

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

Report #432 of the Academic Appeals Committee
February 9, 2024

To the Academic Board
University of Toronto

Your Committee reports that it held a hearing on Friday, November 17, 2023, at which the following members were present:

Academic Appeal Committee Members:

Sara Faherty (Chair)
Professor Nhung Tuyet Tran, Faculty Governor
Dveeta Lal, Student Governor

Hearing Secretary:

Nadia Bruno, Special Projects Officer, Office of Appeals, Discipline and Faculty Grievances

For the Student Appellant:

P.Y. (the “Student”)
Thomas Mathews, Thomas Mathews Litigation, Counsel for the Student

For the Faculty of Applied Science & Engineering:

Professor Thomas Coyle, Vice Dean, Undergraduate

The Appeal

This is an appeal from a decision made on April 12, 2023, by the Faculty of Applied Science & Engineering’s Academic Appeals Board. The Appeals Board communicated its decision that day, explaining they were denying the Student’s request to continue his studies at U of T Engineering. In his decision Professor Don Kirk, Chair of the Academic Appeals Board expressed sympathy for the Student but found there was “insufficient justification” to grant the Student’s request.

The Student needed to request permission to continue in the program because following the Fall 2022 semester he had been refused further registration based on the grade he had been assigned in ECE241H1 *Digital Systems*. While this was a passing mark (a “D”), and the Student received credit for the course, the mark brought his sessional GPA beneath the threshold for continued enrolment in the Faculty. As we discuss below, the Student sought a number of remedies that would alter the treatment of the mark in ECE241H1, *Digital Systems* and raise his sessional average above the required minimum, including requesting an assessed mark, being granted *Aegrotat* status, or being allowed Late Withdrawal without Academic Penalty.

The Facts

The Student has had a long and challenging academic career at the Faculty of Applied Science & Engineering. He first enrolled as an undergraduate working towards his BAsC in Computer Engineering during the Fall of 2004, almost twenty years ago. For the first few years of his enrollment his progress was not strong. He was first placed on academic probation during his second semester, the Winter 2005 term, when his sessional average dipped below 60%. He continued to struggle academically, falling below a 60% sessional average again in the Fall of 2006, and for a third time during the term that is the subject of this appeal, during the Fall term of 2022. We note that he had long leaves during this period, including a five-year gap between the Fall of 2015 and the Fall of 2020. This student is clearly unwell and has struggled in this program for almost two decades.

During the Fall, 2022 term the Student enrolled in ECE241H1, *Digital Systems*. The Student's mark for this course was based on three evaluations:

Lab Work (weighted as 20% of final mark) —	82.5%
Midterm Exam (weighted as 30% of final mark) —	65.3%
Final Exam (weighted as 50% of final mark) —	39.8%.

This resulted in a course mark of 56%, or a D.

The Student attended his exam for ECE241H1, *Digital Systems*, on December 19, 2022. He became ill during the exam, suffering severe headaches and blurred vision. He did not abandon the exam, or even notify an invigilator of his health problems. He explained that he believed disturbing the other students taking the examination would have been inappropriate. Rather, the Student completed and submitted the exam. The Student concluded that the exam was a problem relatively quickly and requested either *Aegrotat* standing or an assessed mark in the course the following day, on December 20, 2022. In support of his request, he submitted a *Verification of Student Illness* form dated January 22, 2023, signed by Dr. Hung-I Henry Ho, a physician whom he sees regularly. On the form, Dr. Ho indicated that the impact of the Student's condition caused impairment that was between "severe" and "serious." He wrote that the Student suffers chronic illness with acute exacerbation, adding "I recommend AEG."

The stakes in this course are high for the Student, since this mark he was given brings his sessional average below 60% threshold required for continued enrolment, given his repeated probation status.

