

# UNIVERSITY OF TORONTO

## GOVERNING COUNCIL

Report #387 of the Academic Appeals Committee  
November 30, 2016

To the Academic Board  
University of Toronto.

Your Committee reports that it held a hearing on Wednesday, November 16, 2016, at which the following members were present:

Professor Malcolm Thorburn (Chair)  
Professor Nicholas Terpstra, Faculty Governor  
Mr. Aidan Fishman, Student Governor

Secretary: Mr. Chris Lang, Director, Appeals, Discipline and Faculty Grievances  
Ms. Sheree Drummond, Chair, Office of the Governing Council, Observer

### **Appearances:**

#### **For the Student Appellant:**

Ms. Rabiya Mansoor, Law Student, Downtown Legal Services  
Ms. Jennifer Fehr, Review Counsel, Observer, Downtown Legal Services  
Mr. Rylee Raeburn-Gibson, Observer, Downtown Legal Services  
The Student

#### **For the Faculty of Arts and Science:**

Mr. Robert A. Centa, Counsel for the Faculty  
Ms. Emily Home, Student-at-Law,  
Professor Ann Tourangeau, Associate Dean, Academic, Faculty of Nursing  
Dr. Francine Wynn, Director, Undergraduate Program, Faculty of Nursing  
Professor Pamela Khan, Faculty of Nursing  
Dr. Tanya Lewis, Director, Academic Success Centre & Accessibility Services

### **The Appeal**

This appeal relates to two decisions of the Academic Appeals Committee (“The AAC”) of the Faculty of Nursing.

The first\* AAC decision, dated 1 June 2016, denied the Student's appeal of the decision of the Committee on Standing ("CoS"), dated 19 March 2016. The CoS had denied the Student's petition to void his FZ grades in two courses from Fall 2012: NUR420 and NUR461.

The second AAC decision, dated 2 June 2015, denied the Student's appeal of the decision of the Faculty of Nursing's CoS, dated 14 October 2014. The CoS had denied the Student's petition to void his FZ grades in two courses from Winter 2014: NUR410 and NUR 460 and recommended that the Student's registration in the BScN program be cancelled.

## **The Facts**

The Student's first year at the Faculty of Nursing (2011-2012) was without incident. Because he had suffered from persistent depressive disorder since the age of sixteen, he registered with Accessibility Services in December 2011 for the 2011-2012 academic year. He successfully completed his first year of studies in the program.

### **(a) Fall 2012 (NUR420 and NUR461)**

The Student's second year did not go so well. In the fall of 2012, he submitted paperwork to re-register with Accessibility Services, but his request was denied. In October 2012, the Student's mother was diagnosed with breast cancer. The Student's depression worsened, triggering an acute depressive episode. On 26 November 2012, the Student became emotionally distressed during a poster presentation in NUR461. On 28 November 2012, he reached out to Dr. Francine Wynn, the undergraduate program chair at the Faculty of Nursing to inform her that "it will be challenging" for him to complete his course requirements in good form. He then met with Dr. Wynn on 2 December to arrange a schedule for submitting his outstanding coursework. On 5 December, he wrote to Dr Wynn indicating that he would try to submit all work by 18 December 2012, but should he be unable to do so, he would request a leave of absence from the program.

On 14 December, the Student attempted to arrange extensions with the instructors of NUR420 himself. One of them granted an extension to 24 December. On 15 December, Dr. Wynn wrote to the Student informing him that she had overridden the extension the instructor had granted him and asking the Student to make an appointment with her for further clarification. On 19 December, the Student met with Dr. Wynn. There is considerable disagreement as to what Dr. Wynn told the Student in that meeting. The Student insists that she told him that he had the option of receiving an incomplete grade in his two courses with outstanding assignments, of late withdrawal (WDR status) or of submitting his assignments much later, at the end of a planned leave of absence. Dr Wynn insists that she made no such assurances. What is clear is that on that day, the Student submitted a request for a leave of absence for three terms, which he was granted.

