

**UNIVERSITY OF TORONTO
GOVERNING COUNCIL**

REPORT NUMBER 297 OF THE ACADEMIC APPEALS COMMITTEE

May 9, 2005

Your Committee reports that it held a hearing on Tuesday, April 26, 2005, at which the following members were present:

Professor Emeritus Ralph Scane, Chair
Professor Clare Beghtol
Mrs. Shari Graham Fell
Mr. Stefan Neata
Professor Ian McDonald

Secretary: Mr. Andrew Drummond

In Attendance:

For the Appellant:

Ms. K. Roach (Counsel)
Ms. P (The Student)

For Ontario Institute for Studies in Education of the University of Toronto (OISE/UT):

Ms R. Campbell (Counsel)
Ms. L. Cowin
Mr. J. Mazurek

This is an appeal from the decision of the Divisional Appeal Committee of OISE/UT, dated December 5, 2002, which dismissed an appeal from the decision of the Appeals Standing Committee dated July 11, 2002. The latter decision dismissed a petition from the Student to be allowed to repeat the second *practicum* session, taken in the Winter Term of 2002, which she had failed. As the Student had also failed the *practicum* session taken in the Fall Term of 2001, this resulted in failure of her year in the B.Ed programme.

The Student entered the B.Ed/Ontario College of Teachers Certificate of Qualification programme in the Fall Term of 2001. In that and the following term, she successfully completed the required course work. However, to obtain the degree and certificate, a candidate must also successfully complete two *practicum* sessions, one in each term. It is OISE/UT policy that, if a student fails the first *practicum* session, but passes the second, the student will be permitted to repeat the earlier session to attempt to pass it. However, if both *practicums* are failed on the first

attempt, the student is not permitted to repeat either, but fails the year. As the Student did not appeal the failure of the earlier *practicum*, the failure in that *practicum* session was not before your Committee, and must stand.

Before your Committee, the Student requested relief from her failure in the second *practicum* on two grounds:

- (1) her performance was adversely affected by an illness, diabetes, which was only diagnosed part way through that course;
- (2) there was a lack of procedural fairness in her assessment, in that the classroom teacher who was evaluating her discovered about half way through the *practicum* session that the Student had failed the earlier *practicum* session.

With respect to the medical condition, the Student was told in January, 2002, that diabetes was suspected, and a diagnosis of "mild diabetes mellitus" was made in mid-March, 2002. The Student had visited her doctor because of her feeling of fatigue and stress. Her supervisors in the second *practicum* were not advised of this problem until two or three days before it ended, so had no opportunity to consider or take any steps designed to mitigate the effects of the illness. However, as a result of her mid-point evaluations, her faculty supervisor and the classroom teacher had reduced her load somewhat. The Student's complaints of unusual fatigue during the second *practicum* are corroborated to some extent by the *Summative Evaluation of Field Experience Elementary*, completed by the classroom teacher, or Associate. She commented, "[The Student's] interaction with students showed caring but lacked enthusiasm. She became stressed and extremely tired in the course of the three weeks of teaching." Fatigue is a known possible consequence of diabetes that is not well controlled. The stress element may have been in large part a result of worries over criticisms of her performance in the *practicums*, but it also may have been added to substantially by the Student's concerns over her symptoms, and her doctor's suggestion, in January, 2002 that she might be diabetic.

With respect to the perception of bias, the Student gave evidence that, on the last day of the second *practicum*, the Associate teacher told her that she, the Associate, had known for about two weeks of the Student's failure in the first *practicum*. OISE/UT did not seek to refute this allegation by the Student, although it was aware of it from previous levels of appeal. Accordingly, your Committee accepts that the allegation is factually correct. The Divisional Appeal Committee of OISE/UT did not comment on this matter in its reasons, but the Appeals Standing Committee did comment that "the associate teacher in the second *practicum* should not have known about the first failed *practicum* since there should always be two independent assessments of a teacher candidate". However, neither of the two lower appeal committees found the grounds relied upon sufficiently compelling to grant the appeal.

In considering the allegation that there was a sufficient perception of bias to require that the decision in question be vitiated, your Committee understands that it is not necessary for the Student to prove, or your Committee to find that bias actually existed and entered into the decision to fail the Student in the second *practicum* in order to give effect to this ground of appeal. A test approved by the courts is, "whether a reasonably informed bystander could

reasonably perceive bias on the part of an adjudicator."

