

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

Report #425 of the Academic Appeals Committee
January 9, 2022

To the Academic Board
University of Toronto

Your Committee reports that it held an electronic hearing, conducted by Zoom on Tuesday, November 1, 2022, at which the following members were present:

Academic Appeals Committee Members:

Dr. Erika J. Murray, Chair
Professor Douglas McDougall, Faculty Governor
Ms. Dveeta Lal, Student Governor

Hearing Secretary:

Ms. Carmelle Salomon-Labbé, Associate Director, Office of Appeals, Discipline and Faculty Grievances

For the Student Appellant:

Ms. R. R. (the “Student”)

For the Faculty of Arts and Sciences

Ms. Erin McNab, Director, Faculty Governance & Curriculum Services
Professor. William Ju, Vice Dean, Undergraduate

I. Appeal

The Student appeals the June 16th, 2022 decision communicated by the Chair of the Academic Appeal Committee of Faculty of Arts and Sciences, Associate Professor, William Ju. The Academic Appeal Committee of Faculty of Arts and Sciences denied the Student's request to either revert the Student's grade in an assignment to the original grade prior to a remaking, or to have another teaching assistant or the same teaching assistant from the course re-grade the assignment in BCH210H1, *Biochemistry I: Proteins, Lipids and Metabolism*.

II. The Facts

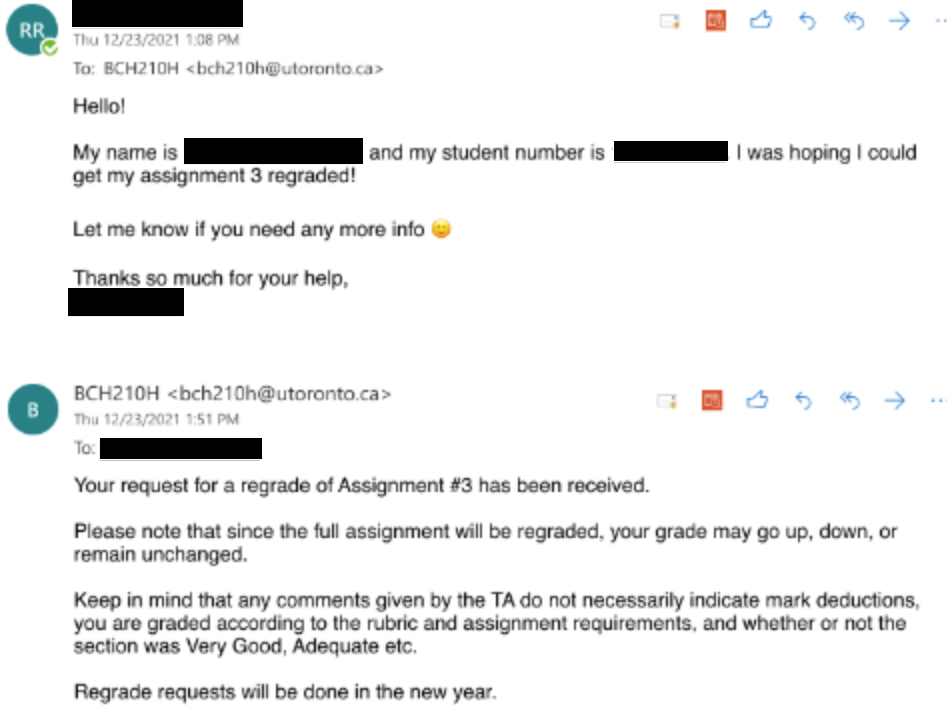
The facts of this matter, when distilled, though lengthy, are fairly straightforward. The Student ("the Student") was enrolled in BCH210H1 during the Fall term of 2021. The following is a breakdown of the assessments and associated marking scheme of the course:

- 10% Brain Break Questions after lectures (best 10 of 11 weeks)
- 15% Self-Assessment online quizzes (10x1.5% each, best 10 of 11)
- 20% Final Assessment, 36-hour completion period
- 45% Assignments (3 x 15% Assignments)

The assignment that is the subject of this appeal is one of three assignments worth 15% of the Student's grade, which was due on November 29, 2021 ("Assignment #3" or "the Assignment").