The Student did not submit the required assignments in NUR420 and NUR461. As a result, he was assigned a failing grade (FZ) by the CoS on 11 January 2013. The CoS sent him a

---

\* This is the later AAC decision, but it concerns an earlier set of underlying facts. We order them in the chronology of the underlying facts, rather than of the AAC decisions.

letter that day to inform him of his failure. The Student was on a leave of absence and suffering from a number of illnesses. He did not read or even open the letter from the CoS of January 11. The Student met again with Dr Wynn on 5 June 2013 to discuss the possibility of recommencing his studies in the Fall of 2013. It was at this time that he first learned that he had been assigned failing grades in NUR420 and NUR461. Dr. Wynn informed him at that time that it was too late to appeal those grades.

(b) Winter 2014 (NUR460 and NUR410)

The Student returned to the Nursing program in the fall of 2013. Once again, he applied for and was denied accommodations through Accessibility Services. He retook NUR420 and NUR461 and passed them. In January 2014, following discussions with the Office of the University Ombudsperson, the Student was re-registered with Accessibility Services on the basis of his depression. In the winter of 2014, as an intimate seven-year friendship came to an end, the Student suffered another acute depressive episode that continued on to the summer of 2014. As a result, he did not complete the coursework in NUR460 and NUR410. He was assigned grades of incomplete in those courses.

On 14 July 2014, the Student was informed by the CoS that he would have to submit the outstanding assignments in NUR460 and NUR410 by 15 August in order for grades to be submitted by the deadline of 30 August. In that same letter, the CoS made clear that should he fail to submit his assignment by the deadline, he would receive a grade of FZ, and this would result in “the termination [of his enrolment] from the program.”

The Student did not submit the outstanding assignments by the 15 August deadline. Instead, he submitted the final assignment in NUR460 on 25 August and the final assignment in NUR410 on 29 August. He claims that he misread the letter of 14 July 2014, believing the deadline for submission to have been 30 August, rather than 15 August. The Student submits that he misread the letter because of his then-undiagnosed ADHD – a disorder that often manifests itself in inattention to detail and distraction. Neither of these assignments was graded.

The Student received a letter dated 27 August 2014 informing him that because his assignments had not been received on time, he was awarded a grade of FZ in both NUR410 and NUR460. Due to his failure in these courses, the Student’s registration in the nursing program was terminated.

The Student now appeals the AAC’s decisions, seeking the following remedies:

1. Reinstatement in the nursing program; voiding all FZ grades and allowing his final assignments in NUR410 and NUR460 to be graded.
2. In the alternative, he seeks reinstatement in the nursing program; WDR status in NUR420 and NUR461 and to be allowed to complete new assignments in NUR410 and NUR460 and to have those assignments graded.
3. In the further alternative, he seeks reinstatement in the nursing program; WDR status in all four courses, and to be allowed to re-take NUR410 and NUR460.

## Decision

### (a) Fall 2012

The Student's first appeal (of his failing grades in NUR420 and NUR461) is unusual because of the long delay from the underlying facts to the time of the Student's appeal to the AAC. The Student was sent a letter on 11 January 2013 informing him that he had been assigned grades of FZ in NUR420 and NUR461, but it was not until 23 February 2016, more than three years after receiving this first letter, that he launched his appeal. According to the Faculty of Nursing's Undergraduate Calendar, students have six months from the time of the original decision to launch an appeal.

The Student argues that he failed to launch a timely appeal of his failing grades in NUR420 and NUR461 for two reasons. First, he was not aware of the failing grade for some time because he was prevented from attending to his mail because of his medical and psychological issues at the time. He had taken a leave of absence and was suffering from a number of psychological conditions and, subsequently, from other medical conditions, as well. Second the Student argues that when he was in a position to begin to think of these things again, on 5 June 2013, Dr. Wynn informed him that it was too late to launch an appeal. Once he retained legal counsel, in the Summer of 2015, the Student became aware that he was still able to launch an appeal of his failing grades. His appeal was launched on 23 February 2016.

The matter of timeliness is decisive in this case. The Student launched his appeal long after the six-month deadline from the time of the original decision. Indeed, he did not launch his appeal until more than three years after that decision.

The Student argues that his delay is not his fault. The first delay was a result of his failure to open his mail while he was on a leave of absence. There is no suggestion that the Faculty failed in any way to take reasonable steps to ensure that the Student was apprised of its decision. The Student cannot use the fact that he chose not to read correspondence from the university as grounds for extending the deadline of his appeal.

