



FOR INFORMATION

PUBLIC

OPEN SESSION

TO: Academic Board

SPONSOR: Mr. Christopher Lang, Director, Office of Appeals, Discipline and Faculty
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PRESENTER: See Sponsor
CONTACT INFO:

DATE: November 9, 2023 for November 16, 2023

AGENDA ITEM: 8a

ITEM IDENTIFICATION:

Academic Appeals Committee, Individual Reports, Fall 2023.

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. Academic Board [for information] (November 16, 2023)

PREVIOUS ACTION TAKEN:

The last semi-annual report came to the Academic Board on May 25, 2023.

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, Fall 2023

THE UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL

Report #427 of the Academic Appeals Committee
August 8, 2023

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Monday, June 26, 2023, at which the following members were present:

Academic Appeals Committee Members:

Professor Lisa Austin, Chair
Professor Jan Mahrt-Smith, Faculty Governor
Jessica Johnson, Student Governor

Hearing Secretary:

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

For the Student Appellant:

J.J. (the “Student”)

For the Toronto School of Theology:

Catherine Fan, Paliare Roland Rosenberg Rothstein LLP

OVERVIEW

The Student appeals a decision of the Toronto School of Theology Academic Appeals Committee (“TST AAC”) of December 5, 2022, that denied the Student his appeal of his grade on his final research paper for the course WYB3743HF “Paul’s Letter to the Galatians.” The Student is seeking to have this course removed from his academic record or, in the alternative, to have his failing grade substituted with either a late withdrawal (“LWD”) or Aegrotat standing (“AEG”). For the reasons given below, your Committee allows this appeal, in part based on the grounds raised, and grants a remedy of either incomplete (“INC”) or, should the Student elect, an extension for re-submission of his final research paper.

FACTS

The Student was enrolled in the Master of Theological Studies program at Knox College, which is a member of the Toronto School of Theology (“TST”) at the University of Toronto. In the Fall of 2021, he was enrolled in two courses offered by Wycliffe College, another of the member colleges in the TST. These courses were WYB3743HF “Paul’s Letter to the Galatians” (“Galatians”) and WYB3641HF “Matthew’s Story of Jesus” (“Matthew”).

On December 1, 2021, the Student was in a car accident. Due to the ongoing effects of this accident, the Student requested, and received, extensions for his coursework in both Galatians and Matthew. He was given an extension until January 5, 2022. The Student handed in his final paper for Galatians on January 5 but did not hand in his paper in Matthew until February 16. He received a grade of 50% on his paper for Galatians and a final grade of 62% in the course. The course instructor indicated that the reason for the failing grade was that the paper did not meet the assignment requirements. He was also given a failing grade in Matthew on the basis that he did not have an approved extension past January 5 for his final paper.

The Student requested that the instructor re-read the assignment, which he did. On February 20, 2022, the instructor gave detailed feedback regarding the paper, highlighting a number of substantive deficiencies including its failure to answer the assignment question and its lack of the requisite number of secondary sources. The Student then requested a second reader. A second reader was assigned on February 24. The second reader agreed with the failing grade and indicated that the paper did not at all do what the assignment asked.

The Student then appealed his grades in both Galatians and Matthew and was granted a hearing before the TST AAC. The TST AAC denied the Student's appeal of his failing grade on his final research paper in Galatians but granted it in relation to Matthew.

The Student had raised several grounds of appeal in relation to Galatians, all of which were found by the TST AAC to be without merit. These grounds were that: Wycliff College did not follow the correct procedure regarding the second reader review; that the paper was assessed according to criteria not included in the assignment instructions; that the instructor and second reader did not give adequate comments; and that the Student was not informed in a timely manner of the mark assigned to him by the second reader.

The TST AAC did provide a remedy in relation to the complaint regarding Matthew, based on new medical information that was introduced and that had not been known to the course instructor or administrators at Wycliffe College prior to appeal. The TST AAC found that "had it been provided with all the relevant facts – Wycliffe would have been unreasonable in not supporting or assisting the Student Appellant with a request for a further coursework extension." The TST AAC recommended a coursework extension, in accordance with the BD Handbook's procedures (§11.3.2), "as if the Student Appellant had been 'incapacitated'" and if that was declined, it recommended that a mark of INC ("incomplete") be entered on the Student's transcript. Wycliffe College subsequently granted this extension but the Student was unable to complete the paper and a grade of INC has been entered on the Student's transcript for the Matthew course.