A teaching assistant ("TA") originally marked the Student's Assignment #3. On December 23, 2021, the Student was informed she received a 78% grade on the Assignment. On the same day, the Student emailed the course instructor, Professor Patterson ("the Professor"), requesting that her Assignment #3 be regraded. The Student received the following response from Professor Patterson:

Initial communication with Dr. Patterson requesting a Regrade



In the new year, on January 3, 2022, the Student received a response from the Professor indicating that the Professor had gone through the Assignment (not a TA) and that the Professor's regrade mark was 56% (a 22% drop in mark). Professor Patterson noted to the Student "What the TA gave you was more than generous", that the Student's mark was now a 56% and that "I know this probably wasn't the outcome that you were hoping for, but I do need to abide by the regarding policy." The Student responded to the Professor concerned about the 22% drop in grade and inquiring about the associated policies. Professor Patterson responded to the Student indicating that the grade was final, that "there is nothing else that can be done at this point," that "the class is very large", has "policies on regrading" and also noted to the Student to "try not to worry".

On January 7th, 2022, the Student reached out to her Registrar of the Academic Advising Office, Victoria College, in order to see how to appeal the Professor's 56% regrade. The Registrar responded asking the Student to reach out to the Undergraduate Administrator ("UG Administrator"). The Student outlined in her email to both the Registrar and UG Administrator that she understood there was a risk that her grade may go down upon a re-grading, however, she understood/expected that "Profs and TA's usually share similar expectations of what kind of work students are expected to produce". The Student submitted the request for a regrade promptly on December 23rd, the day she received the Assignment back. The Student expected the re-grading to be done by the TA or another TA, however, the Professor did the regrade on January 3rd, reducing the Student's grade by 22%. The Student explained, "This came as a shock to me as I didn't expect such a discrepancy between what the TAs expected and what Prof. Patterson expected."

On January 11th, 2022, The UG Administrator, Ms. Jennifer Haughton, responded to the Student with the Registrar cc'ed indicating that the re-marking was properly done since the Assignment was "thoroughly reviewed" by Professor Patterson, which resulted in the lower mark than the TA and that "this re-marking request is final". An hour later, the Student received an email from Ms. Yvette Ali of the Registrar noting "I thought the department would be more flexible", and that the Student had now "fully explored that option" (for an appeal/review of the regrade) and recommended that the Student not pursue the matter further and, at this point, the Student would "just" have to "live with the re-grade assigned."

On January 12th, 2022, the Student responded to the UG Administrator requesting a phone conversation. The Student noted in that correspondence that the entire process was unclear to her, was causing the Student stress and anxiety, and that the Student was seeking "a way for me to thoroughly understand the steps that lead to this decision." The Student never received a response from the UG Administrator.

On January 24th, 2022, the Student wrote to the Registrar inquiring about any appeal process and again emphasized the Student's concern that she genuinely did not think that the Department took the time to review the matter and that, when she asked about the review process, she did not receive a response.

On January 26, 2022, the Registrar responded to the Student indicating that, since the Assignment was only worth 15%, "the matter could not be escalated further (as per the rules)", however, although the department is not obligated to review a request for appeal, "it was still worth asking".

At this stage, the Student followed up with the Dean's Office to pursue her concerns and appeal. Over a 2-month period, from January to March 2022, the Student met or corresponded, and needed to follow-up on several occasions with Professor William Ju, who was Associate Dean, Student Affairs at the time (presently Acting Vice Dean, Undergraduate). Professor Ju sought to assist the Student with her request to have her regrade reviewed, indicating he was reaching out to discuss the matter with the Undergraduate Chair and then confirmed that he believed the Undergraduate Chair and himself would be "reaching out to the instructor to see if we might chat first" (i.e., before the Student pursued an appeal). Professor Ju then apologized for the matter "taking much longer than I know you wanted." It is unclear how the discussion went with the Professor, however, ultimately Professor Ju advised the Student to set up a meeting with the Associate Chair directly and to prepare an appeal to the Vice Dean directly.

The Student did so and emailed Dr. Craig Smibert, acting Undergraduate Chair of the Department of Biochemistry, on March 22, 2022. She met with Dr. Smibert on April 6, 2022. On April 27, 2022, Dr. Smibert emailed the Student to advise that he had reviewed the assignment and, "after careful consideration," supported Dr. Patterson's amended grade.

The Student then followed up by emailing Dr. Liliana Attisano, Interim Chair of the Department of Biochemistry, on April 28, 2022. On May 16, 2022, Dr. Attisano responded via email that she had also reviewed the documentation and agreed with Dr. Patterson's amended grade.

