

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report #373 of the Academic Appeals Board
June 5, 2014

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on March 19, 2014 (the “Hearing”) and May 2, 2014 (the “Continuation Hearing”), at which the following members were present:

Ms. Emily Orchard, Chair
Professor Andrea Sass-Kortsak
Mr. Adrian De Leon

Secretary (April 19, 2014 Hearing): Mr. Christopher Lang, Director, Office of Appeals, Discipline and Faculty Grievances

Secretary (May 2, 2014 Continuation Hearing): Ms. Sinéad Cutt, Administrative Assistant, Office of Appeals, Discipline and Faculty Grievances

Appearances:

For the Student:

Ms. Andrea Wobick, Counsel for the Student (April 19, 2014 Hearing)
The Student (May 2, 2014 Continuation Hearing)

For the School of Graduate Studies:

Mr. Robert Centa, Lawyer for the Division
Professor Jane Alderdice, Director, Quality Assessment and Governance
Professor Alan Saks, Professor of Organizational Behaviour and HR Management,
Department of Management, University of Toronto Scarborough
Ms. Deborah Campbell, Access/Information Services Specialist, Roberts Library

Appeal

This is an appeal from the decision of the Graduate Academic Appeals Board (the “Board”) dated March 11, 2013, denying the student’s appeal from the decision of the School of Graduate Studies (“SGS”) to terminate the Student’s enrollment in the Master of Industrial Relations and Human Resources Program (the “Program”) for failure to maintain the required mid-B average. The Board denied the Student’s request for late withdrawal without academic penalty from IRE1010H (Fall 2008), IRE1126H (Winter 2009), IRE1010H (Fall 2010), IRE1126H (Winter 2012) and the substitution of aegrotat standing in IRE1338H (Winter 2009).

The appeal is dismissed in part.

In what follows, the Committee has addressed each of the forms of relief sought by the Student in this appeal. The Committee notes that Student’s submissions touched upon several recurring themes. The Committee has addressed these overarching themes, together with some procedural issues, at the outset and, even though we are a reviewing body, we have reiterated many of the facts that were before the Board.

Representation

The hearing in this matter was initially held on March 19, 2014. However, as a result of a scheduling conflict, the matter was not heard in its entirety on that date. The Committee reconvened on May 2, 2014 (the “Continuation Hearing”) in order to hear the Student’s reply, the Respondent’s response thereto, and the parties’ closing submissions.

The Student was, at first instance, represented by counsel who aptly made submissions on her behalf. By email dated May 1, 2014, however, the Student advised the Office of Appeals, Discipline and Faculty Grievances, that she would not be represented by counsel at the Continuation Hearing. In this email, she further sought permission to admit an additional ten (10) decisions of the Academic Appeals Committee (the “AAC”) and a document that addressed issues relating to procedural fairness. The Committee did not have the benefit of reviewing these decisions in advance of the Continuation Hearing. The parties were invited to make submissions regarding whether these documents ought to be admitted and considered by the Committee. The Student argued that the decision would be of assistance to the Committee in rendering its decisions, but was unable to elaborate on their subject matter or relevance to the issues under consideration, submitting only that they would be referred to briefly. The Respondent objected to their admission on the basis that the reply materials filed by the Centre for Industrial Relations and Human Resources (the “Centre”) had been prepared in response to the materials relied upon by the Student at the time. Counsel to the Respondent further noted that it was late in the day to be admitting cases which it had not had the opportunity to consider, particularly in light of the fact that the Student was unable to identify upon which cases she intended to rely and for what purpose.

In preparing for this appeal, this Committee exhaustively reviewed previous decisions of the AAC in which late withdrawal without academic penalty has been sought. The principle applied by this Committee in cases of this sort is well-established and clear; the remedy is an extraordinary one that is only granted in extremely limited circumstances and in such cases where a very high threshold is met. The Committee is bound to apply the facts of this case to the principles established by this body.

Your Committee notes that the hearing of this matter was adjourned for approximately six weeks. Despite this fact, the Student waited until the eve of the Continuation Hearing to request permission to file additional materials, which request was not made known to this Committee until the start of the Continuation Hearing. On hearing and considering the submissions made by both parties, your Committee made a finding that the Student would not be permitted to admit the additional documents. The Committee notes that the Student's failure to make this request in a timely fashion was unreasonable. Further, she did not seek to admit any new evidence or cases with which this Committee is unfamiliar, nor, as stated above, could she identify upon which cases she intended to rely and for what purpose. Given that your Committee is a reviewing body, and that the Student presented no new evidence, this Committee's role was to review the review the reasonableness of the Board's decision taking into account the facts before us and the well-established legal principles from prior AAC cases.

Procedural Fairness

The Committee went to great lengths at the commencement of the Continuation Hearing to explain the scope of an appropriate reply to the Student, including reminding her of the fact that her counsel had already made submissions on her behalf in this matter and that she would not, accordingly, be permitted, nor was it necessary, to make her case a second time. Despite these instructions, the Chair was required to provide the student with guidance and repeated reminders about the appropriateness of her submissions throughout the Continuation Hearing. The Committee notes that the Student was specifically reassured that the Committee had thoroughly reviewed all of the materials submitted in this matter and that she needn't, and indeed would not be permitted, to repeat those submissions made by her counsel.

No Knowledge of a Right of Appeal

The Committee repeatedly heard from both counsel to the Student and the Student herself that she was unaware of her right to appeal her grades in various courses. According to the Student, the Centre had a duty to personally inform her of the right to appeal the grades which are the subject of this appeal and in the absence of such reminders following, the Centre should be precluded from objecting to the Student's request for late withdrawal.

