



FOR INFORMATION

OPEN SESSION

TO: Academic Board

SPONSOR: Mr. Christopher Lang, Director, Appeals, Discipline and Faculty
Grievances

CONTACT INFO: christopher.lang@utoronto.ca

PRESENTER: See Sponsor

CONTACT INFO:

DATE: May 19 for May 29, 2017

AGENDA ITEM: 15b

ITEM IDENTIFICATION: **Academic Appeals Committee, Individual Reports, Spring 2017**

JURISDICTIONAL INFORMATION:

Section 2.1 of the *Terms of Reference of the Academic Appeals Committee* describes the function of the Committee as follows:

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 and to report its decisions, which shall be final, for information to the Academic Board. The name of the appellant shall be withheld in such reports.

Section 5.3.4 of the *Terms of Reference of the Academic Board* provides for the Board to receive for information Reports of the Academic Appeals Committee without names.

GOVERNANCE PATH:

1. Agenda Committee [for information] (May 17, 2017)
2. **Academic Board [for information] (May 29, 2017)**

PREVIOUS ACTION TAKEN:

The last semi-annual report came to the Academic Board on November 24, 2016.

HIGHLIGHTS:

The purpose of the information package is to fulfill the requirements of the Academic Appeals Committee and, in so doing, inform the Board of the Committee's work and the matters it considers, and the process it follows. It is not intended to create a discussion regarding individual cases or their specifics, as these were dealt with by an adjudicative body, with a legally qualified chair and was bound by due process and fairness. The Academic Appeals Committee's decisions are based on the materials submitted by the parties and are final.

FINANCIAL IMPLICATIONS:

There are no financial implications.

RECOMMENDATION:

For information.

DOCUMENTATION PROVIDED:

- Academic Appeals Committee, Individual Reports, Spring 2017

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.

**THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

Report # 388 of the Academic Appeals Committee
May 8, 2017

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Tuesday, March 28, 2017 at 8:45 a.m., at which the following members were present:

Ms. Sara Faherty, Chair
Professor Hugh Gunz, Faculty Panel Member
Mr. Mohammad Amin, Student Panel Member

Hearing Secretary: Ms. Krista Osbourne, Administrative Clerk and Hearing Secretary, Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

Mr. F.Z. (the Student)
Mr. Cormac Donovan, Student Lawyer, Downtown Legal Services
Ms. Jennifer Fehr, Staff Lawyer, Downtown Legal Services

For the Division, Faculty of Arts and Science/Woodsworth College:

Professor Anne-Marie Brousseau, Associate Dean, Undergraduate Programs
Mr. Rob Centa, Paliare Roland
Ms. Emily Home, Paliare Roland, Articling Student

I. The Appeal

This is an appeal from a decision of Professor Adrienne Hood, then Acting Associate Dean, Undergraduate Faculty of Arts and Science, dated January 30, 2015 reviewing the decision of Jamie Stafford, Chair of the Department of Statistical Science, denying the Student Appellant's request to change his grade in STA 302, *Methods of Data Analysis*, from 70 to 80 by reallocating the weight of the Student Appellant's missed October 23, 2012 term test to the deferred final exam he wrote on June 24, 2013.

II. The Facts

The Student Appellant graduated from Woodsworth College, majoring in mathematics and statistics, in November 2013. During the fall term of 2012 the Student Appellant enrolled in two courses that both met on Tuesday and Thursday mornings. STA 62, *Stochastic Processes*, met on the University

of Toronto's Scarborough Campus. The timing for STA 62 was different on the two days: it met on Tuesdays from 8:00 am to 9:00 am and on Thursdays it met for longer, from 8:00 am to 10:00 am; STA 302, *Methods of Data Analysis* met on Tuesdays from 10:00 am to 12:00 noon and on Thursdays it ended earlier, beginning at 10:00 am but running only until 11:00 am on the University's St. George campus in downtown Toronto. The two campuses are about thirty kilometers apart. In neutral traffic conditions it should take between 30 and 40 minutes to drive between the two campuses. Public transportation options entail a combination of bus rides, train rides, and walking that should take about an hour and fifteen minutes provided there are no disruptions. The Student Appellant reports that he relied on public transportation.