The Faculty of Applied Science & Engineering does not consider *Aegrotat* standing for courses in which all the work is completed and submitted. The Faculty also ruled out offering a deferred examination since the Student had completed the final exam as offered. The assignment of an assessed mark was complicated by the Faculty's practice of excluding work that was "not closely supervised" in determining whether an exam mark is significantly lower than the marks earned during a term (which would confirm a student's argument that there was an unanticipated issue during the writing of the examination.) Vice Dean Coyle explained that the Faculty compared the final exam mark (39.8) to his closely supervised work on the midterm (65.3) and concluded

that there was not a sufficient difference to warrant an assigning of an assessed mark that excluded the unsupervised Lab Work. This eliminated three remedies that might have been available if the Student had abandoned the exam and earned a lower mark.

Decision

The Student is anxious to have the mark he earned in ECE241H1 *Digital Systems* excluded from his transcript because the consequences of the mark are dire: they bring his sessional mark below the threshold for continued registration. In the course of his appeal, he has asked for three different remedies:

Aegrotat standing which would give him credit for the course but exclude the course from calculations of his grade point average because he was ill while writing the exam;

an assessed mark that excludes the low final exam grade and would result in a mark above the threshold on the grounds that his course work establishes his mastery of the material; or

Late Withdrawal without Academic Penalty on compassionate grounds because his mark was affected by circumstances outside his control.

He also challenges the reasonableness of the Academic Appeals Board decision and the reasonableness of the results.

***Aegrotat* standing**

The Student requests *Aegrotat* standing due to his illness during the exam. The illness is corroborated by the *Verification of Student Illness* form submitted by Dr. Ho. There is no disagreement that the Student is unwell, and he has worked hard to overcome the challenges posed by his condition. Had he abandoned the exam when he began to experience symptoms *Aegrotat* would have been a reasonable remedy. The Student's decision to complete the exam makes *Aegrotat* an inappropriate solution. His concern for the other students writing the exam should not have prevented him from quietly approaching an invigilator and seeking guidance. His transcript indicates that he has written at least nineteen examinations at the Faculty of Applied Science & Engineering, and he has a responsibility to be aware of his division's exam policies. It is difficult to conceive that in all these exams he has never interacted with an invigilator or seen other students interacting with invigilators. While the Student asserted that he was unwell and under pressure, and consequently he did not have the details of University policies at the front of his mind on the day of the examination, this does not exempt him from being subject to those policies. The Student's mistaken belief that he should not disturb other exam writers is unfortunate, but it cannot mean he will be treated as if he had abandoned the examination.

Your Committee is sympathetic to the Student's plight that day, and gives great deference to the form submitted by Dr. Ho. We note, however, that while Dr. Ho is a medical expert, he does not have expertise in academic accommodations or in University or divisional policies. His role is to

identify the level of impairment of the Student due to his medical condition—not to prescribe academic accommodations. Your Committee disagrees with Dr. Ho that *Aegrotat* is the appropriate remedy in these circumstances, given the Faculty’s policy, which is clearly stated in its Academic Calendar at page 21: “*Aegrotat* standing granted on the basis of session work and medical or similar evidence where the student *was not able to write* the final examination in the course.” [Emphasis added.]

An assessed mark

The Faculty of Applied Science & Engineering declined to assign an assessed mark to the Student in ECE241H1 *Digital Systems*. The decision rested on their evaluation of the difference between the mark the Student earned on the exam in question (a 39.8%) and his other closely supervised work in the course. The Student understandably wanted his Lab Work mark included as part of the “other work in the course,” since he did so well on his Lab Work. Including the Lab Work would have led the Faculty to compare the 39.8% mark on the final to an “other work” average of 72.2%. Excluding the Lab Work mark meant the comparison was between the 39.8% final mark and the 65.3% midterm mark. The Faculty did not find that difference to be compelling.

The first issue raised by the Student is that in his view the difference between the midterm and the final exam grades is significant, and the Faculty should have given him an assessed mark based on that difference. His second argument is that if they had included the Lab Work mark the even greater difference would have been even more compelling.