In the assessment of the two grounds of appeal, your Committee is divided. The view of the minority is that neither individually nor cumulatively do the facts applicable to these grounds justify allowing the appeal. The minority does not believe that, but for the effects of the Student's diabetes on her performance, she would have been able to sufficiently overcome the defects in her classroom performance, and in particular of her performance when dealing with the class as an entirety, which concerned the Associate teacher and her Faculty advisor, and resulted in a failure. Nor does the minority consider that the test for perception of bias was met here. The flaws in her classroom performance during the second *practicum* were a matter of serious concern by the time of the mid-point evaluation, when the knowledge of the failure in the earlier *practicum* first came to the Associate teacher.

The majority of your Committee finds that both grounds are operative here, and at least cumulatively justify granting relief to the Student. The majority considers that, at the best, the classroom skills of the Student at the time in question were marginal, and the results of the illness would adversely affect them. If this ground of appeal stood alone, the majority, or some of it, might have come to the same final conclusion as the minority. However, the majority notes that the evaluation was by no means totally negative, and cannot dismiss the possibility that, had the Student been able to muster more vigour, the Associate teacher might have been able to persuade herself that the Student had edged past the required threshold. It is here that the issue of possible bias comes in. A decision to fail a student is one which few teachers arrive at without great regret, except in the most obvious cases, and it is seldom made without reconsidering to ensure that everything which might be put forward in the student's favour has been fully weighed.

The danger of knowing that the student has previously failed in the same subject matter is not only that the assessor might be positively predisposed to find negative factors to justify failing the student again, but more insidiously, might unconsciously be discouraged from trying harder to find positive reasons to raise the student to a pass. In addition to the knowledge of the Associate teacher, the faculty advisor in the second *practicum* was also the faculty advisor in the earlier one, and necessarily knew the result of the first during the second. Your Committee was told that this situation is uncommon, but is sometimes necessitated by the logistical problems encountered in supervising a large number of teacher candidates spread geographically over a wide area. The possibility of bias operating unconsciously here is similar. While it is the responsibility of the Associate teacher to make the pass/fail decision, the faculty advisor consults and mediates in problem areas. Again, knowledge of a previous failure might discourage a person in that position from advancing positive arguments in favour of the student as forcefully as he or she might otherwise do. The majority of your Committee finds that the combination of these two sources of possible bias, operating in the assessment of a student whose then relevant skills would not provide much margin over a minimum pass at best, and which were to some extent adversely affected by her illness, does meet the threshold test for reasonable apprehension of bias, and requires relief.

The appeal is allowed. The failure in the second *practicum* is vacated, and the Student shall have an opportunity to repeat it during the next round of *practicums*. If the Student fails the retry

hereby allowed her, her failure in the year will be confirmed. If the Student achieves a pass on the retry, then, in accordance with what your Committee was advised was the normal practice at OISE/UT, she will be afforded an opportunity to retry the failed first *practicum*. If she passes that, she may proceed to her degree. If she fails that, again her failure in the year will be confirmed. Before the *practicum* is retried, the University's Accessibility Office should be consulted to advise as to whether accommodation for the diabetes is now required.

On a further matter, your Committee is concerned with an aspect of the appeal process at OISE/UT as it concerns *practicums*. OISE/UT was not asked to be prepared to discuss this, and your Committee therefore does not wish to form a conclusion on the matter at this time. Your Committee was told that, where students fail the first *practicum*, and are considering an appeal, they are often advised not to appeal, but to proceed to the second, and, if they pass that, they will be given chance to repeat the first. The reason for giving this advice is that, except for the very first level of appeal, it is almost impossible in practice to complete higher levels of appeal, should such be necessary, before the second round of practicums starts. If a failed first *practicum* is under appeal, the student is not allowed to continue to the second until the appeal is finally determined. This in turn means that even if the student is finally successful on the appeal, she or he may suffer a serious delay in graduating and qualifying for a teaching certificate. This appears to create a powerful financial disincentive to the exercise of a right of appeal. Your Committee recommends that the process be reconsidered in this light.

Andrew Drummond, Acting Secretary

Ralph Scane, Chair