Note that on Tuesday mornings this meant the Student Appellant had one hour to get from his Scarborough class ending at 9:00 am to his St. George campus class that began at 10:00 am. He reports, classes start at ten minutes after the hour, or in this case, 10:10 am. Given the length of the trip, this was an ambitious transportation plan under the best of circumstances. At best, he could hope to arrive to his St. George campus class five minutes after it started.

On Thursdays, the plan was entirely unfeasible: the Scarborough campus *Stochastic Processes* class ended at 10:00 am. It was absolutely impossible for the student to be on the St. George campus in time for the 10:10 start time of the *Methods of Data Analysis* class. Since the St. George campus class went only until 11:00 am on Thursday mornings, attendance at the Thursday meeting of both of these classes was physically impossible. The second class would be ending about fifteen minutes before the student arrived from the Scarborough campus. The student was aware of the obstacles posed by this schedule.

On October 23, 2012, a Tuesday, the student was faced with a conflict. The earlier morning class, *Stochastic Processes*, which met at Scarborough from 8:00 to 9:00 am, had a homework assignment due. The student appellant reports that the teacher would not accept homework assignments via email, or later in the day. The student also said that he did not know anyone in the class whom he could ask to hand in the assignment on his behalf, and points out that the assignments were only accepted at the end of class, not at the beginning of class. This was, in part, because the instructor would discuss the assignment during the class, and students were expected to alter their written work according to the instructions and tips given during class. For these reasons, the Student Appellant believed his only option to hand in that day's assignment, which was worth 5% of his final mark, was to attend class and hand it in personally at the end of class.

This posed a problem, because there was a midterm that was worth 25% of the final mark scheduled in the second class, *Methods of Data Analysis*, at 10:00 am on the St. George campus.

After his class *Stochastic Processes* class ended at 9:00 am, the Student Appellant set out on the TTC trip from Scarborough to the St. George campus, optimistic that he would arrive in time to write and perform well on the *Methods of Data Analysis* midterm. Unfortunately, he did not arrive in time. Even though the predicted average travel time was one hour and fifteen minutes, the Student Appellant did not arrive at his midterm until beyond 10:40 am. The Student Appellant does not recall why the trip took twenty-five minute longer than usual. He did not attempt to write the midterm that day.

The STA302 *Methods of Data Analysis* syllabus set forth the following policy regarding missing the midterm:

“There is no makeup test. If the test is missed for a valid reason, you must provide appropriate documentation such as the University of Toronto Medical Certificate, University of Toronto Health Services Form, or College Registrar’s Letter. You must submit this documentation to the course instructor (Hadas Moshonov) or the Departmental Office (SW6018) within one week of the test. Print on it your name, student number, course number and date. If documentation is not received in time, your test mark will be zero. If the test is missed for a valid reason, its weight will be shifted to the final exam.”

[Syllabus, *Methods of Data Analysis*, Fall 2012; Student Appeal, Exhibit C].

The Student Appellant met with Hadas Moshonov, the course instructor, on October 30. He presented her with a copy of his ROSI Timetable and some TTC transfers, which documented the reason for his lateness to the 10:00 am midterm. At this meeting, Professor Moshonov told the student appellant that she would decide the question later and let him know of her decision by email.

The Student Appellant reports that he had an informal conversation with Professor Moshonov in passing on December 4, 2012. He asked about her decision on the missed midterm. He recalls that she told him she was waiting to see his final exam mark before deciding. At that time, the instructor and the Student Appellant believed he would be writing the final exam, which was scheduled for December 13th, nine days later.

As it happens, however, the Student Appellant did not write his exam that week. He missed that exam, and ended up writing a deferred exam on June 24, 2013. He was informed of the mark for that exam shortly thereafter. On July 4, 2013 he inquired about the raw score and was answered on July 5, 2013. When the course grade was made available, it became clear that the weight of the midterm had not been shifted to the final exam.

It was not until eight months later, in March of 2014, however, that the Student Appellant followed up. On March 6 of 2014 the student contacted Professor Moshonov, asking to discuss his exam in the course he had attended in the Fall of 2012.