The TST AAC declined to consider a number of further complaints that the Student made before it. It declined to consider complaints made against Knox College on the grounds that the Student had not yet availed himself of the channels of recourse available for those complaints at the Divisional level. It also declined to decide on allegations that TST did not follow its regulations and procedures for academic appeals because the complaints fell outside the jurisdiction of the TST AAC. The Student was instructed to seek informal resolution of these complaints and, if

unsuccessful, to “seek independent advice about the next appropriate channel of recourse.” The TST AAC’s decision on these issues is not under appeal in this current appeal. On June 12, 2023, the Chair asked the parties, through the Office of Appeals, Discipline and Faculty Grievances, whether they wanted to (1) continue with the hearing as planned on June 26, 2023, and sever the Knox College issues, or (2) postpone the hearing until that separate complaint reached the AAC and then join them and hear them together at a later date. It was agreed that the parties would proceed with the first option. Given this raised a jurisdictional issue, and therefore raised a question of law, the Chair determined this issue alone, in accordance with section 3.1.4 of the Academic Appeals Committee’s *Terms of Reference*. Although some of the materials submitted to this Committee address issues related to the Student’s grievance in relation to Knox College, your Chair has determined that this is out of scope of the current appeal and the panel has been advised accordingly.

DECISION

The Student has raised numerous grounds of appeal before your Committee. In oral argument, it became clear that the key issues were the second reader review process and the question of consistency in academic accommodations for medical reasons. We therefore address these first and then discuss the remaining issues.

The Second Reader Review

The Student argues that new evidence brought forward by the TST in this appeal shows that Wycliffe College violated the second reader policy in the TST Basic Conjoint Degree Policy Handbook (“BD Handbook”). Section 11.8.1 of the BD Handbook outlines the procedure for reviewing marks on assignments. After requesting that an instructor re-read the assignment, if the student remains dissatisfied then he or she can petition for a second reader:

According to the regulations in effect in the college of instruction, the official will assign another qualified reader to evaluate the assignment. Where possible, the second reader should not be apprised of the identity of the student (nor the student the identity of the second reader) and should read the assignment free of evaluative comments of others. The syllabus, and if available, the marking rubric and assignment instructions, should be given to the second reader.

Although the TST AAC determined that this policy was followed, in oral argument the TST indicated that because of the new evidence introduced, it does not rely upon the TST AAC findings regarding the second reader review process. The TST indicated that your Committee could decide whether the §11.8.1 process was followed and does not need to remit this issue back to the TST AAC.

This new evidence consists primarily of an email from the Academic Dean of Wycliffe College, Professor Peter Robinson, to the second reader. In this email, Professor Robinson indicated that the instructor in Galatians had given the Student’s paper a failing grade. He offered to provide the second reader with the instructor’s response from his re-read of the assignment and then also quoted from an email that the Student had sent, indicating the Student’s views of Biblical scholarship in relation to the paper, which were strongly contrary to mainstream scholarship.

Professor Robinson wrote, “[w]hile the student is entitled to their views the basic question is whether or not the student followed the guidelines for the assignment.”

On a plain reading of section 11.8.1 of the BD Handbook, the second reader review process was not properly followed in this case. The BD Handbook clearly states that the second reader should “read the assignment free of evaluative comments of others”. Here, the second reader was told the grade and provided information that suggested that the Student had not followed the assignment guidelines due to his views of scriptural interpretation. The second reader was even offered further evaluative comments of the course instructor (although these were not in fact passed along).

The TST has argued before this Committee that “evaluative comments” do not include providing the instructor’s grade. Your Committee disagrees with this interpretation of the policy, as a grade is a type of evaluative comment. The TST has also argued that the statement that the second reader should read the paper without others’ evaluative comments is modified by the words “[w]here possible,” which mean that this is not a mandatory condition. Your Committee is unpersuaded by this argument. It was entirely possible in this case to provide the paper to the second reader without any evaluative comments. Finally, the TST argues that “[i]t was significant for the second reviewer to be made aware that the stakes were high, and to consider whether – as an independent person who did not develop the assignment guidelines – it was apparent what the assignment guidelines were asking.” Your Committee notes that this approach is inconsistent with a plain reading of section 11.8.1. The TST has also argued that AAC Report #392 indicates that a fair process for grade review depends on the circumstances and that access to evaluative comments does not, in itself, make the process unfair. However, your Committee views that Report of little help as the faculty in question did not have its own faculty-specific policy regarding such grade reviews. Here, we have such a policy and the question before us is the interpretation of this specific policy and not speculation about the fairness of alternatives.

