

UNIVERSITY OF TORONTO

GOVERNING COUNCIL

Report # 396 of the Academic Appeals Committee
June 5, 2018

To the Academic Board
University of Toronto.

Your Committee reports that it held a hearing on Tuesday, May 29, 2018, at which the following members were present:

Professor Andrew Green (Chair)
Professor Mohan Matthen, Faculty Governor
Ms. Mala Kashyap, Student Governor

Hearing Secretary:
Ms. Tracey Gameiro, Appeals, Discipline and Faculty Grievances

Appearances:

For the Student Appellant:

Ms. N.C. (the “Student”)

For the John H. Daniels Faculty of Architecture, Landscape and Design:

Dean Richard Sommer
Ms. Andrea McGee, Registrar & Assistant Dean, Students

The Appeal

The Student appeals a decision by the Associate Dean Academic at the John H. Daniels Faculty of Architecture, Landscape and Design (the “Faculty”) dated October 23, 2017 (the “Decision”). In the Decision, the Associate Dean dismissed an appeal by the Student from a decision by the Associate Chair, Undergraduate Studies of the Department of Germanic Languages and Literatures (the “Department”) dated June 21, 2017 (the “Department Decision”) denying her request for an increase in her grade in GER372H1S (the “Course”). The Student seeks an increase in her grade for the Course. The Student based her appeal on a number of grounds including primarily that the Professor for the Course had promised to give her extra marks on one test but had failed to do so.

The Facts

In Winter 2017, the Student was enrolled in the Course as part of her minor in Business German. On February 17, 2017, the Student states that she wrote the first test in the Course ("Test 1") and that the Professor returned it in the week of February 27, 2017. At that time, the Student states that the Professor did not provide an overall mark on Test 1 as he could not read the Student's answer on part of the exam. According to the Student, he allowed the Student to read her answer to him. On the same day, the Student states that she pointed out to the Professor a mistake in the marking of a different part of the test and that he agreed to increase her overall mark by 2% to take account of that mistake. The Professor then took the test away to provide a final mark.

The Student states that the Professor returned Test 1 to her on March 6, 2017 with a final mark of 84%. On March 8, 2017, the Student emailed the Professor thanking him for going over the test with her and stating that she

Realized that for Teil II. C. fur Welches Wort passt nicht? that my mark for the fourth question with OHG that we went over last time is not updated (the case where I crossed off the right ones and ticked the left over OHG). I just wanted to email you to make sure that is still ok.

The Student states the Professor did not respond to this email. The first test was worth 20% of the final grade.

Later in March, the Student sought an explanation for a grade of 83% on a presentation also worth 20% of the final grade. The Professor did respond to this email and increased her mark without comment to 84%.

At the end of the Course, the Student found out that her overall mark was 84.4%. She emailed the Professor for a breakdown of her grades for the different components of the Course. She again mentioned the additional 2% on Test 1 about which she had emailed the Professor. The Professor responded on April 12, 2017 that he had "been very helpful this semester in that I gave you a chance to read your first test to me because I could not read your writing". He also stated "I feel I have been very generous and co-operating. 84% is an excellent grade." He did not mention the Student's claim about the additional 2%.

The Student then asked again for a breakdown of all the marks. On April 15, 2017, the Professor emailed her the marks including a mark on Test 1 of 84%. The Student subsequently emailed to re-iterate her concern about the 2% and sought to meet with the Professor. The Professor was unable to meet with her but left a second test ("Test 2") for her to pick up. He did not address her question about Test 1.

On April 21, 2017, after reviewing Test 2, the Student emailed the Professor. She noted a mistake in the marking on Test 2 and again mentioned the 2% issue on Test 1. In reply the Professor wrote:

To directly address your grade change request, I have no intentions of changing your mark. I tried to indirectly make this clear; however, that hasn't worked.

On April 26, 2017, the Student again emailed her concern about the 2%. She received no response. The Student noted on a number of occasions that the mark was important for her as it would increase her overall GPA and, she believed, her chances of getting into graduate school.

As a result, the Student began the appeal process. She appealed first to the Associate Chair, Undergraduate Studies of the Department. The Associate Chair rejected the appeal in the Departmental Decision. The Departmental Decision stated that:

According to the Academic Handbook “appeals must be made in writing in a timely manner, and no later than two weeks after the work was returned, explaining why the student believes the mark was inappropriate, and summarizing all previous communications in the matter” (5.14). Your appeal for Test 1 does not meet the timeline criterion for reassessment.

The Departmental Decision also rejected the other grounds raised by the Student for a grade increase relating to her marks on the oral report, for participation and on Test 2.