Your Committee does not agree with this submission and notes (1) that students have a duty to familiarize themselves with their rights and responsibilities and the policies of their respective programs and to act in a timely fashion to avail themselves thereof and (2) that the Student was

made aware of her right to appeal. The SGS Calendar which the Student received in each of her years of study clearly sets out the timeline for departmental level appeals and beyond.¹

Overview

The Program at the Centre is a course-based graduate degree program that can be pursued in one of two formats: a two year program that requires students to earn 18 half-course credits over two academic years, and a 12-month program requiring students to earn 14 half-course credits over a 12-month period (during three sessions of study between September and August). The 12-month program, in which the Student was enrolled, is intended for students who have experience in the field. Students can elect to pursue the degree on a full or part-time basis in both the 12-month and two-year program formats. However, students are not permitted to switch from the 12-month program to the two-year program following commencement thereof.

Students who are enrolled in the 12-month program are required to take 7.0 full-course equivalents (FCE) of which the following 3.5 FCE are required²:

- IRE1010H: Economic Environment of Industrial Relations and Human Resources
- IRE1126H: Labour Market Policy
- IRE1611H: Sociology of Industrial Relations
- IRE2001H: Foundations and Current Issues in Industrial Relations and Human Resources
- IRE2002Y: Research Methods in Industrial Relations and Human Resources
- IRE1270H: Law of Labour Relations
- IRE1338H: Law in the Workplace

The SGS Calendar further provides that students are required to achieve a mid-B average in the first two sessions of the program in order to continue into the third session and that if a student fails to complete a graduate course in a satisfactory manner (i.e. by earning a failing grade of FZ or one which is below the declared minimum requirement), the graduate unit may recommend to SGS the termination of the Student's participation in the Program. As will be described in greater detail below, it is unclear on the face of the record whether the latter policy appeared in the 2008/2009 SGS Calendar, upon which the Student would presumably have relied in making decisions about the impact of the FZs earned during the 2008/2009 academic year on her progress in the Program.³

The Student was admitted into the 12-month full-time Program in 2008 and commenced her studies in September 2008. In the ordinary course, therefore, she would have completed the Program in August 2009. However, as will be set forth in greater detail below, the Student experienced a lengthy period of serious personal and medical problems, which impacted her

¹ SGS 2008/2009 Calendar, Tabs 1-4 of the Respondent's Book of Documents

² SGS 2008/2009 Calendar, Tab 1 of the Respondent's Book of Documents

³ *ibid.*

successful completion of the following half-courses and resulted in her taking two leaves of absence:

- Fall 2008: the Student earned an FZ in IRE1010H
- Winter 2009: the Student earned an FZ in IRE1126H and INC in IRE1338H
- Fall 2010: the Student earned an FZ in IRE1010H (for a second time)
- Winter 2012: the Student earned an FZ in IRE1126H (also for a second time)

The Student relies upon her personal and medical problems, together with the Centre's alleged failure to sufficiently accommodate them, as the basis for her failure to perform satisfactorily in the courses in respect of which she now seeks late withdrawal without academic penalty (IRE1010H: Fall 2008 and 2010 and IRE1126H: Winter 2009 and 2012) and substitution of aegrotat standing (IRE1338H).

By letter dated June 18, 2012, from the SGS Director of Student Services, the Student was advised that her registration in the Program was terminated as a result of her "failure to maintain good academic standing and a mid-B average".

Duty to Accommodate

As noted above, both the Student and the Respondent acknowledge that disability is a protected ground under the *Ontario Human Rights Code* and that the University is, as a service provider, under a duty to accommodate students to the point of undue hardship. Where the parties disagree, however, is whether the Student was sufficiently accommodated by the University. The Respondent submits that the Student was not discriminated against, that the accommodations put in place were sufficient and that her failure to familiarize herself with and leverage SGS policies, and to take an active role in ensuring her academic success, account for her predicament. It further notes that had the Student alerted the Centre to certain of her medical issues while enrolled in the Program or sought relief in respect of her failing grades in a timely fashion, the Centre might have been in a position to consider further accommodations. However, the Committee cannot, it says, attempt to sift the sand of time and grant such extraordinary relief years after the window to appeal the foregoing grades has closed. The Student, however, argues that the personal and medical issues from which the Student was suffering between 2008 and 2012 impacted her ability to perform academically, and to properly interpret and apply the SGS policies regarding grade appeals. According to the Student, the Board ought to have examined the Student's failure to seek appropriate relief in respect of her courses through the lens of disability, which, it alleges, it failed to do in dismissing her appeal. The Student further submits that the Centre did not adequately accommodate the Student's disability. The Committee will address each of these submissions in turn below.

The Student's Personal Circumstances

To say that the Student's personal circumstances during the academic years at issue were difficult would be to grossly understate the issues with which she was wrestling. The Student and her family were embroiled in legal matters related to their attempt to escape an abusive father and to ensure that measures were in place to restrain his repeated attempts at reconciliation with the family. The Student's mother suffers from severe asthma, which the evidence confirms flares up when she is under stress. The Student's younger sibling also suffers from a debilitating medical condition which is exacerbated by stress. During the period 2008-2010, the Student appears to have assumed, likely with little choice, responsibility for retaining and instructing counsel in the criminal matters relating to her father, caring for her mother and siblings, including by assuming responsibility for many domestic duties, pursuing full-time academic studies and working. In addition, in February 2009 she fell down a flight of stairs and in June 2009 was in a car accident. She sustained relatively severe injuries from both incidents, which required ongoing medical attention and care.