Finally, the TST argues that even if this Committee finds that section 11.8.1 of the BD Handbook was not followed, it should not grant a remedy in this case because the paper did not meet the minimum requirements of the assignment guidelines and so there was no way for any second reader to give this paper a passing grade. In oral argument, the TST indicated that whether or not the assignment met the minimum assignment guidelines was a “threshold” question that did not require your Committee to engage in judgements about the merits of the grade assigned. However, your Committee lacks the basis upon which to make this finding. The TST AAC made no determination to this effect and so we are not being asked about the reasonableness of its decision. Instead, your Committee is being asked to agree with the TST about the substance of the minimum assignment requirements, that the paper did not meet those requirements, and that any second reader would agree with this and fail the paper. Your Committee cannot undertake such a review. As Senior Chair Hamish Stewart stated in Motion Decision #359-1: “It is well-recognized that the AAC has no jurisdiction to re-read a paper or examination to consider the merits of the grade assigned, or to review decisions about admissions.”

Consistency in Accommodation for Medical Reasons

The Student also appeals on the grounds that his medical circumstances were accommodated by the TST AAC in relation to Matthew but not in relation to Galatians. The Student argues that the same rationale should apply to Galatians as, but for his car accident and its medical consequences, it would have been possible for him to clarify the assignment requirements with the course instructor. In its response, the TST has argued that the Student's "misguided views" rather than his health condition were responsible for his grade in Galatians. In oral submissions before your Committee, the TST has also argued that the TST AAC decision is reasonable because it was responsive to the arguments that the Student made before it. The Student had originally raised his medical issues in relation to Matthew but not Galatians.

The Student provided detailed medical documentation to the TST AAC in October 2022. This had not been previously made available to his instructors or to Wycliffe College. The TST AAC only considered the relevance of this medical information in relation to the paper for Matthew and held:

Your Committee believes that, if the course instructor (Prof. Donaldson) or administrators at Wycliff College had had this information in January and February 2022, it is likely that they would have tried to contact the Student Appellant and that they would have taken appropriate steps (e.g., those prescribed in BD Handbook §11.3.2) to ensure that he was not unfairly disadvantaged because of his medical condition.

In terms of a remedy, the TST AAC recommended that the Student be granted an extension, in accordance with the BD Handbook's procedures (section 11.3.2), "as if the Student Appellant had been 'incapacitated'".

The TST AAC therefore concluded that the medical evidence established that the Student was "incapacitated" for the purposes of the BD Handbook section 11.3.2. This section concerns "SDF", or "standing deferred" status and reads as follows:

Standing Deferred. This is assigned when a student has been granted an extension of course deadline for medical or similar reasons. It is assigned by the designated official of the student's college of registration where a request has been made by the student (or, if the student is incapacitated, by the instructor alone), documented and duly approved by the course instructor and the student's college of registration according to the process established by the college. It is a temporary report and eventually will be replaced by a final numerical grade or a final letter grade such as FZ or INC.

The reference to "incapacitated" in this section allows for an extension even where the student has not requested it.

The question before your Committee is whether the TST AAC decision was unreasonable because it did not also consider whether the Student should have also been considered "incapacitated" for the purposes of "Galatians." The question that the TST AAC did not ask was whether, if the course instructor for Galatians or administrators at Wycliffe College had this medical information before the Student's January 5 due date, would they have tried to contact the Student and taken appropriate steps to ensure he was not disadvantaged? Nor did the TST AAC

ask the Student at the hearing whether he felt that he had been disadvantaged in relation to Galatians because of his medical issues.

The medical information submitted included a physician's note dated December 29, 2021, indicating that the Student would be absent from work/school from December 29, 2021, to January 29, 2022. The subsequent medical documents discuss ongoing symptoms arising out of the same circumstances rather than something new. Therefore, the medical documentation shows that the Student was dealing with the same medical issues prior to when he handed in his Galatians paper on January 5, 2022, as he was in the period between January 6 and February 14 when he was delayed in completing his Matthew paper. That is, there is no basis to think that the Student became "incapacitated" on January 6 but was not incapacitated on December 29 (when he obtained a doctor's note). It would appear that the TST AAC did not consider the relevance of this medical information prior to January 6 because it did not consider whether there should have been an accommodation offered in Galatians.

This raises an important question regarding whether the TST AAC decision was unreasonable for not considering whether or not the Student's medical issues also required an accommodation in relation to "Galatians" even if the Student himself did not raise it. According to the BD Handbook's "Guiding Principles" for academic appeals (section 16.1.3):

The implementation of all appeals shall be informed by the principles identified in the policy document of the Governing Council of the University of Toronto entitled *Policy on Academic Appeals within Divisions*, which is available from the website the of Governing Council [sic].