Following Dr. Attisano's decision, the Student emailed Professor Ju on May 18, 2022, for advice about next steps. Professor Ju advised the Student that the next step in the appeal process was to put together an appeal to the Faculty, with documentation, and to send it for review and consideration by the Vice-Dean, Undergraduate, Professor Randy Boyagoda.

The Student appealed to the Faculty of Arts & Science via email on May 29, 2022, requesting an official academic appeal, attaching documents explaining her rationale and providing supplementary material and correspondence. In evaluating the appeal, Dr. Randy Boyagoda, Vice-Dean Undergraduate for the Faculty, reviewed the materials provided by the Student and met with Dr. Liliana Attisano on Wednesday, June 8, 2022, to discuss the Student's appeal and the process. On June 16, 2022, Dr. Boyagoda emailed the Student with the Faculty's decision in her appeal:

I am satisfied, on behalf of the Dean, that the relevant policies and procedures associated with your request for an appeal were followed at the department level, and that your appeal was given fair consideration. This concludes the consideration of your appeal at the divisional level.

On August 11, 2022, the Student then appealed to the Academic Appeals Committee of Governing Council, raising the following three concerns:

1. that her work was not graded to a standard equitable with other students;
2. that her work ought to have been regraded by a TA, rather than the instructor; and
3. that she was insufficiently informed about how her appeal was being assessed.

The Student sought the following two remedies:

1. that her mark for Assignment #3 be reverted to the original 78%; or
2. that another or the same TA from the course re-grade her work.

The Faculty's Academic Appeals Committee dismissed the Student's appeal, finding that the appropriate procedures were followed, the Student was treated fairly, and the marking standards applied were consistent with those applied to all other students who did the assignment. Specifically, your Committee reasoned that given the low weight of the Assignment, the Student was not entitled to any remarking consideration beyond the instructor level, nonetheless she received special consideration, and that, at all stages, the Student's requests were seriously and fairly considered. The Committee also found the remedies sought by the Student were not appropriate.

III. Issues

At issue in this academic appeal is the re-grading process of an assignment worth less than 20% originally graded by a TA, re-graded 22% lower by the course Professor, and the appropriate academic appeal processes related to the remarking request.

This Committee considered the following four issues:

1. Were the relevant academic remarking policies and procedures applied correctly, consistently, and fairly?
2. Were the communications to the Student that the regraded mark is final, that there was no right to appeal reasonable, made without delay and through a demonstrably fair interpretation and/or application of the relevant policies? Was the Student entitled to any re-marking consideration beyond the instructor level?
3. Was the Faculty decision that the appropriate procedures were followed and that the Student was treated fairly, made through a demonstrably fair interpretation and/or application of the relevant policies, processes and procedures that were relied upon or invoked in its making?
4. If the Student was entitled to an Academic Appeal of the regrading of an Assignment worth less than 20% of the course mark and the appeal decisions were not made through a demonstrably fair interpretation and/or application of the relied upon relevant policies, processes and procedures invoked in its making, what is an appropriate remedy for the Student?

IV. Analysis

1. Were the relevant academic re-marking policies and procedures applied correctly, consistently, and fairly?

This Committee finds that there was unfairness and inconsistency in the application of the relevant policies at issue in this appeal. Section 5.14 Requests to Re-Mark Assignments & Terms Tests, Academic Handbook For Instructors, Faculty of Arts and Science provides that “[i]f a TA originally marked the work, the remarking request should go first to the TA and any appeal of that should go to the course instructor.” This is the policy that *should* have been followed. However, in the Student’s case, there was no TA involved in the regrading process. Instead, the Professor of the course did the regrading with a 22% reduction in the Student’s grade. The Committee found that this aspect of the policy was correctly followed since the guidance reads “should”, rather than “must”. This Committee agrees and accepts that “should” denotes a recommendation of that which is advised but not required in order to conform to the policy. However, at the hearing, this Committee questioned the fairness associated with the Professor not following the policy to have the TA who originally graded the assignment do the regrading. This Committee finds that the Faculty Committee unfairly accepted the Faculty’s argument that it would not have been appropriate for the instructor – or the department, or the Faculty – to reach out to the TA outside of the terms of their contract. The Assignment was completed on

November 29, 2021, the re-grade request was made promptly by the Student on December 23, 2021, the day the Student received the grade, which, at the hearing, the Faculty acknowledged may likely have been within the time frame of the TA's contract. Moreover, at the hearing, the Faculty was questioned by this Committee whether it is the case that, when a Student submits a remarking request near the end of an academic term of a TA grade, if it is consistent across the Faculty that such remarking requests do not generally and therefore should not go first to the TA who originally marked the work? The Faculty conceded that no, TA's are regularly engaged to do remarking at the end of academic terms and beyond, however, not in this case.