Professor Moshonov informed the Student Appellant that she was no longer in Toronto in an email dated March 12. They commenced their discussion via the email exchange presented as Exhibit I in the Student Appellant’s materials. When the Student Appellant inquired about the breakdown of his final grade, on March 19, 2014, he seemed to assume the instructor had found his reason for missing class the day of the midterm was valid, writing “As your fall course only had one assignment instead of two in which I got a 63% plus I had submitted documentation within one week of missing term test, should my course mark be [calculation]?” In support, the Student Appellant cited a policy from the University of Toronto campus at Mississauga. She replied on March 24th, five days later, “Your reason for missing the midterm test was not valid and hence your mark in the test was 0.” [Student Appeal, Exhibit I, email dated March 24, 2014.] In a later email she told the Student Appellant that she had consulted with higher officials and learned that a TTC transfer is not proof for a valid reason to miss a test. [Student Appeal, Exhibit I, email dated March 30, 2014.]

The higher officials with whom Professor Moshonov consulted seem to have relied on the Faculty of Arts and Science policy. Its 2013-2014 calendar instructs students to avoid course conflicts:

“ROSI does not check for course time conflicts, so plan your schedule carefully.

“Once you have decided which courses you are eligible to take, make sure that none of your choices are offered at conflicting times. You can find a weekly schedule worksheet here to help you create a conflict-free schedule. If you enrol in courses which conflict with one another, you do so at your own risk and you cannot expect special consideration from instructors as a result of the conflict.”

The Student Appellant responded to Professor Moshonov, suggesting that the U of T Registrar had confirmed that 1 hour between two campuses is a legitimate conflict warranting special consideration [Student Appeal, Exhibit I, email dated April 23, 2014.] The Student Appellant did not identify which registrar made that confirmation in his email, which may have confused Professor Moshonov. However his Exhibit N includes language from the UTM website. The heading reads “I have an exam at UTM in the morning and an exam at St. George/UTSC in the afternoon. What do I do?” Of course, in this case the student did not have exams on two different campuses. This policy appears to refer to final examinations, not midterms, In any event, since it is the University of Toronto at Mississauga policy, it is not relevant.

To this the instructor replied “Please contact your college directly regarding this issue.” [Student Appeal, Exhibit I, email dated April 27, 2014.]

The Student Appellant complied with this request, bringing the matter to Alison Gibbs, Associate Chair for Undergraduate Studies in Statistics and Cheryl Shook, the Registrar of Woodsworth College. Cheryl Shook, informed the Student Appellant that she would be managing the matter. On June 6, 2014 she communicated the response to the student: “It is my understanding that [the Student Appellant] does not have a record of an agreement between him and the instructor to re-weight his course grade to discount the missed test. In the absence of such a record, it is the position of the Department of Statistical Sciences that the course grade, as it was submitted, stands.” [Student Appeal, Exhibit I, email dated June 6, 2014.] After this the Student Appellant attempted to contact Jamie Stafford, Chair of the Department of Statistical Sciences, who declined to meet with him, and referred him back to the Registrar. [Student Appeal, Exhibit I, email dated September 8, 2014.]

The exchange was elevated to a petition to Adrienne Hood, who declined to alter the decision of the department in the absence of written documentation of an agreement with the instructor to re-weight his exam. [Student Appeal, Exhibit A, email dated January 30, 2015.]

The Student Appellant responded to Associate Dean Hood’s decision by asserting that he did have the instructor’s consent to re-weight the final exam, and that the consent was in the text of the course syllabus quoted above, in which the instructor explained.

“There is no makeup test. If the test is missed for a valid reason, you must provide appropriate documentation such as the University of Toronto Medical Certificate, University of Toronto Health Services Form, or College Registrar’s Letter. You must submit this documentation to the course instructor (Hadas Moshonov) or the Departmental Office (SW6018) within one week of the test. Print on it your name, student number, course number and date. If documentation is not received in time, your test mark will be zero. If the test is missed for a valid reason, its weight will be shifted to the final exam.”