These principles may be summarized as (a) diversity, equity, and accommodation; (b) consistency; (c) flexibility; (d) transparency and timeliness; (e) fairness and confidentiality; (f) the goal of academic excellence.

Therefore, the TST AAC, in addition to being responsive to the specific arguments made before it, must ensure that its appeals are informed by these principles. It cannot be solely up to student appellants to ensure that the University meets these obligations, especially when a student is self-represented and dealing with medical issues.

Your Committee therefore finds that the fact that the TST AAC did not consider the question of accommodation in relation to Galatians, or even ask the Student whether he felt disadvantaged by his medical condition when completing his final paper, was unreasonable.

The TST argues that the differential treatment between Matthew and Galatians is justified because it was the Student's substantive views regarding the assignment and Biblical scholarship, rather than his medical issues, that led to his failure. The Student argues that, had he been given an extension, he would have had the opportunity to ask the course instructor for clarifications regarding the assignment requirements. Your Committee is not in a position to speculate on what might or might not have happened had an accommodation been offered and, as already discussed in relation to the second reader review, your Committee cannot determine that the Student would have definitely failed anyway.

Other Grounds of Appeal

The Student raised a number of additional grounds of appeal in his initial appeal package, which did not have the advantage of the new evidence regarding the second reader review. Some of these involved allegations of dishonesty and bias involving the course instructor and administrators at Wycliffe College. We understand that the Student holds these views very strongly. However, your Committee finds no basis for any such findings.

The Student originally challenged the reasonableness of the TST AAC decision regarding Galatians, making numerous arguments regarding his interpretation of the assignment requirements as well as the meaning of “secondary sources.” Because your Committee’s jurisdiction is confined to determining the reasonableness of the TST AAC decision, and because the TST AAC relied so heavily on the problematic second reader review in its reasons, your Committee does not view it as necessary to address these aspects of the TST AAC decision.

The Student also challenged the reasonableness of the TST AAC decision on the grounds that Wycliffe College was permitted to make a “second response” to his original appeal and, in doing so, raised a number of “additional concerns” that potentially biased the proceedings. The TST has acknowledged that a number of mistakes were made in relation to how this complaint was dealt with procedurally. Your Committee agrees with the TST that any procedural defects were cured through the hearing before a full panel of the TST AAC. As already stated, your Committee sees no basis for thinking that either Wycliff College’s actions or the decision of the TST AAC involved bias.

The Student also raised a number of issues concerning Knox College, which were determined by your Chair to be out of scope of this appeal. In addition, the alleged data breach discussed by the Student is subject to a separate FIPPA complaint and is not addressed here.

Remedy

The Student has asked for the remedy of removal of the course from his transcript or, in the alternative, for either LWD or AEG to be substituted for the failing grade. The TST has argued that this Committee does not have the jurisdiction to grant the primary remedy that the Student requests, which is to remove “Galatians” from his academic transcript. Given that this Committee does not agree with the remedy of removal of the course from the transcript, it is unnecessary for your Chair to decide upon the question of jurisdiction.

Where the process for a second reader has not been followed properly, the usual remedy would be to send the matter back to the Division in order to redo the process. However, in this case your Committee has also found that Galatians and Matthew should have received consistent treatment in relation to accommodations for medical reasons. This would mean that the remedy that the TST AAC granted for Matthew should have also been granted for Galatians. That remedy was to give the Student an extension for the final paper and, should that not be possible, an INC on his transcript. The Student petitioned for an INC but, in oral argument before your Committee, the TST indicated a willingness to grant the Student a further extension on his final paper in Matthew should he choose.

Your Committee is persuaded that the Student should be given the option of an extension for his final paper in Galatians and, if he should instead choose, a notation of INC on his transcript for the course.

Your Committee acknowledges that the Student has not directly asked for this remedy. However, in this case the Student has in fact requested consistent treatment as between Matthew and Galatians. As one of his alternative remedies, he has asked for LWD to be entered on his transcript, which is functionally equivalent to INC in that it means that the Student does not receive a credit for the course but also does not receive a failing grade. The TST has had a full opportunity to respond to the Student's arguments both for consistent treatment regarding accommodations as well as to the request for LWD. Therefore, it is the view of this Committee that this remedy is substantively consistent with what the Student has asked for and that granting it creates no procedural unfairness. In addition, the AAC in the past has granted a remedy that the Student has not requested (see AAC #332).

CONCLUSION

The appeal is allowed in part.