Your Committee also found that "Indeed, [the Student] independently reached out to another teaching assistant in BCH210 to ask about re-marking possibilities; this teaching assistant notes that they cannot help as they are no longer employed in a marking contract for BCH210." At the hearing and in the Student's written submissions to this Committee, the Student submitted that "this is a blatant misquote of the evidence" and speaks to the unfairness of the process and bias of the lower Committee reviewing the facts of the case. This Committee agrees with the Student. Indeed, the evidence indicates that the Student did reach out to another TA of the course for an independent re-grading. That TA, Ms. Rachel Shannon, responded indicating she "was not on the marking team for this particular assignment." The TA suggested (along the lines of the policy) that "it would be better if you asked the TA who did the mark[ing]". That TA did not in any way note that they could not help with the regrading because they were no longer employed in a marking contract for BCH210 like the Committee found and relied upon in their reasoning.

Besides being treated unfairly throughout the Student's lengthy review and appeal processes, the crux of the Student's argument in written and oral submissions is that, by having the Professor, not the TA, do the remarking, the Assignment was not graded to a standard consistent and equitable with all other students marked by TA's. Your Committee found and during the hearing before this Committee, the Faculty also argued that, since the Professor used the same rubric that was used by the TA's for all students, the grading standard of the Professors' regrade of the Student was necessarily consistent across all students in the course. This Committee does not agree and instead accepts the submission of the Student, who at the hearing, asked the Faculty member representative, Professor William Ju, if, as a scientist, they were aware of the concept of inherent biases. The Faculty conceded that certainly there can be differences in evaluators, individuals will evaluate differently even if given the same rubric, however, the Faculty then argued that this Committee needs to defer to the professionalism of the Professor. In essence, the Faculty argued that, since it was the Professor of the course who did the regrade using the same rubric as the TA's, the regrading absolutely must have been done fairly and to the same grading standard applied to all students in the course. This Committee does not agree that any grader, including professors, should be afforded absolute deference to their grading and hence why section 5.14 of the policy and other University policies exist. However, this Committee does agree that academic graders, in particular professors, ought to be accorded significant deference in their grading. At issue in this unusual case, having a 22% regrading discrepancy, is whether the Faculty's decision that the Professor's regraded mark was final, is a reasonable one, made without unreasonable delay through a demonstrably fair interpretation and/or application of the relevant policies, processes and procedures that were relied upon or invoked in its making? This Committee unequivocally finds, "no".

The unfortunate and unique circumstances before this Committee and faced by the Student is the significant 22% discrepancy in re-grading, which, on its face, raises the valid concern of a reasonable apprehension of bias and thus unfairness. Of importance to this Committee is there was no evidence to indicate that the Student was incorrectly awarded additional grades for questions on the Assignment, in other words, it is not the case nor the submission of the Faculty that the TA made fundamental calculation errors. The fact before this Committee, as well as the lower appellant levels, is essentially that the Professor did the re-grading less generously than the TA. This Committee finds that it is not necessary for the Student to prove whether there was inherent, implicit or unconscious bias in the Professor's re-grading in order to bring the fairness of the re-grade into question. Indeed, the fairness of a decision-making process can be undercut by the mere perception of bias, where that perception is deemed to be reasonable. In this unique case, this Committee finds the 22% discrepancy in re-grade raises a reasonable apprehension of bias on part of the Professor, particularly when the policy provides that the re-marking should first go to the TA who did the original marking, and importantly, the evidence indicates the Professor explaining to the Student that the standard applied by the TA "was more than generous" than that of the Professors.

2. Were the communications to the Student that the regraded mark is final, that there was no right to appeal reasonable, made without delay and through a demonstrably fair interpretation and/or application of the relevant policies? Was the Student entitled to any re-marking consideration beyond the instructor level?