The Vice Dean explained that Lab Work and other work that is not closely supervised is reasonably excluded from these comparisons because they are not earned in tightly controlled settings like exam rooms, and often include contributions made by other students. The Student characterised the failure to include the Lab Work as a “glaring omission,” but your Committee finds this position to be reasonable.

Your Committee is of the view that the Faculty is justified in excluding work that is not closely supervised from these comparisons. Our view of the significance of the 25% difference in the midterm mark and the final mark is clouded by the lack of clarity in the Faculty of Applied Science & Engineering’s policies. While we are willing to defer to the Faculty’s Committee members and their academic judgement on this issue, we would be more certain in this conclusion if there were established guidelines on this important issue. The Faculty explained that they do not consider assessed marks in cases where a student has completed the exam.

The Committee notes that members asked which policies the Faculty administrators applied in this circumstance and was not given a response.

Late Withdrawal without Academic Penalty

The third remedy requested by the Student, Late Withdrawal without Academic Penalty, would deny the Student credit for the course but will give him an opportunity to remain enrolled at the Faculty of Applied Science & Engineering. It is unusual, but not unprecedented for a Student at

the University of Toronto to be allowed to Withdraw from a course after the drop deadline and even after an exam is written. Vice Dean Coyle explained that the mark is not appropriate based on the Faculty's normal procedures, suggesting that LWD is reserved for students who have struggled throughout the term. Your Committee finds that it would be confusing to tell a student his marks were too low throughout the term to warrant an assessed mark (see above), but too high throughout the term to warrant a late withdrawal. Your Committee notes that it gave the Faculty several opportunities to point to an existing policy related to these decisions. They were unable to do so. It would be important to have such a clear policy.

The Student provided clear medical documentation of his situation. While it would have been better if he had abandoned the examination on December 19th, he made a relatively prompt request for late withdrawal on December 20th, the following day. This remedy was not driven by an effort to manipulate the sessional average, since he made this request before he saw the final mark. The fact that the Student's circumstances are beyond his control lead your Committee to allow this request on compassionate grounds.

Vice Dean Coyle told us that the Faculty has a policy against allowing students to repeat courses they have completed. Your Committee agrees that the Student should not take ECE241H1 *Digital Systems* again unless the course is required for graduation. If the course is required for graduation, then the Student must be permitted to take this course, or a suitable substitute course.

The reasonableness of the Academic Appeals Board decision and the Reasonableness of the result

The Academic Appeal Board decision is brief. The section devoted to reasoning is two sentences:

“The AAB is sympathetic to your situation and acknowledges the difficult circumstances you faced due to health conditions. After carefully considering the information presented, the Board finds insufficient justification in granting your request.”

This summary decision does not illuminate the Faculty of Applied Science & Engineering's reasoning and made it hard for your Committee to assess what factors were important, which facts were determinative, and whether they were fair to the Student. We do not doubt the Faculty's respect for the Student and sympathy for his condition—it has accommodated him generously and patiently over the almost twenty years of his enrolment. As Vice Dean Coyle pointed out, they have been willing to bend policies in his favour more than once. A more expansive explanation of their thinking would have been helpful here. Were they concerned about the timing of the Student's submission of the Verification of Student Illness? Did they want more detail or more information about the Student's condition? It would have been helpful to the Student and your Committee if the decision had provided more insight into how the Academic Appeal Board assessed the Student's request.

Related to the above, your Committee could not find the result of the Academic Appeal to be reasonable. While he ultimately received a clear explanation in the Faculty's response to his Appeal and in Vice Dean Coyle's explanations at the hearing, the process within the Faculty was

too skeletal to be helpful. Your Committee finds that clarity in the policies and more fulsome explanations for decisions are important components of a fair grading and appeal system.

For the reasons outlined above the Appeal is allowed.