The Student also argues that his further delay in filing an appeal is the fault of Dr. Wynn. He alleges that Dr. Wynn falsely suggested on 4 May 2013 that he no longer had the right to appeal his failing grades in NUR420 and NUR461. The Faculty denies this allegation. But even if that allegation is true, it still does not help the Student's case. For the Student was still in no hurry to appeal his failing grades in NUR420 and NUR461 even after he acknowledges that he was aware of his right to appeal. The Student began working with Downtown Legal Services in July 2015, but he only submitted his appeal on 23 February 2016, more than six months after any date in July of 2015.

The Student's suggestion that he was late once again in submitting his 2012 appeal because he was focused on his other 2014 appeal is not grounds for extending the deadline for the 2012 appeal. It was entirely within his means to instruct counsel to bring both appeals in the fall of 2015, but he chose not to do so.

Finally, the Student argues that the Faculty has waived any right to raise arguments of delay simply because it responded to the substance of the Student's argument in this case. We disagree. The Faculty has shown a willingness to respond to the Student's argument on its merits as well as to point out its lateness. These are not mutually exclusive positions. Rather, they simply show that the Faculty may insist on the administrative need to ensure timeliness while also providing the Student with substantive reasons for the dismissal of his claim in their reply.

But even if we were to leave the issue of timeliness to one side, there remains the question of the merits of the Student's appeal on this issue. Was the Student fairly treated by the Faculty of Nursing when it assigned him failing grades in NUR420 and NUR461?

It is clear that the Faculty of Nursing could have offered accommodations to the Student in the fall of 2012 that it did not. Had the Faculty simply assigned him grades of incomplete (INC) in NUR420 and NUR461, (as they did when a similar problem arose in the winter of 2014) or if they had granted him deferred standing (SDF) in those courses, the result might very well have been different. It seems clear, also, that matters could have been dealt with more effectively had Accessibility Services granted the Student accommodations in the fall of 2012. And (if we are to believe the student's account), things might also have turned out differently if Dr. Wynn had not misled him into believing that he would avoid failing grades if he took a leave of absence.

All three of these issues are troubling to this committee. Although there are no procedural irregularities in the Faculty's unwillingness to grant the Student INC or SDF status in NUR420 and NUR461, it is not clear why these options were not made available. The Faculty insists that SDF status was not granted simply because the student did not petition for that status. This appears to be standard policy in the Faculty, but it led to an unfortunate and possibly avoidable result for the Student. It is only made worse by the fact that the Student did not have Accessibility Services to assist him in working through this difficult period in his life. And if it is true that the Student was given assurances that he would avoid failures by taking a leave of absence, this is even more cause for concern. We hope that the Accessibility Services and the Faculty of Nursing will both take this committee's decision as a call to improve the service they provide in ways that will avoid this sort of situation arising in the future.

That said, we cannot say that the Student was treated unfairly by the Faculty of Nursing or that the decisions of the AAC or of the CoS were unfair. The Student was given deadline extensions in two courses and he was allowed to re-enrol in the program despite having failed two courses. Had this been the end of the affair, he would have been able to complete the program upon his return. Although the Student did not receive all the accommodations that might have been offered, his treatment by the Faculty of Nursing was in accordance with faculty policies and these policies were administered fairly.

(b) Winter 2014

In the Winter of 2014, the Student was accommodated much more generously than he had been in the fall of 2012. Unlike in 2012, he was registered for accommodations with Accessibility Services at the time. Unlike in 2012, when the Student suffered a depressive

episode, he was assigned incomplete status (INC) in two courses, allowing him to take several months to complete his outstanding coursework. Unlike in 2012, there is no suggestion that the Faculty misled him about how they would treat his case. He was informed in the clearest possible terms of the deadline for submission of his work and of the consequences of failure to do so. Given the long extension granted to the Student and the clarity of the Faculty's expectations, there is simply no basis for the suggestion that the Student was unfairly treated in this case.

### **Disposition and Recommendation**

This committee was impressed with the Student's seriousness and his desire to continue with the BScN program at the University of Toronto. It is clear that he is capable of completing the necessary coursework under the right conditions. But that is not the question before us nor was it the question before the AAC or the CoS. The Faculty of Nursing policies for dealing with late assignments were fair and, notwithstanding the problems in the process identified above, they administered them fairly.

Both of the Student's appeals are hereby dismissed. The Student was appropriately awarded failing grades in four courses in the BScN program. In keeping with the standards of that program, the CoS was correct in its decision to terminate the Student's enrolment in that program.