

UNIVERSITY OF TORONTO
GOVERNING COUNCIL

Report # 383 of the Academic Appeals Committee
June 1, 2016

To the Academic Board
University of Toronto.

Your Committee reports that it held a hearing on Wednesday, May 25, 2016, at which the following members were present:

Professor Andrew Green (Chair)
Professor Hugh Gunz, Faculty Governor
Mr. Ridwan Olow, Student Governor

Secretaries: Mr. Chris Lang, Director, Appeals, Discipline and Faculty Grievances
Ms. Krista Osbourne, Administrative Assistant, Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

Ms. P.M. (the Student)

For the School of Graduate Studies and the Department of Civil Engineering:

Mr. Robert A. Centa, Counsel
Professor Luc De Nil, Vice-Dean, Student, School of Graduate Studies
Ms. Emma Thatcher, Associate Director, Graduate Affairs, School of Graduate Studies

The Appeal

The Student appeals a decision of the Graduate Academic Appeals Board (“GAAB”) of the School of Graduate Studies (“SGS”) dated November 13, 2015 (the “GAAB Decision”). The GAAB Decision dismissed an appeal by the Student from a decision by the SGS to accept a recommendation of the Department of Civil Engineering (the “Department”) to terminate the Student’s registration in their Master of Applied Science Program. The Department’s decision to terminate the Student’s registration was based on the Student’s failure in two courses in the Program.

The Facts

The Student entered the Program in the Fall of 2013 having relatively recently emigrated with her family to Canada from Iran. Unfortunately in the Fall, she experienced significant stress from family issues relating to her parents' marital issues which began in September 2013. She did not drop any courses at the Drop Date of October 28, 2013. She failed two of her courses in the Fall.

On January 24, 2014, the Department's Graduate Programs Coordinator emailed the Student noting that she had failed the two courses and asking whether she was appealing these failures. The Student appealed both of these failures and continued to take courses in the Program. She was successful in her appeal for one of the courses. Her father had broken his wrist the night before her exam on December 6, 2013 and she had spent the night caring for him. She was granted a late withdrawal without academic penalty.

She was unsuccessful in her appeal of the failure in the other course, CIV531H. She had written her exam on December 20, 2013. She based her appeal on the stress and responsibilities arising from her parents' marital problems. The Department's Graduate Departmental Academic Appeals Committee dismissed the appeal on June 9, 2014, stating that:

While the Committee acknowledges your request for special consideration and is sympathetic towards your circumstances, there is not sufficient proof of your distress without the documentation of a medical certificate.

The Student appealed this decision to the GAAB which denied the appeal of the failure on October 14, 2014, stating:

The Student's family circumstances, though difficult, did not change after the drop date. Moreover, the Student has never provided any documentation of any unanticipated circumstances that affected her performance in CIV531H. The GDAAC's dismissal of her appeal from the FZ in CIV531H was eminently reasonable.

The Student appealed this decision of the GAAB to the Academic Appeals Committee of the Governing Council (the "AAC"). On July 27, 2015, the AAC unanimously dismissed the appeal of the failure stating:

This Committee accepts that the Student was distressed by her family situation in the fall of 2013, and that the Student's academic performance was likely affected by these factors. However, such a finding is insufficient to merit the extraordinary remedy of late withdrawal without academic penalty.

...

In this case, the Student argues that her situation became unexpectedly more difficult after the drop date. Yet, the Student did not file sufficient medical or psychological evidence to support this finding, and her own affidavit does not mention the psychological distress that she claims impacted her performance in CIV531H.

While these appeals were going forward, the Student continued to take courses in the Program. Unfortunately she failed another course, CIV1532H, in the Winter of 2014. The Student stated at the hearing in this appeal that she had been concerned both about her parents' marital problems as well as the fact that her mother revealed to her that she (the mother) had a brain tumor. The Student did not drop any courses by the drop date that term nor did she appeal the failure in CIV1532H.

In the Fall of 2014, the Student took three further courses. She obtained marks of A-, A- and B+ in these courses.

As result of the unsuccessful appeal of the failure in CIV531H at the GAAB and the failure in CIV1532H, the Department recommended to the SGS in December 2014 that the Student's registration be terminated. The Department states that its policy is that any student who fails two or more courses be asked to withdraw from the program. On December 16, 2016 Professor De Nil, the Vice Dean, Students of the SGS, emailed the Student to inform her of the request for termination and offered the Student the opportunity to provide any relevant information about the termination. He and the Student met in person to discuss the termination. The SGS subsequently terminated the Student's registration on January 13, 2015.

The Student appealed this termination to the GAAB. In the GAAB Decision dated November 13, 2015, the GAAB unanimously dismissed the appeal. After reviewing the prior decisions, the GAAB stated:

As the Department's policy is to require students who have failed two courses to leave the program, SGS and the Department argued that the FZ in CIV 531H, which still stands after multiple levels of appeal, in conjunction with the failed course in the Winter of 2014, CIV 1532H (Fundamentals of ITS and Traffic Management), satisfy the requirement for termination of the Student's program.

While the members of the committee were sympathetic to the Student's situation, the fact remains that she did not appeal the Winter 2014 failure (it stands uncontested) and the failure in CIV 531H certainly stands after having been considered by three levels of adjudicators. This makes for two failures that justify the Department's decision to recommend termination of the Student's program and for SGS to act on it and terminate the registration.

The Student appeals this GAAB decision to your Committee.

Decision

The Committee's task is to decide whether the GAAB decision upholding the termination is reasonable. We are not revisiting the failures of the courses themselves. These failures stand. The Student's appeals of the failure in CIV531H were unsuccessful and she did not appeal the failure in CIV1532H.

