam would be her final attempt at the comprehensive exam and if she did not pass, she would no longer be in the program.

The Student chose a three-hour exam for this final attempt. She wrote the exam in July 2013. The examination committee again found that she had failed the exam. Professor Chambers met with the Student to discuss the results. On September 13, 2013, Professor Chambers wrote a letter to the Student informing her that because she had failed the exam twice, he was forwarding a request to SGS to terminate her registration in the program. He noted that SGS would make the final determination and be in touch with her. The SGS subsequently terminated her registration in the program.

The Student appealed the termination to the GAAB. She requested a range of relief including development of policies at OISE, training of staff and faculty, revision to her status as a student, reinstatement to the program or transfer to another program and waiver of accrued penalties and fines. In a decision dated December 12, 2013, the Chair of the GAAB panel decided that the GAAB lacked jurisdiction to grant a number of the remedies requested by the Student. After considering the jurisdiction of the GAAB, he determined that the issues properly before the GAAB were whether the SGS decision to terminate the Student should be set aside and whether any recommendations should be made regarding student fees. Further in a Direction dated January 31, 2014, the Chair of the GAAB panel determined that the appeal to the GAAB did not provide the Student with the opportunity to have the academic merits of the performance on the exam reviewed. He decided that the Student should be permitted to decide whether to continue with the appeal through the GAAB or to appeal her failure to the GDAAC as was possible under SGS policies.

The Student decided to appeal the failure to the GDAAC. The GDAAC recommended to the Department Chair that the appeal not be allowed. The Associate Chair informed the Student of this result in a letter dated April 1, 2014 and notified her that she supported the recommendation.

The Student then appealed the GDAAC decision to the GAAB. In a decision dated June 5, 2014, the GAAB dismissed this appeal. It rejected the argument that the Department and in particular the examination committee had not adequately supervised and prepared the Student for the exams. It found that the “Student’s examination committee did more than was reasonably required to prepare the Student for her second and third attempts to pass the comprehensive exam”.

The Student subsequently appealed the GAAB decision to your Academic Appeals Committee. She asked for three types of remedies:

- Personal remedies including reinstatement to the program, reactivation of funding, a recommendation to expedite convocation, consideration for awards and grants, a declaration that there is sufficient evidence that she is suitable for candidacy and defense of a dissertation, an expedited ethical review, removal of adverse notations from her transcript and a written apology from the advisory committee;
- Departmental remedies including that the Department establish a committee on equity and accessibility, the creation of a post-doctoral fellowship worth over \$100,000 per year for a female or indigenous person of colour who completed an Ed.D/Ph.D. at OISE, and a designation of the Student as the first recipient of this fellowship and as a member of the equity and accessibility committee; and
- SGS remedies involving the creation of a staff and incoming student training program relating to the doctoral experience.

In her written materials, the Student argued that the policies and procedures in the Department relating to supervision were inadequate, that she was not provided with clear direction as to Departmental decisions and that there was a lack of proper supervision. At the oral hearing, the Student noted she had had a negative experience as a graduate student and that there were new policies and procedures in place since her termination that she would like to apply to her situation.

Decision

There are two issues in this appeal. First, does your committee have jurisdiction to grant the remedies requested by the Student? Second, to the extent the Committee has jurisdiction to grant at least some of the requested remedies, should the appeal of the GAAB decision be allowed?

Jurisdiction

The Academic Appeals Committee obtains its powers through its Terms of Reference from Governing Council. Under section 2.1 of its Terms of Reference, the Academic Appeals

Committee is “to hear and consider appeals made by students against decisions of faculty, college or school councils (or committees thereof) in the application of academic regulations and requirements”. In this case, your committee is reviewing a decision of the GAAB. Your Committee’s powers are informed by the powers of the GAAB. The GAAB’s Terms of Reference provide that the GAAB is to hear appeals relating to “grades in a course or component of a course, or concerning any other decision with respect to the application of academic regulations and requirements to a student” (section 3). The GAAB’s Terms of Reference also provide that the GAAB “may vacate, reverse, or amend the decision appealed from, and in the case of an appeal of a grade, may order a re-evaluation of the student” and “may recommend to the University that fees of a student be rebated or cancelled in whole or in part, but shall not otherwise recommend or award any monetary or other compensation” (section 3).