Your Committee reasoned that given the low weight of the Assignment, the Student was not entitled to any remarking consideration beyond the instructor level. This Committee disagrees. This Committee finds that, despite section 5.14 providing that "[a]n appeal of a mark beyond the instructor may only be made for an item worth at least 20% of the course mark", the Special Consideration Appeal Policy should be applied to this case. The Special Consideration Appeal Policy, which was highlighted in evidence before your Committee, provides the grounds that the Student was eligible for remarking consideration beyond the instructor level. Indeed, the Arts & Science Academic Calendar provides:

Special Consideration Requests to Academic Department(s): Special consideration requests to academic department(s)/unit(s) (sometimes called Academic Appeals) concern issues arising within a course that relate to the pedagogical relationship of the instructor and the student, such as the organization of a course, grading practices, or conduct of instructors. These fall within the authority of the academic unit sponsoring the course and are not the subject of Faculty petitions. Students are encouraged to discuss any issues regarding the academic aspects of a course first with the instructor. It is recommended that such discussions should be documented in writing where appropriate. The successive stages of special consideration request after the course instructor must be documented in writing. These successive stages are: the Undergraduate Coordinator or Associate Chair; the Chair or Program Director of the Academic Unit; then the Office of the Dean, Faculty of Arts & Science. A special consideration request must have been reviewed at the academic unit level before being referred to the Dean's Office; requests to the Dean's Office must be in writing

Given that section 5.14 provides that an appeal of a mark beyond an instructor may only be made for an item worth at least 20% of the course mark, this Committee did question the Faculty representatives at the hearing why the Student's appeals were considered by the Academic Unit, the Dean's Office, the Division, the Academic Appeals Committee ("the University Units") and now were before our Committee. The Faculty explained they "felt it was important that the

Student be heard”. In other words, the Faculty made clear to this Committee that there was no dispute that the Student should be accorded procedural fairness. Importantly, greater procedural fairness protection is usually required if a decision is considered final, but a decision need not be final in order to attract a high degree of fairness protection (See *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817).

This Committee finds it concerning that if it was not for the tenacity of the Student and the willingness of Professor William Ju to take the Student’s concerns of the 22% discrepancy in regrade seriously, the Student may have been left with the incorrect understanding that the “re-grade was final” (per the UG Coordinator), that “nothing else could be done” (per Professor) and that the Student would “just” have to “live with the re-grade assigned.” (per the Registrar). This Committee questioned and it was confirmed at the hearing before this Committee, that the delays in communications to the Student between January to April 2022, as between the UG Coordinator, Faculty and Dean’s Office (“the University Units”) were related to all of the involved University Units trying to ascertain what was the correct policy/procedure to follow given the 22% in regrade discrepancy and an assignment worth less than 20%. This Committee finds that the Student ought to have been promptly and clearly informed that, per the Special Considerations Policy, she could make an Academic Appeal of the Professors regrade in successive stages starting with the Undergraduate Coordinator or Associate Chair; the Chair or Program Director of the Academic Unit; then the Office of the Dean, Faculty of Arts & Sciences. Importantly, this Committee acknowledges that all such Special Consideration Requests will not nor shall be granted an appeal by the department/units. However, this Committee finds that, in order to be procedural fair to students, it is important that students not be told that “there’s nothing else that can be done” and “not to worry”, but instead that they be properly and promptly informed of their ability to make an appeal. This Committee emphasizes that, in many cases, appeals may be denied, however, in such circumstances to be procedurally fair, students should be provided with some form of reasoning as to why their appeal is being denied.

This Committee finds that the Professor unfairly indicated to the Student that the grade was final, that “per the policies” “nothing else could be done” and to “try not to worry”. Similarly, it was unfair for the Registrar to inform the Student that she would “just” have to “live with the re-grade assigned”. Furthermore, this Committee finds that it was unfair and procedurally incorrect for UG Administrator to tell the Student that the “re-marking request is final” without any explanation and/or reference to the relevant policy and then for the UG Administrator to not respond when the Student replied inquiring about the review process and how the Student could pursue an appeal. All of the involved University Units ought to have been more familiar with the relevant policies and instead informed the Student when she repeatedly inquired that, pursuant to section 5.14, an appeal of a mark beyond the instructor may only be made for an item worth at least 20% of the course mark, however, that pursuant to the Petitions and Appeal Policy, the Student could make a Special Consideration Request for Academic Appeal to the Department. This was not done. Instead, this Committee finds the Student was unfairly given the run around for months by the involved University Units, resulting in unreasonable delay and procedural unfairness.