III. Decision

Jurisdiction of the Student Appeal Committee

In its submission dated June 12, 2015, the Faculty of Arts and Science raised a jurisdictional issue, citing section 11.1 of the Faculty of Arts and Science Academic Handbook, which states that academic appeals involving marking conclude “with the Dean’s Office being the final level of appeal.” This assertion contradicts the mandate of the Academic Appeal Committee, which is to hear appeals from any student “as to the applicability to his or her case of any academic regulation of the University.” [*Policy on Academic Appeals Within Divisions.*] Indeed, the University of Toronto Governing Council’s policy expressly instructs Divisions to advise any student whose appeal has been denied of his or her further right of appeal. [*Policy on Academic Appeals Within Divisions.*]

A Division may have more than one set of processes for inter-divisional appeals, and it can prevent some appeals from proceeding to its internal appeal board. However, Divisions may not circumvent the University level appeal process by preventing appeals from coming to the Academic Appeal Committee of Governing Council.

It is possible that the Academic Handbook language cited is meant to refer exclusively to assessments of the academic merit of a student’s work. In that case, the policy is correct. This Committee is not empowered to consider the academic merit of the work submitted, as this Committee has no expertise in the field of statistics. However since the student is raising issues around the rules for determining whether the reasons for an absence were valid the Committee has jurisdiction to decide this appeal. Its role will be to determine whether the Division’s policies were applied fairly, and the standard for their application is reasonableness.

Who Determines Whether the Reason For an Absence Is Valid?

The facts cited above, about which there is little disagreement start and end with a rule set forth in Professor Moshonov’s syllabus for *Methods of Data Analysis*. That rule establishes that students who miss the midterm will not have a second opportunity to sit for the test. Instead, a student with a valid reason for missing the test can have the weight of the midterm shifted to the final exam. The syllabus is silent on the issue of what might constitute a valid reason for missing the test, although it gives a University of Toronto Medical Certificate as an example of appropriate documentation, and suggests students could proffer a College Registrar’s Letter. The reference to medical certificates suggests that a valid reason might entail illness. The reference to a College Registrar’s letter suggests that there may be some circumstances under which a College’s policies would be considered as relevant to the validity of an absence.

The syllabus does not directly answer the question of who determines whether an absence is valid. However it instructs students to submit their documentation to the course instructor or the departmental office. The Student Appellant apparently assumed that the instructor would determine whether his absence was valid, as he brought her his documentation, he asked her what she had decided when he saw her in December of 2013, and he followed up with her in March of 2014. This assumption seems reasonable.

The Student Appellant attempted to influence the instructor’s decision by referring her to UTM’s policy on final exams. He also suggested that the University Registrar had a policy saying one hour travel time between two campuses constituted a legitimate reason to miss an exam. It is not clear that either of those points was controlling, but in any event, the instructor did make an effort to determine whether there was a relevant policy she should follow. The instructor told the Student Appellant that she had “consulted with higher officials” and determined that the TTC transfer was not valid.

Nothing in the syllabus language suggests what specific process the instructor would follow to determine whether an absence was valid. Under these circumstances, the process that she followed (consulting with officials) seems reasonable.

Did the Instructor Agree to Reallocate the Weight of the Midterm to the Final Exam?

At one point (in December of 2013) the instructor is said to have told the Student Appellant she was waiting to see how well he performed on the final exam before she decided whether his absence on the day of the midterm was valid. [Exhibit G, Affidavit of Student Appellant]. This is incongruous with the policy written in the syllabus, which does not contemplate taking performance on other assignments into consideration. It is hard to conceive how the score on the final exam would logically weigh on the decision about the validity of the absence. The instructor may not have wanted the student to end up failing the course as a result of the missed midterm. However taken at face-value this comment is difficult for the Committee to reconcile with the system set forth in the course syllabus. The assertion that she made this point, however, does not constitute an agreement to reallocate the weight of the midterm to the final exam.