The powers of your Committee to grant a remedy encompass the request by the Student for reinstatement to the program (that is, to overturn the termination) and to remove notation about the termination from the Student’s transcripts. They do not, however, extend to any of the other remedies requested by the Student. Some of the remedies requested may flow from the reinstatement to the program (such as those relating to funding or further progress in the program). However, the Academic Appeals Committee does not have jurisdiction to grant these remedies nor to order the university or any Department to adopt specific policies, committees or training programs, to create fellowships, to designate holders of those fellowships or to require any Department or person to provide an apology. The Academic Appeals Committee has in the past made recommendations relating to policy changes but it does not have the power to order the university or any department to adopt a particular policy. Moreover, the Academic Appeals Committee is not able itself to evaluate and determine the sufficiency of materials for doctoral candidacy.

The Chair of the GAAB in this case reached a similar conclusion about the GAAB’s jurisdiction in the motion decision dated December 12, 2013. The Chair found that the GAAB could not order policy changes, training, creation of task forces, acceptance of a student’s work as satisfying the comprehensive exam or provision of financial remedies beyond making a recommendation for the rebate or cancellation of fees. A similar conclusion was reached in Motion Decision 359-1 of the Academic Appeals Committee dated August 25, 2011, which noted that “some light may be shed on [the Academic Appeal Committee’s] jurisdiction by examining the jurisdiction of those bodies whose decisions it reviews, in this case, the GAAB.” It stated that the Academic Appeals Committee’s jurisdiction

... is therefore limited to considering whether those academic regulations and requirements have been applied correctly, consistently, and fairly. Its remedial jurisdiction is limited to making orders of an academic nature; such as allowing a student to withdraw late without academic penalty, granting aegrotat standing, granting a request to write a deferred examination. It is well-recognized that the AAC has no jurisdiction to re-read a paper or examination to consider the merits of the grade assigned, or to review decisions about admissions.

The Committee in that decision found that it did not have the jurisdiction to award financial compensation to students to the program or to order the SGS or the university to apologize to the students.

As a result, your Academic Appeals Committee can only consider and potentially grant the reinstatement of the Student and related amendment of her transcript.

The Merits of the Student's Appeal

The GAAB rejected the argument by the Student that she was provided with inadequate supervision and preparation by the Department. Your Committee does not find this conclusion unreasonable and in fact agrees with this conclusion. The examination committee or Professor Chambers on his own met with the Student on numerous occasions to discuss the nature of the exam and her performance on particular exams. In addition, Professor Chambers met with her and helped prepare her for her third attempt at the exam and clearly notified her that it was her last attempt at the exam. Moreover, the examination committee gave her three attempts at the exam rather than the standard two attempts. The Student was involved in the process, chose her method of exam and was informed of the consequences of the failure of the third attempt. It was not unreasonable for the GAAB to conclude that the examination committee "did what it could do to prepare the Student for the third attempt." There is no indication or evidence provided that the Department's policies were applied unfairly or inconsistently. The only apparent inconsistency was the provision of a third attempt at the exam, which was to her benefit.

As noted above, the Student argued that she should have the advantage of any new policies put in place following her termination. The Academic Appeals Committee's function is to examine the application of policies existing at the time of the initial decision. New policies may shed light on any unfairness in the application of the existing policies and therefore in some circumstances may be relevant to an appeal. However, in this case, the policies do not appear to have changed in a manner that demonstrate any unfairness to the Student or that would have led to any benefit to the Student. The Department's policies about the number of comprehensive examinations remain the same. Moreover, as we noted above, the Student received significant counseling through the examination process. Further, in terms of the appeal process, while it may in general be preferable for a student to first appeal within the Department on the merits of a failure on a comprehensive exam before appealing to the GAAB, the Student availed herself of this opportunity when provided the option by the GAAB. Part of the Student's concern was a lack of clarity in the processes and policies within the Department. While she ultimately received a review of the failure within the Department, the appeals process appears to have been unclear. She noted that she was happy that the SGS and the Department had moved towards a clearer, more transparent process. Your Committee agrees that clarity in processes around decisions such as termination and the related appeals are centrally important to students and it would be beneficial to make these processes as clear as possible.

The appeal is dismissed.