The Issues

The Panel, like the Board before it, accepts the Student's description of her personal situation and does not dispute the fact that it likely negatively impacted her ability to perform to the academic standard demanded by the Program and to which she was accustomed. The Centre similarly does not dispute the fact that the Student suffered from considerable difficulties during the course of her studies.

At issue in this case is whether the Student's disabilities were sufficiently accommodated and whether any alleged failure to accommodate the Student's disabilities justifies the extraordinary relief of late withdrawal without academic penalty and substitution of aegrotat standing as many as five years after the earliest courses were undertaken.

The Student submits that the Centre failed to accommodate her and seeks the following remedies:

- Removal of the FZ mark for IRE1010H (Fall 2008)
- Removal of the FZ mark for IRE1010H (Fall 2010)
- Removal of the FZ mark for IRE1126H (Winter 2009)
- Substitution of aegrotat standing in IRE1126H (Winter 2012)
- Substitution of aegrotat standing in IRE1338H (Winter 2009)

The Centre submits that the Student's appeals are grossly out of time in respect of all of the courses taken before the 2011/2012 appeal and should, in any event, be dismissed on their merits.

IRE1010H (Fall 2008) and IRE1126H (Winter 2009)

As described above, the Student's personal situation during Fall 2008 was incredibly difficult, a fact which is not disputed by the Centre. The Student's father, who had been convicted of assault in May 2008, made repeated attempts to reconcile with the family, breaching a court imposed restraining order in so doing. Each such attempt required the Student to engage the family's lawyer to take steps to enforce the restraining order and ensure that adequate precautions were in place to prevent his having any contact with them. The affidavits submitted by the Student, her mother and her brother in response to her father's Motion to Change the terms of the restraining order confirm that the Student and her family lived in constant fear that the restraining order would be lifted and their safety compromised. The affidavits further confirm that the Student's mother had been hospitalized several times between 2008 and 2010 and was, as a result of the stress caused by her involvement in the legal matters, instructed by her doctor to limit her involvement therein and not to attend court. As a result, the burden of overseeing this legal matter and that of being the primary caregiver and provider of emotional support for her family members were shifted to the Student. The evidence also suggests that in or around Fall 2008, the Respondent's father became extremely angry regarding the court ordered division of finances and the Student feared increasingly for the safety of her family at this time.⁴

During this same time, the Student was undertaking her first term of the Program. The evidence confirms that from the very beginning the Student struggled with the course load and had difficulty coping with the volume of work. She initially enrolled in five half courses during the Fall 2008 term, but dropped two courses before the October 31, 2008 drop date, having recognized her inability to complete them successfully. On October 23, 2008, while writing her midterm examination, the Student experienced chest pains and was excused from completing the exam. She went straight to Ms. Campbell's office where the latter contacted the University's Psychiatric Service office and scheduled an emergency appointment, presumably because she was sufficiently concerned about the Student's well-being to consider immediate action necessary. Dr. Masson's letter to Ms. Campbell following his assessment of the Student notes that the Student would continue to receive assistance from the office and encourages her to take a reduced course load and receive "any possible flexibility/consideration regarding assignments given." The Centre was responsive to this recommendation and the record confirms that the Student sought and received several extensions in IRE1630H and IRE1645, both of which she completed successfully. The Centre also permitted the Student to rewrite the mid-term exam in IRE1010H twice and to write a 100% final examination. Your Committee finds that these efforts were a good faith attempt by the Centre to provide the Student with sufficient accommodations.

The Student's troubles did not abate and, in November 2008, while still under the care of Dr. Masson, she applied to Accessibility Services for an accommodation. However, as a result of an

⁴ Student Service Consultation Report dated November 27, 2008, Tab 6, Page 6 of the Student's Book of Documents.

administrative error, she never received a response from that office. Your Committee can only speculate as to what accommodations, if any, Accessibility Services would have recommended be put in place to support the Student. The Student did not pursue Accessibility Services, did not drop IRE1010H, and ultimately failed the course. The Student now seeks late withdrawal without academic penalty.

The ability to obtain late withdrawal without academic penalty is an extraordinary remedy⁵, reserved for the most serious and unique of situations. The very existence of “drop dates” indicates that the University takes seriously the ability of a student to choose whether or not to continue in a course for any number of reasons personal to the student. By that date each term, the student is expected to have assessed his or her situation and made a decision. But once the date has passed, the University takes the position that the student has decided, no matter what situation may have existed before the drop date or may arise after the drop date, to continue on in the course.⁶ A student is not to be allowed a substantially risk free gamble that anticipated difficulties will be overcome⁷. Although exceptions to the drop date regime are rare, the AAC has said that it is appropriate to grant this remedy “when unanticipated circumstances arise after the ‘drop date’, when then existing circumstances unexpectedly become more severe, or where then existing circumstances were reasonably expected to abate but did not.”⁸ Exceptions to this policy have also been made on medical and compassionate grounds.⁹

The Board found that although troubling, Accessibility Services’ administrative error was not responsible for the Student’s failure in IRE1010H. It further held that the Centre adequately accommodated the Student and rejected her submission that she could not have anticipated her father’s continuing breach of the no-contact order after the drop date.¹⁰ It found, instead, that the material filed by the Student suggests that her father was never inclined to comply with this order and that the circumstances were, therefore, entirely foreseeable.