The SGS Calendar states that "[i]f a student fails to complete a graduate course in a satisfactory manner (i.e., receives a grade report of FZ or NCR in a course or receives a grade report below the minimum acceptable by the graduate unit), then the graduate unit in which the student is registered may recommend to the School of Graduate Studies the termination of registration and eligibility of that student." The Department indicated to the Student that it is the Department's policy to recommend termination of registration to the SGS if a graduate student fails two or more courses. Unfortunately this policy does not appear to be written down anywhere. However, as the SGS noted at the hearing, the policy is more lenient than the SGS general policy of at least one failure.

The SGS does not automatically terminate registration upon request of a graduate unit. It exercises discretion in deciding whether to accept a unit's recommendation. At the hearing Professor De Nil stated that there have been cases where students with two failures have not had their registrations terminated (although not from this graduate unit). The Vice Dean appropriately recognized the need to take into account the whole of the circumstances relating to students facing termination in providing the Student with the opportunity to make submissions concerning her potential termination. The question then is whether the GAAB was reasonable in upholding the SGS's decision to terminate registration in this case.

In this case, the SGS followed a fair process in making its decision. The Student had warning as early as the Winter of 2014 that the Department viewed two failures as a basis to request that the Student leave the program. She had opportunities to provide information to the SGS and to appeal the underlying marks that eventually formed the basis of the termination decision. Moreover, the Student was informed of the Department's request to the SGS to terminate her registration, was offered the opportunity to make submissions to the Vice Dean about the termination and in fact met with the Vice Dean to discuss the circumstances around the failures.

In terms of the substance of the SGS's decision, the Student argues that the circumstances surrounding her failures militate in favour of the SGS exercising its discretion to not terminate her registration. In particular, she argued that the events of the Fall of 2013 and Winter of 2014 led to her failures. Your Committee is of the view that it would be reasonable for the GAAB to uphold the SGS decision based on the fact that the Student was unsuccessful in her appeals relating to CIV531H and she did not appeal her failure in CIV1532H. The Student needs to show not just that allowing her to remain in the program may be reasonable but that the SGS termination of her registration (and the GAAB upholding that termination) was unreasonable. Based solely on the information relating to the events of the Fall 2013 and Winter 2014 that was before the SGS and the GAAB, the Student failed to do so. The Student is in effect asking the SGS and the GAAB to review the facts underlying the failures of the courses and come to a

different decision. The GAAB in reviewing the termination found that the failures and the circumstances surrounding the failures provided a sufficient basis to support the termination. The Committee finds that this decision is not unreasonable given the many different bodies that had reviewed and not accepted her submissions relating to CIV351H (including a panel of this Committee) and her lack of appeal of the failure in CIV1532H.

However, the Student adduced new medical evidence that was not available before the GAAB in its decision in the appeal of the termination. The Student provided a letter from a psychologist dated February 17, 2015 noting that the Student had been under his care since November 2014. She also provided a letter dated January 7, 2016 from a psychologist in Iran who stated that he was in contact with the Student by phone since November 2013 and saw her in person beginning in the Fall of 2015. However, the Committee does not believe either the SGS or the GAAB would have come to a different decision if they had had this information. The February 17, 2015 letter refers to a period (November 2014) after the terms in which the Student took the courses she failed and during which she was performing well academically. The letter dated January 7, 2016 does not significantly add to the information that was before either the prior decision-makers or the GAAB and was not convincing given the timing of the production of the evidence and its limited nature. The Student was unable to provide any reason why she could not have adduced this letter in prior hearings relating to the failure of CIV 531H or in the GAAB hearing in this appeal. She had been informed both by the Department and in the various decisions that medical evidence was important and had not seen fit to obtain this documentation before. Because of its limited nature, the new medical evidence does not support a finding that the GAAB decision was unreasonable.

The Student also argues that the SGS should take into account her record in the Program following her failures (that is, while undertaking the appeal process). She notes that she was able to obtain good marks in the Fall of 2014 which point to her ability to successfully complete the Program. The SGS argued that the Student's academic record following her failures is irrelevant to the reasonableness of her termination. It refers to AAC Report #307, a prior decision of this Committee, where the Committee held that the student's performance in courses subsequent to the events central to that appeal were not relevant.

The Committee is of the view that it may be appropriate in some cases for the SGS to take into account the performance of a student in courses taken subsequent to the events central to the appeal. A complete exclusion of such information would be unfair to the students subject to termination and may in some cases lead to an unreasonable termination decision. In this case, however, the majority of the Committee is of the view that even taking into account the grades in the Fall of 2014 the GAAB decision was not unreasonable. The Student had failed two courses. One of the courses had been the subject of decisions of a number of bodies, including this Committee, which did not accept that there were grounds for any exceptional relief based on the evidence. The Student had not appealed the other decision. Before making its decision, the SGS provided the Student with a fair opportunity to explain the circumstances surrounding the failures. Given these facts, it was not unreasonable for the GAAB to dismiss the appeal on the basis that there were sufficient grounds to support termination. One member of the Committee

considered the grades relevant to the SGS decision and the failure to consider them at all made the decision unreasonable.

The Committee dismisses the appeal. However, at the hearing, the SGS and the Department offered to the Student that if the appeal was dismissed and the termination upheld, she could contact the SGS within seven days of release of the decision and request that she be allowed to withdraw from the program as opposed to having her registration terminated. The Committee recommends that the Student take this option.

The appeal is dismissed.