In her decision dated January 30, 2015, Associate Dean Hood wrote, “While I understand that you might have had a verbal agreement with Professor Hadas to [use your June 2013 deferred final exam grade as the sole basis of the final grade], it is also the case that the professor has left the university and that there is no existing documentation to support your claim.” In fact, the Student Appellant has never asserted that the instructor orally agreed to move the weight of the midterm to the final exam mark. Rather, she told the student, in December, that she was waiting to see the results of his final before she decided. (Exhibit G, Affidavit of Student Appellant.) The December comment was not an oral agreement to calculate the Student Appellant’s mark exclusive of the missed midterm, and the only definitive answer the instructor ever gave on the question was contained in her March, 2014 emails, in which she explained that the reason for the absence was not a valid one. The undocumented December, 2013 conversation is confusing because it invoked a new factor in the decision (performance on the final), but the ultimate decision was based on the language set forth in the syllabus, was the result of consultation with other U of T personnel, and was consistent with the Faculty of Arts and Science policy.

The Student Appellant’s response to Associate Dean Hood’s assertion that there was no written agreement to re-allocate the midterm grade weight was to assert that the syllabus itself constituted a written agreement. He wrote, “I am unsure if you got the consent written by instructor which I put into Registrar’s mailbox in December....Namely the 3-page course syllabus PDF clearly states on last page that “there is no makeup test” and “if the test is missed for a valid reason, its weight will be shifted to the final exam.” He concludes with his interpretation of these sentences, “As course outline is instructor consent that test weight will be automatically shifted to exam for all students who missed test legitimately, there is no need for “any special arrangement.”

The Student Appellant’s use of the word “automatically” is not supported by the language in the course syllabus. On the contrary, the course syllabus requires students asserting a valid absence to submit appropriate documentation within one week of the missed test. The last sentence begins with the word “if,” indicating that sometimes that documentation will be found to be valid, and other times it will not be. The Student Appellant’s oral and written follow up with Professor Moshonov indicate that he was aware the instructor would be making a decision regarding the validity of his reason for missing the midterm, and that there was nothing “automatic” about it.

Further, this argument suggests that it is not the instructor's decision that determines whether an absence is legitimate, but someone else's. The Student Appellant expressly asks Adrienne Hood to make that decision. [Exhibit I, email dated February 5, 2015.] As discussed above, this is not the arrangement set forth in the course syllabus, and it is not the arrangement relied upon by the Student Appellant from July of 2013 until February of 2015.

What Constitutes a Course Conflict?

The language in the Faculty of Arts and Science Course Timetable for the 2013-2014 academic year had specific language instructing students how to plan their schedules. It had an express policy on conflicting courses, which read:

“ROSI does not check for course time conflicts, so plan your schedule carefully. Once you have decided which courses you are eligible to take, make sure that none of your choices are offered at conflicting times. You can find a weekly schedule worksheet here to help you create a conflict-free schedule. If you enrol in courses which conflict with one another, you do so at your own risk and you cannot expect special consideration from instructors as a result of the conflict.”

The Student Appellant asks this Committee to read the language very narrowly, arguing that since the two courses in which he enrolled did not directly overlap, this policy should not apply. This Committee was not persuaded by that argument. Enrolling in a course that meets shortly after (on Tuesdays) and immediately after (on Thursdays) another course might work if the two courses are in the same building, or at least on the same campus. But to do that in two courses that are separated by thirty kilometers, and take 75 minutes to travel between creates as much a conflict as if they met at the same time. The student knew that he would be unable to attend both courses regularly. He acknowledged that it was necessary for him to choose which course to attend in his email to Professor Moshonov, “Please note I mostly went to your lecture at 10 am and thus did not often go to STAC62H3 at 8-9 am at U of T Scarborough.” With this comment, the student tacitly acknowledged the impossibility of attending both classes regularly.

This Committee recognizes that there is a technical difference between classes that directly overlap and classes that do not overlap but that are located so far away from each other that the properties of time, space, and TTC travel make it either unlikely or impossible for a student to attend both. However we note that if the Faculty of Arts and Science does not accommodate one of those, it would not be reasonable to expect it to accommodate the other. The Student Appellant acknowledged, during the hearing, that the policy on Course Conflicts did not purport to set forth an inclusive list of all competing obligations that would not be given special consideration by instructors. The Committee concludes that a reasonable interpretation of the Course Conflict policy would include courses like the ones the Student Appellant chose. Even if it were not included in that policy, a regular travelling obligation that made it impossible for a student to attend a course on a consistent basis would not be one that we would expect instructors to accommodate.