Your Committee disagrees with the Board and finds that this is a situation in which the extraordinary relief of late withdrawal without academic penalty is warranted on the basis that already-existing circumstances became significantly more severe and could not have been reasonably anticipated by the Student. In support of this finding, we accept the testimony and evidence presented on behalf of the Student regarding the effect of her family conditions and injuries upon her academic performance in IRE1010H. To suggest that the only circumstances which the Student ought to have anticipated having an impact on her academic success was the likelihood that her father would breach the restraining order is an overly simple characterization of her situation and the many variables at play during this time frame. Your Committee does not find it necessary to make a finding on whether the Student could or should have predicted her father’s actions in this regard in order to grant the relief sought by the Student in respect of this

⁵ AAC Report 338

⁶ AAC Report 275

⁷ AAC Report 264

⁸ AAC Report 264

⁹ AAC Report 275

¹⁰ Board Decision, Page 4.

course. We note that regardless of whether the Student could have predicted her father's actions, it would have been extremely difficult for her to foresee the extent to which she would have to assume responsibility for the care of her mother and sibling (in the wake of her father's ongoing threats), and the impact of this responsibility on her studies and mental health. Although your Committee recognizes that we have no expertise on the implications of domestic violence on victims, we have no doubt that such effects are incredibly complicated, at times severe and likely difficult for a victim to fully assess while still effectively under the influence of the abuser.

Your Committee has previously held that "if, due to intense psychological stress, a student is in no position to weigh competing considerations reasonably at the time the election must be made, the policy which underlies rigorous protection of drop dates is not engaged."¹¹ It is clear that the Student understood and exercised her right to drop courses before the "drop date" in October and to seek accommodations from her faculty with respect to deadlines for assignments, as necessary. In response to this appeal, the Centre pointed out that the Student had done comparatively well in two others courses taken during the fall 2008 term, which might be expected to have been equally adversely affected by the circumstances at play. It further relies upon the fact that she dropped courses during the fall term to suggest that she was capable of making rational and considered decisions at the time. This approach has been previously referred to by this Committee as "the problem of selectivity".¹² The argument, as this Committee interprets it, is that if the Student was well enough to pass these other courses during the term, the illness could not have been so severe as to justify relief in the course failed. Put another way, if the Student could avail herself of certain SGS policies during the period of her alleged disability, the disability could not have been so severe as to justify her failure to seek relief in respect of IRE1010H. Your Committee is unconvinced by the "selectivity" argument. Your Committee does not believe that the Student's ability to perform well in two courses and to drop courses before the drop date can be relied upon to suggest that she was well enough to perform well in all of her courses or assess the severity of the impact of an FZ on her status in the program. In making this finding, the Committee notes that the Student was not evaluated by 100% final exams in the courses in which she succeeded and that she received numerous extensions on her written work in those courses, which extensions may have accounted for her success.

In allowing the Student's appeal with respect to IRE1010H, your Committee further notes the Student never had the benefit of an assessment by Accessibility Services and cannot assume in the absence of such an assessment that the provision of a 100% final exam was an appropriate accommodation. Indeed, the evidence suggests the Student did *not* receive the accommodations she required to support her to be successful.¹³ Further, it is not clear from the record that the Student was in a position to understand that one FZ grade or a grade that was below a mid-B average was sufficient to trigger her termination in the Program. The 2008/2009 SGS Calendar

¹¹ AAC Report 280, page 2.

¹² AAC Report 283.

¹³ Letter dated August 13, 2012 from P. White to the Board, Tab 36 Student's Book of Documents.

does not describe the circumstances under which a Student's enrolment in the Program could be terminated (though calendars from subsequent years do) and the Centre did not notify the Student of the severe impact such a grade could have on her status until February 2011. Had the Centre provided the Student with a warning letter of the sort she received in February 2011, she may have elected to appeal the grade at an earlier date. Your Committee does not believe that a Student who accepts the favourable results and decides to leave well enough alone with respect to them is being in any way unreasonable, nor does it believe that such student is being inconsistent or unreasonable in appealing other results which were unfavourable.¹⁴

Applying the foregoing facts and analysis to the present case, your Committee accepts the student's contention that her already-existing circumstances became significantly more severe. Your Committee believes that the circumstances faced by the Student at the end of October, shortly before what your Committee was advised was the "drop date" lasted longer than could reasonably be expected as of the "drop date" and, indeed, became more severe thereafter. In making this finding, the Committee notes that it does not absolve the Student of the obligation to assume an active role in her academic success and to familiarize herself with relevant rights and responsibilities; nor is its finding meant to be a negative reflection on the Centre or SGS. The Committee does not aim to establish a precedent that would empower students to turn a wilfully blind eye to University policies only to later seek late withdrawal without academic penalty on the basis that they were unaware of such policies. The Committee's decision with respect to this course is based entirely on a recognition of the fact that the Student was suffering from diagnosed acute stress disorder at the time, and is an acknowledgment of the unique and serious nature of the circumstances faced by the Student during the Fall of 2008.

In summary, the appeal is allowed. The grade of "FZ" recorded in the course IRE1010H (Fall 2008) will be vacated.

The Student also asked the Committee to refund the money she spent on any course in respect of which we grant the relief sought. The Committee believes that it does not have the jurisdiction in this matter and that it is a matter of policy to be decided by individual divisions. However, we wish to state for the record that in our opinion, students are not entitled to refunds of courses for which they are granted late withdrawal without academic penalty¹⁵. In this case in particular, the student had the benefit of attending all of the classes and writing the mid-term and final exam in IRE1010H (and the faculty member the burden of grading these exams). In the Committee's opinion while the student is entitled to relief from a failure on her transcript for a course she did not successfully complete, she is not entitled to monetary relief.¹⁶

¹⁴ AAC Report 283.