3. Was the Faculty decision that the appropriate procedures were followed and that the Student was treated fairly, made through a demonstrably fair interpretation

and/or application of the relevant policies, processes and procedures that were relied upon or invoked in its making?

This Committee finds that, despite the Student, months later, finally being informed of her right to appeal, her appeals were not fairly heard or made through a demonstrably fair interpretation and/or application of the relevant policies, processes and procedures that were relied upon or invoked in its making. This Committee does not agree with the Faculty Committee's finding that "At all stages, [the Student's] requests were seriously and fairly considered." It appears clear to this Committee, pursuant to the procedural policies at issue, that once the Student was granted her appeal under Special Consideration, the Student's appeal ought to have first gone and have been considered by the UG Coordinator according to the following procedures under section 5.14:

- If the UG Coordinator believes a remarking is justified, then he or she will select an independent reader who will be given a clean, anonymous copy of the work. Without knowing the original assigned mark, and taking into account the context of the course for which it was submitted, the independent reader shall determine a mark for the work."; and
- If the recommended [i.e. independently graded] mark differs substantially from the original mark, the UG coordinator shall determine a new mark, taking both marks into account.

Instead, in the case of the Student, the UG Administrator informed the Student that the remarking was properly done since the Assignment was "thoroughly reviewed" by Professor Patterson, "which resulted in the lower mark than the TA" and that "this re-marking request is final". Importantly, when the Student responded inquiring about what processes and procedures were followed by the UG Administrator in reaching this decision, the Student received no response. It appears to this Committee that either the AG Administrator incorrectly thought that there was an absolute concrete no right of appeal on assignments worth less than 20% (issue addressed above), and/or was unaware of the procedures regarding having an independent grader (policy outlined directly above), and/or the UG Administrator did not believe a remarking was justified, despite a 22% discrepancy in regrading. It also appears to this Committee that Professor William Ju recognized the substantial discrepancy in regrade and the justification for the Student needing to have her case actually "heard", hence his commitment to the Student to speak to the Professor and his assistance in ensuring the Student was informed of her paths of appeal, albeit delayed and convoluted. This Committee commends Professor William Ju for his student dedication and integrity. However, this Committee finds it unfortunate and unfair that, at no point, did any of the involved University Units responsible for reviewing the Student's regrade, including the Faculty Committee, seek to have an independent grader involved, specifically by giving them a clean anonymous copy of the work without knowing the original assigned mark. Instead, this Committee finds that there was no independence in the review process of the Professor's regrade. All of the involved University Units, including the UG Administrator, the UG Chair, the Interim Chair, the Vice-Dean UG, instead, while knowing the original mark and without any anonymity, "looked over the Assignment" and "fully supported" the Professors regraded mark. This was procedurally unfair and unreasonable for the Faculty and your

Committee to find that the appropriate procedures were followed. In summary, this Committee finds that, by having no independent reader, no clean copy and no anonymity with respect to the review/appeal process, the Student was not treated fairly. The regrading review process was not made through a demonstrably fair interpretation and/or application of the relevant policies, processes and procedures that were relied upon or invoked in its making.

4. If the Student was entitled to an Academic Appeal of the re-grading of an Assignment worth less than 20% of the course mark and the appeal decisions were not made through a demonstrably fair interpretation and/or application of the relied upon relevant policies, processes and procedures invoked in its making, what is an appropriate remedy for the Student?

Based on the detailed reasoning above, this Committee finds that, while the Student was not entitled to an Academic Appeal of re-grading since the Assignment at issue was worth 20% of the course mark, the Student was entitled to be informed of her right to appeal under the Special Consideration policy. Once the involved University Units accepted the Student's appeal under the Special Consideration Policy, the Student was entitled for the involved University Units to review the Student's appeal of the regrade through a demonstrably fair interpretation and/or application of relevant policies, processes and procedures invoked in its making. Specifically, by selecting an independent grader and following the policy. This was not done. This process would have been prompt, fair to the Student, and alleviated countless hours, communications, meetings, and appeals, including before this Committee, should the Department have followed the policies in place. The issue now before this Committee is what is an appropriate remedy for the Student? This Committee did briefly contemplate requesting the Department to select an independent grader and having the relevant policy followed, however, in view of the procedural unfairness and unreasonable delay experienced by the Student, this Committee finds reverting the Student's grade in the Assignment to the original 78% is an appropriate remedy in the unique circumstances of this matter.

V. Decision

Appeal is allowed.