Narcissistic Personality Disorder

The Student Appellant submitted extensive documentation on the disability of Narcissistic Personality Disorder. [Exhibits P (a definition of the term Narcissistic Personality Disorder from the Mood Disorders Association of Manitoba), Q (A letter from Accessibility Services dated January 18, 2010 and a consultation form completed on 29 May, 2009), R (a psychiatric note dated July 6, 2009)]

, and S (a set of Patient Encounter Notes dated May 27, 2011]. None of these documents relates to the period of time in question (The Fall term of 2012), and none of them includes recommendations about appropriate academic accommodations. This Committee cannot rely on the general or outdated documentation provided by the Student Appellant to account for or accommodate the student's specific request. There is no documentation guiding this Committee on how that disability relates to the matter at hand. It may be the case that the Student Appellant has a disorder, but the medical documentation provided was neither definitive nor up-to-date.

The student has offered no evidence, nor has he asserted, that he asked for any academic accommodations related to a disability before or during this course. Had the student been registered with the University's Accessibility Services, and had some qualified conclusions been drawn regarding what academic accommodations might allow this student to thrive, this Committee would have been able to judge whether the Faculty of Arts and Science had adequately followed those instructions, and whether the application of its policies had been fair. But here the Student Appellant is asking the non-expert members of this Committee to fashion an academic accommodation to suit his needs. That is not our province.

The accommodation of an increased grade three years after a course has closed would not be a valid remedy for the circumstances described by the Student Appellant. A disorder may have contributed to the Student Appellant's unrealistic expectations about how he would travel between the courses on Tuesdays. But the Faculty of Arts and Science gave him extensive counseling on course selection. Certainly the language in the Academic Handbook, warning students not to select conflicting courses and bluntly stating that they should not expect special consideration if they did so was unequivocal. The Student Appellant did not accept that guidance. A *post hoc* grade increase would not be a legitimate accommodation under these circumstances. While the Committee is sympathetic to the Student Appellant's situation, and can take no position on his condition, we are hopeful that with time he will learn to better manage his circumstances.

The Student Appellant's references to the fact that he is applying to graduate programs cannot be the basis for a change in his mark. The very request is problematic. For a faculty member to base a grade on any factor other than academic performance would constitute a violation of the *University's Code of Behaviour on Academic Matters* [(B)(i)(2)(c)], which forbids faculty members, "(c) to evaluate academic work by a student by reference to any criterion that does not relate to its merit, to the time within which it is to be submitted or to the manner in which it is to be performed." This Committee, which includes a faculty member, will not consider the fact that the student is applying to graduate programs as a factor in determining the appropriate mark for his course.

Conclusion

In his March 29, 2014 email to Professor Moshonov the Student Appellant acknowledged the difficulty of attending both classes due to the distance between the campuses. If he was naïve in disregarding the Faculty of Arts and Science's advice on course conflicts when he made his course selections, he quickly learned that he would often need to choose which course to attend. His decision to prioritize attending a class to hand in a homework assignment that was weighted at 5% of his final mark, rather than a class in which a 25% midterm was being administered was a poor choice. The course syllabus and the Faculty of Arts and Science policy on course conflicts, when

read together, bring this Committee to the conclusion that his absence was reasonably found to be invalid, and there was no basis for moving the weight of his midterm exam to the final exam. These policies were applied fairly to the student. This Committee sympathises with the Student Appellant's arguments about his personality disorder, but they were not adequately tied to the decisions he made, and were never translated into a viable academic accommodation. There is no evidence or suggestion that the Student Appellant asked for such an accommodation when this course was in process. His arguments about his pending applications to graduate school have no persuasive force. There is no basis for changing his final mark in STA 302, *Methods of Data Analysis*, from 70 to 80.

The appeal is dismissed.