¹⁵ AAC Motion Decision 359-1 and AAC Report 363.

¹⁶ AAC Report 302.

IRE1126H (Winter 2009)

Despite having failed IRE1010H during the Fall term, the Student returned to the Program during the winter 2009 term and enrolled in five courses (IRE1126H, IRE1338H, IRE1611H, IRE1635H, and IRE2001H). In addition, she was completing coursework from classes in which she had received extensions during the fall term. The Centre continued to provide the Student with accommodations and she was granted several extensions in the courses in which she was enrolled in winter 2009, which enabled her to submit assignments in these classes into the summer of 2009. The Student earned an A- in IRE2001H and a B+ in IRE1611H. She withdrew from IRE1635H on the February 27, 2009 drop date. The Student seeks late withdrawal without academic penalty from IRE1126H.

The circumstances surrounding the Student's failure in IRE1126H are addressed in the Board's decision and your Committee adopts the facts therein as a correct and fair representation of the evidence before it. The Student did not adduce any new evidence at the Hearing or Continuation Hearing. During the winter term and throughout the summer, the Student continued to attend to all matters related to legal proceedings initiated by her father, including liaising with Crown counsel, the Office of Victim Services, and Toronto Police Services, amongst others. Although the facts appear to suggest that her father may have initiated new proceedings at some point during the 2008/2009 academic year, there is no evidence to suggest that these new proceedings drastically impacted the burden borne by the Student. In February 2009, the Student fell down a flight of stairs and was unable to write the mid-term examination. The Centre advised the Student that her final examination would be worth 100% of her grade. During that exam, she experienced a panic attack and failed. To make matters worse, before she had the opportunity to re-write the exam, which the Centre had given her permission to do, she was injured in a car accident on June 30, 2009. The Student never sought further accommodation in the course or the opportunity to rewrite the final exam and did not appeal the grade of FZ in the class until the commencement of this appeal, almost four years later.

Your Committee notes that although the Student continued to receive care from Dr. Masson throughout the 2008/2009 academic year, at no point during the winter term did she again seek the assistance of Accessibility Services or enlist Dr. Masson's assistance in advocating for additional or different accommodations on her behalf, even though at that point she was clearly aware of the need to do so. The Committee has noted its disappointment at the administrative error that led to the failure of Accessibility Services to assess the student during the fall 2008 term. However, the Committee was unanimously of the view that such failure must have a temporal limit. In other words, the Student cannot rely on that failure to explain away the FZs she received in courses taken months and years after her initial attempt to enlist the office's support.

The Student submits that the Centre did not reasonably accommodate her disability and that the

FZ earned in IRE1126H is not indicative of the academic excellence of which she was capable. Had she been provided with extra time and a private space in which to write the exam, she argues, she would have performed at a higher level. The Respondent submitted that these accommodations would have had no impact on the Student's success in the class because the Student never wrote the exam. Your Committee believes that the Respondent is correct in this instance. The Committee agrees that it cannot speculate as to whether the accommodations made by the Centre were sufficient because the Student never wrote the exam and failed to seek relief from the Centre in a timely fashion. It is irrelevant whether the accommodations in place were sufficient because the Student never wrote the exam and therefore never exercised the accommodations.

The Committee further notes that the mere fact that the Student *may* have been entitled to special accommodation does not absolve her of the responsibility to comply with the university's policies regarding the commencement of appeals in a timely fashion and, in this case, the obligation to seek accommodation to write the final exam at a later date.¹⁷ Students entitled to special accommodation nevertheless have an obligation to familiarize themselves with University policy and to assume responsibility for advocating on their own behalf. In addition to arguing that she was insufficiently accommodated in this course, the Student argued that the Centre had a duty to inform her of the right to appeal a grade. The Committee disagrees with this suggestion and, in any event, notes that the 2008/2009 SGS Calendar clearly sets out the steps and timelines associated with academic appeals.¹⁸ In addition, before commencing her studies the Student was provided with a letter dated August 2008 from Dr. Heathcote, enclosed with which was a copy of the 2008/2009 Graduate Handbook (the "Handbook"). The letter specifically provides "the following materials have been prepared to assist you as you start the new academic year. Please read them carefully."¹⁹ The Policy on Standing and Grade Appeals contained in the Handbook provides that students must obtain a minimum grade of B- in all courses and notes that an explanation of the academic appeals process can be found on the SGS website. Finally, by email dated September 18, 2009, Professor Heathcote notified the Student of the appeal provisions. Though the commencement of an appeal in respect of this course would still have been arguably out of time in September 2009, the Centre would have been in a better position to consider a request for accommodations at that point.

Your Committee finds that the Board was correct in its reasons and its decision. By the "drop date" the Student was only too well aware of the burdens being placed upon her by her family situation and the physical injuries she had sustained as a result of her fall. Her decision to drop a course during this term lends credence to the fact that she, too, was aware of her ongoing struggle to juggle her familial responsibilities with her school work and the additional complications borne of her injuries. She also knew, or ought to have known, that she had failed a course during the Fall term and could not afford to earn any grades below the mid-B threshold

¹⁷ AAC Report 287.

¹⁸ SGS 2008/2009 Calendar, Page 26, Tab 1, Respondent's Book of Documents.

¹⁹ Letter from Dr. Joanna Heathcote dated August 2008, Tab 5, Respondent's Book of Documents.

during the winter term. Although the Committee is sympathetic with the Student's plight, we believe that the Student "gambled" that she would be able to pull herself together sufficiently by the end of the term so as to be able to write and perform sufficiently well on the final exam. This is precisely what the University's policy on dropping courses is intended to prevent. The record also suggests that the Student's decisions with respect to dropping courses were at least in part influenced by financial considerations²⁰, which although a reasonable motivation, may have undermined more important considerations.