The Student appealed this decision to her Faculty. The Faculty denied the appeal in the Decision. The Decision merely states (in total):

I have given your appeal for GER372H1S careful consideration. I support the pedagogical academic assessment by the Associate Chair, Undergraduate Studies, Christine Lehleiter, and I am denying your request for a grade increase.

The Student appeals this Decision to your Committee.

Decision

The Committee's task is to decide whether the Decision denying the Student's grade appeal was reasonable.

In her submissions, the Student raised concerns about the participation mark, the oral report mark and Test 2. Each of these components was worth 20% of the final grade. The Student did not stress these points at the hearing. In considering these points, your Committee finds that the Decision was reasonable. The Professor had discretion in marking the participation and oral components of the grade and in fact considered and raised the mark on the oral report. Further, the Department undertook a re-read of Test 2 and indicated there were no grounds for changing the grade. The Department noted the Student had the opportunity to submit Test 2 for re-grading, which she has not apparently done. Your Committee finds the Decision reasonable on these matters.

In terms of Test 1, the Departmental Decision found that the Student was out of time to appeal Test 1 as the Academic Handbook stated that any such appeal must be launched within two

weeks of the work being returned. It therefore did not deal with the merits of the Student's claims about Test 1. The Decision does not seem to address Test 1 at all as it refers to supporting the "pedagogical academic assessment" by the Department and does not directly discuss the timing of the appeal of Test 1.

In its submissions to your Committee, the Faculty merely stated that the Student "did not appeal marks she now takes issue with within the time required under policy, and there is nothing in the record that shows that Professor Hagar made any mistakes in rendering her final grade." As a result in terms of Test 1, we have no assessment by the Department or the Faculty of the reasonableness of the grade for Test 1. We have a statement by the Student about a promise of an extra 2% by the Professor but nothing from the Professor, the Department or the Faculty about this issue.

What we do know is that according to the uncontested evidence of the Student, the Professor did not return Test 1 with a final mark until March 6, 2017. On March 8, 2017, the Student emailed the Professor about the apparent promise of an increased mark and asking whether it was okay. The Professor did not respond, and there is, again according to uncontested evidence by the Student, apparently nowhere he kept marks such that students can determine their grades on an on-going basis (such as Blackboard). The question then is whether the Student is out of time for appealing because although she emailed the Professor promptly, he did not respond to her email about the grade increase.

For convenience, we repeat the policy as set out in the Department Decision:

According to the Academic Handbook "appeals must be made in writing in a timely manner, and no later than two weeks after the work was returned, explaining why the student believes the mark was inappropriate, and summarizing all previous communications in the matter" (5.14).

Your Committee finds it reasonable to read this policy as placing a heavy onus on the Student to take responsibility in appealing decisions. The policy clearly states that the decision must be appealed "no later than two weeks after the work was returned" and we cannot question the fairness of the policy itself.

However, in the exceptional circumstances of this appeal, we find that the policy was not fairly applied to the Student. The Student states (and it has not been contested by the Professor) that the Professor had promised her an increase, that when she found out it was not given she immediately contacted him asking if it was still okay and that the Professor did not respond. She clearly contacted him within two weeks of receiving her work back with a grade. In general, the Student should not be able to rely on a mere assertion as evidence that she can assume the mark had been changed. However, if a student is misled into thinking that a particular mark had been given and then only later finds out that it was not, it is unfair to find that the student can no longer appeal the grade. In this instance, neither the Department nor the Faculty had anything but the uncontested evidence from the Student that she had been promised this increase. The Professor never contested the fact that he had promised her the extra marks nor did he provide any assertion at all about the marking other than later stating that he had been generous. He does

mention that he “tried to indirectly” make it clear that he would not increase her mark. However, it would seem unfair if the Student was found to not be able to appeal if the Professor was purposely silent when she mentioned that he had agreed to increase the mark. Even that silence might have been acceptable if at some point somewhere in this whole process, the Professor had provided some response to this claim of a promise of extra marks. However, despite repeated inquiries by the Student, he never addressed the issue. The Department and the Faculty then were faced with uncontested evidence from the Student that the Professor had promised and failed to increase the mark (including a contemporaneous email) and nothing denying that assertion later. While a mere assertion by the Student of the increase would be insufficient, we can see no attempt by the Department or the Faculty to determine if there was any basis for her assertion that the Professor had promised the increase, even if it only consisted of an ex post statement by the Professor that there was no such promise, and that the Student had been misled into thinking the mark had been increased.

Your Committee therefore finds that in the exceptional circumstances of this appeal, the Decision was not reasonable in finding that the appeal was out of time. As neither the Department Decision nor the Decision dealt with the substance of the Student’s claims on Test 1, the appeal is allowed but rather than grant the remedy requested by the Student of increasing the grade, we remit the appeal back to the Department to consider the substance of the Student’s appeal on Test 1.