The Student submitted that the car accident in which she was involved was an unforeseen circumstance that mitigates in favour of the relief sought. The Committee agrees with the position taken by the Board on this submission and finds that although the accident in June 2009 was an unforeseen circumstance that might justify late withdrawal without academic penalty, there is nothing in the record to indicate that the Student sought the remedy from the Centre in a timely way. This Committee has recognized that an otherwise meritorious appeal may be dismissed where a student fails to request relief in a timely fashion.²¹ The Committee further notes that by Winter 2009, the Student was only too well aware of the tenuous position she was in academically, the implications of her personal circumstances and ought, given the foregoing, to have advised the Centre of her injuries and sought relief to accommodate the injuries. Finally, the Committee was not presented with a satisfactory explanation of the Student's failure to do so.

We see no reason to disagree with the decision of the Board to dismiss the appeal as untimely and without merit.

IRE1338H (Winter 2009)

Although it was the Committee's understanding that the Student had abandoned her request for relief in respect of IRE1338H, the Student made submissions with respect to this course during the appeal and thus the Committee has addressed it in these reasons.

The Student was enrolled in IRE1338 during the winter 2009 term. She completed some of the coursework, but was unable to complete the final paper which was worth 50% of the grade by the original deadline. The Centre gave the Student an extension until June 2009 and a further extension until the end of August 2009. As noted above, the Student was injured in a car accident in June 2009 and was unable to complete the final paper. She asked to be evaluated on the basis of the work she had completed in the course, but the Centre elected instead to award her an INC report. The Student took no steps to appeal in respect of IRE1338.

During the hearing of this appeal, the Student's counsel argued that it was unreasonable that she be awarded an FZ in IRE1126 (Winter 2009) and an INC in IRE1338 given that in both courses

²⁰ Student's Appeal Statement, page 4.

²¹ AAC Report 337.

she failed to complete the required course work. The Respondent, however, argued that the distinction between the two courses is that she had completed a sufficient amount of coursework in IRE1338 to justify an INC (rather than an FZ), whereas she had not completed any coursework in IRE1126H. An INC, or incomplete, is a non-grade report given where “work is not completed but where there are not grounds for assigning a failing grade.” An INC has no impact on the calculation of a student’s average.

It is unclear to this Committee whether the Student made submissions in respect of IRE1338 because she wants this Committee to substitute aegrotat standing in this course or purely as a means of encouraging the Committee to award the relief sought in respect of the IRE1126 (Winter 2009) by effectively arguing that it is unreasonable that two courses taken at the same time have different results. Regardless, this Committee is of the view that the Board’s dismissal of the appeal as untimely and without merit is reasonable and ought to be upheld. The Committee further finds that an INC report is the appropriate “grade”.

IRE1010H (Fall 2010)

The Student took a one term leave during the Fall of 2009. When she returned to the Program, she pursued her studies on a part-time basis, taking one or two courses per term. Indeed, during the winter and summer 2010 terms, the Student successfully earned credits in three courses (IRE1260H, IRE1650H, and MGT2615H).

The Student took IRE1010H for the second time during the Fall of 2010. This was the only course she pursued during this term, having dropped IRE1002H at the drop date. The Student wrote the mid-term exam in the course and earned a 62%. The record reflects that in July 2010 and December 2010 the Student was assessed by neurologist, Dr. Farouk Dindar, who observed that the Student was experiencing multiple symptoms that could be associated with a concussion, including headaches, dizziness, and lightheadedness. There is no evidence to suggest that the Student advised the Centre that she was experiencing these symptoms or sought to have accommodations put in place for her final exam. She experienced a panic attack during the final exam and was given additional time to write the exam by Professor Duhey. The Student submits that the extra time was not of assistance to her because she was distracted by the noise made by those students who had completed the exam. The Student seeks late withdrawal without academic penalty.

Before this Committee, the Student’s counsel argued that the Student’s performance in the course is not reflective of her academic abilities, which were compromised as a result of not having adequate accommodations in place. There is no evidence that the Student did any of the following:

- Visit Accessibility Services to enlist their support in having accommodations put in place (which could have been done at any point during her studies and certainly during the

summer of 2010 when her symptoms were ongoing, if not immediately upon her return to the Program in Winter 2010);

- Complain of the volume of noise in the exam room;
- Notify the Centre of the medical symptoms she was experiencing and seek accommodations; or
- Ask to rewrite the exam under different conditions.

Your Committee agrees with the finding of the Board. The Centre cannot be expected to accommodate a condition of which it was unaware. Further, the Committee finds that the Student ought to have taken steps to ensure her academic success while she was on leave, including, but not limited to:

- familiarizing herself with the appeal procedures and program requirements (of which she was personally made aware in September 2009);
- meeting with Accessibility Services to have the required accommodations, if any, put in place (which could have been done before her return to campus and certainly not later than July 2010 at which point she knew that she was continuing to experience symptoms of a possible concussion); and
- working with the Centre to ensure that they were aware of her medical condition and required accommodations.

The Student must abide by the consequences of her failures in this regard.

The Committee finds that the Student was well aware of the personal and medical circumstances when she resumed her participation in the Program in the winter term of 2010. Further, and assuming that her medical symptoms worsened after her return to the Program (which conclusion the Committee cannot definitively draw based on the evidence), the Student was certainly experiencing those symptoms and receiving treatment therefor before commencing this class in the Fall of 2010. The Committee submits that the Student could or should have foreseen the impact of these symptoms on her studies and was in a position to respond accordingly by taking one or more of the steps identified above. The duty to accommodate students can only be imposed upon the University in circumstances in which it is made aware of a student's disability. In this case, the Student did not tell the Centre that she was experiencing symptoms of a concussion and thus it could not be expected to have surmised what accommodations she required. For all of the foregoing reasons, the Committee finds the position of the Board to be reasonable and dismisses the Student's appeal in respect of IRE1010H (Fall 2010) on the basis that it is untimely and, in any event, without merit.

Winter 2011 Leave of Absence

The Student took a second leave of absence from the Program during the Winter 2011 term.

By letter dated February 23, 2011 from Frank Reid, Graduate Program Coordinator, the Student was notified that her participation in the Program was in jeopardy. The letter provides as follows:

Satisfactory performance in a degree program requires the completion of every course taken for graduate credit with a grade of at least B-, some graduate units may require a minimum grade above a B- for some or all courses. If a student fails to complete a graduate course in a satisfactory manner (i.e. receives a grade report of 'FZ' or 'NCR' in a course, receives a grade report below the minimum acceptable by the graduate unit, or receives a non-grade report of 'INC'), then the graduate unit in which the student is registered may recommend to the School the termination of registration and eligibility of that student. If the student is permitted to continue, he or she must repeat the relevant course, or an alternative course recommended by the graduate unit and approved by the School, and obtain a satisfactory grade. (The report for the course that was not completed in a satisfactory manner as well as the report for the repeated or alternative course will appear on the student's academic record).

You have received an FZ in IRE1010H, which you have attempted twice, FZ in IRE1126H and INC in IRE1338H. Currently, your academic performance is below the minimum required to continue in the program. Your average is B- (B minus) and students in the 12-month MIRHR require a mid-B average in their first 5.0 FCE (full course equivalents) in order to continue. In addition, a mid-B average overall is needed to be recommended for the degree.

We have approved your request for a temporary withdrawal from the program until September 2011. During the 2011-2012 academic session you will be required to repeat both IRE1010H and IRE1126H and achieve a satisfactory grade in each course. Should you fail to receive a satisfactory grade in either course, the Centre will recommend to SGS that your registration be terminated. Such a recommendation would also be made if you fail to achieve a satisfactory grade in any further required or elective courses, or if you are unable to maintain a mid-B average.²²

Further, by email dated August 22, 2011, prior to the Student's return to the Program, Ms. Deborah Campbell, Manager of Academic and Administrative Services at the Centre, reminded the Student of her need to achieve a satisfactory grade in every course in IRE1010 and IRE1126 in order to remain in the Program and encouraged her to "take only those courses that you need to take ... and postpone the others until next year."²³ In response to this email, the Student acknowledged this requirement and advised that she had taken steps to ensure her academic success and would continue to receive ongoing support throughout the academic year.²⁴ It is clear, therefore, that at the start of the 2011-2012 academic year, the Student was well aware of

²² Letter from F. Reid to R. S. [REDACTED] dated February 23, 2011, Tab 17, Student's Book of Documents.

²³ Email dated August 22, 2011 from D. Campbell to R. S. [REDACTED], Tab 19, Student's Book of Documents.

²⁴ *Ibid.*

the need to maintain a mid-B average and pass IRE1010H and IRE1126H. The record confirms that the Student met with Dr. James Kleiman on September 12, 2011, who recommended certain accommodations be put in place, and with Accessibility Services in October 2011.²⁵ These steps are presumably illustrative of some of the steps the Student was taking to ensure her success.

The Student took IRE1010H for the third time in the Fall of 2011 and earned a B-.

IRE1126H (Winter 2012)

The facts surrounding the Student's appeal in respect of this course are as follows. The Student took IRE1126H for the second time during the winter of 2012. She initially registered for Professor Dhuey's section of IRE1136, but later transferred to Professor Krashinsky's section in order to accommodate conflicts with her work schedule. Shortly after making this change, in or around late January 2012, the Student complained to the Centre that Professor Krashinsky was biased against her, and asked that Professor Dhuey grade her mid-term exam. The Student received a 57% on her mid-term exam, which was marked by Professor Dhuey. Upon receiving her grade, the Student complained that Professor Dhuey's grading scheme was different than Professor Krashinsky's and queried why he had not been more involved with marking her exam. By email dated February 7, 2012, Professor Saks presented the Student with several options, including: (1) that she remain enrolled in Professor Krashinsky's class and have her exam marked by him on a "blind" basis, (2) switch to Professor Dhuey's class and write her exams, (3) switch to Professor Dhuey's class while continuing to attend Professor Krashinsky's class, or (4) remain enrolled in Professor Krashinsky's class, attend his class and write his exams, but have them graded by Professor Dhuey. The Student accepted the last option, seemingly without objection.²⁶ Also on February 7, 2012, the Student also received a second later advising her of the need to maintain a mid-B average in order to continue in the program²⁷. As noted above, the first such notice was provided in February 2011.

The record reveals that despite the Student's acceptance of this option, the dialogue surrounding her performance in the class and with whom to address certain questions continued into late February. The Student's Book of Documents includes several emails between the Student and Professors Krashinsky and Dhuey in which the latter two attempt to explain the way in which her exam was marked, provide her with guidance regarding with whom to speak about how to improve her performance on the final exam, explain the way in which the exam is graded (namely, by Professor Dhuey using Professor Krashinsky's grading scheme), and offer to meet with her to review her mid-term exam.²⁸ The discussion regarding which faculty member would grade the Student's exam continued until a week before the exam, at which point Professor Saks wrote to the Student and asked her to advise the Centre which faculty member she elected to

²⁵ Tab 21, Student's Book of Documents.

²⁶ Email from Professor A. Saks to R. S. [REDACTED] dated February 7, 2012, Tab 24, Student's Book of Documents.

²⁷ Tab 23, Student's Book of Documents.

²⁸ Tabs 25 and 27, Student's Book of Documents.

have grade her exam. The response he received was less than clear and, in an effort “to ensure continuity” and address the Student’s many concerns regarding bias and a fair application of the grading scheme, the Centre agreed to permit both Professor Dhuey and Krashinsky to grade her final exam, awarding her the higher of the two grades. There was a difference of one mark between the grades awarded by the two faculty. The Student was awarded the higher grade of 105/150 (70%). The Student’s final grade was a 64.8%, which is a failing grade.

The Student alleges that both professors were biased against her and failed to provide her with the assistance and support she required in the course because they knew her status in the Program was in jeopardy and didn’t believe she could or would succeed in the class. As a remedy, she asks this Committee to substitute her grade of FZ with aegrotat standing. The Centre submits that aegrotat standing is not available to graduate students, and that the appeal should, in any event, be dismissed on its merits on the basis that the Student did not experience any bias or unfair treatment. Indeed, the Centre characterizes her allegations as unfounded, reckless and untrue. The Board was reluctant to dismiss the appeal solely on the basis that SGS practice is not to grant aegrotat standing. However, the Board found that the appeal should be dismissed on its merits.

The facts of this case are replete with examples of the Centre’s attempts to accommodate the Student. However, it is in this course particularly that the Committee is of the opinion that little else could have been done to respond to and address her concerns and allegations. Your Committee finds that there is no evidence to support the Student’s allegations that Professors Dhuey and Krashinsky were biased against her. In fact, the Committee is of the opinion that both the faculty members and the Centre did everything they could to accommodate the Student’s various requests, to indulge her repeated demands for explanations about the manner in which her various exams would be graded, to ensure that her exams were graded fairly and without bias, and that she benefited from the highest grade.

The Committee finds agrees with the decision of the Board. The Student’s request for aegrotat standing in IRE1126H (Winter 2012) is dismissed on its merits. The Committee does not believe that a reasonable person would find that the Professors Dhuey and Krashinsky were biased against the Student and that her performance in the course was compromised as a result of the alleged bias.

Other Issues

With respect to the Student’s complaints that the Centre did not permit her to transfer from the 12-month program to the two-year Program, the Committee adopts the reasoning and decision of the Board, and notes that the Student failed to demonstrate that a transfer of this sort would have been a better accommodation than the combination of program leaves and part-time studies that she adopted. Further, the Committee notes that this complaint is untimely.

Finally, the Student complains that the Centre failed to review her status in the Program in 2008, 2009, and 2010 and that its failure in that regard ought to be relied upon to grant her the relief sought. The Committee again adopts the reasons of the Board on this issue and finds that there is no substance to the Student's complaint. Students are, as noted exhaustively above, deemed to be aware of the requirements of their programs. The expectation that she maintain a mid-B average was clearly disclosed and communicated to the Student both in the School of Graduate Studies program materials and by letters in 2011 and 2012. The Student cannot, at once, complain of the Centre's failure to review her program status in certain years and the timing of its review during others (namely, in February 2012).

Conclusion

The Committee unanimously allows the Student's appeal in respect of IRE1010H, but dismisses the Student's appeal with respect to IRE1126H (Winter 2009), IRE1010H (Fall 2010), IRE1126H (Winter 2012) and IRE1338 (Winter 2009) on the basis that the appeal is well out of time and without merit in each case. The Committee does so having thoroughly reviewed all of the Student's written and oral submissions and having exhaustively considered the body of decisions rendered by this Committee previously.

At the hearing, the Respondent's counsel cogently summarized the reasons in support of the Respondent's decision to terminate the Student's registration in the Program, and the basis for the conclusion that the Board's decision was reasonable and supported by the evidence. We agree with the Respondent in all but IRE1010H in Fall 2008. The Committee finds that the Student raised no new evidence in her oral or written submissions that persuaded the Committee that the relief sought in respect of the remaining courses was reasonable. The evidence raised had either been addressed in the Board's decision or was irrelevant to the reasonableness of the Centre's decision to terminate her registration in the Program. The Panel found the decision of the Respondent to terminate the Student to be entirely reasonable, particularly as the record indicates that this decision followed on the heels of numerous accommodations and several clear written warnings being issued to the Student that her academic standing in her program was in jeopardy.

Your Committee sympathizes immensely with the Student, whose life during the period at issue in this case was, without question, rife with challenge. However, the body of case law rendered by this Committee clearly establishes the circumstances under which a Student will be granted the extraordinary remedy of late withdrawal without academic penalty and those circumstances are not met in respect of IRE1126H (Winter 2009), IRE1338H (Winter 2009), IRE1010H (Fall 2010), and IRE1126H (Winter 2012).

Notwithstanding the fact that the Committee has granted the Student's appeal in respect of IRE1010H, the Committee finds that the termination of the Student's registration in the Program is still justified by both the Centre's policies and those of SGS, which provide that a student's

registration in the Program can be terminated if a student fails to complete even one graduate course in a satisfactory manner. The Student's termination in the Program is, therefore, upheld.

For all of these reasons, the Committee rejects the Student's appeal with respect to all but IRE1010H (Fall 2008) in respect of which it orders that the grade of FZ be vacated.