

UNIVERSITY OF TORONTOTHE GOVERNING COUNCILREPORT NUMBER 110 OF THE ACADEMIC APPEALS BOARDSeptember 3rd, 1987

To the Academic Affairs Committee,
University of Toronto.

Your Board reports that it held a hearing on Thursday, September 3rd, 1987 at 2:00 p.m., in the Board Room, Simcoe Hall at which the following were present:

Professor J. B. Dunlop (In the Chair)	Ms. Susan Girard, Governing
Mr. Michael Bilaniuk	Council Secretariat
Professor F. Flahiff	
Mrs. J. Philpott	
Professor F. Arthur Sherk	

In Attendance:

Mr. L., appellant
Mr. Timothy G. M. Hadwen, counsel for the appellant
Dean A. R. Ten Cate, Faculty of Dentistry
Professor J. T. Mayhall, Faculty of Dentistry

THE FOLLOWING ITEM IS REPORTED FOR INFORMATION

At a meeting on September 3rd, 1987 the Academic Appeals Board heard the appeal of MR. L. from a decision of the Academic Appeals Committee of the Faculty of Dentistry upholding the Faculty's decision to deny him supplemental privileges in respect of subjects failed during the 1986-87 academic year and to refuse him further registration. The decision of the Board is that the appeal should be dismissed.

The appellant had entered first year of the Faculty of Dentistry in 1985-86 but had failed six subjects and had been refused further registration at that time. He appealed to this Board on compassionate grounds and the Board, by reasons dated September 25th, 1986, allowed his appeal, granting him the right to repeat the year. The appellant had been under considerable stress during the year due to family problems which threatened his mother with bankruptcy and which seemed to be pushing her towards a nervous breakdown. As the Board said in its reasons: "No doubt many students have distracting problems during an academic year. The Board felt the appellant's were grave enough to warrant relief on compassionate grounds."

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On this second occasion the appellant failed in three subjects.

The appellant raised a question as to the Faculty's authority to refuse supplementals in the circumstances. The Faculty's regulations on "Standing", set out in the calendar, deal with "Promotion" and "Consequence of failure in the D.D.S. program" and read in part as follows:

First Year Students

- i) Any student failing three or more courses in which standing is required will not be permitted to take supplemental examinations or evaluations. He or she will be judged to have failed the year, will retain no credit for any course of the year, and will be refused further registration in the Faculty. Any student who fails two or three courses may, at the discretion of Faculty Council, be granted supplemental privileges in the courses failed. (emphasis added)

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Thus the Faculty would appear to have the authority to refuse supplementals. However, the appellant pointed to another provision of the calendar under the heading "Examinations" which deals with supplemental examinations and reads in part:

Supplemental Examinations in didactic courses and supplemental evaluations in preclinical courses and in the Clinical Clerkship will be granted as a privilege to students failing in a given year up to three courses in which standing is required.

It was suggested that there was an inconsistency between the provisions and that the latter implied a right to supplementals. In the Board's view, however, the latter provision, albeit a trifle unclear, intended by the use of the word "privilege" to rule out the idea that supplementals were a right.

Nevertheless, a discretion to refuse supplementals must be exercised reasonably, and it is usual for a student failing three subjects to be granted supplemental privileges. In this case, however, the Faculty took account of the fact that the appellant was repeating the year. It was felt that he was simply too weak a dental student to be permitted to continue.

The appellant's principal argument was addressed to this point. It was urged that because the appellant had been granted the right to repeat on compassionate grounds no account should be taken of his previous performance. The "slate should be wiped clean" and he should be treated as any other first-year student.

While there may be circumstances in which this argument should prevail, the Board does not agree that it should apply to this case. Although it is true that the appellant had serious problems and was excused the severest consequences of failure because of them, he could still have been expected to benefit from the year of teaching and study. His previous experience of first year should have been an advantage to him that would have allowed him, if he really had the capacity for dentistry, to make a much better showing than he did. Thus the Board felt that the Faculty Council was justified in exercising its discretion as it did by refusing the appellant supplemental privileges.

Evidence and argument were directed to the question of whether or not the appellant had actually passed one of the subjects he was shown as having failed. Although the scores on his term work, his tests and the final examination added up to 61.26%, slightly above the passing level of 60%, his final examination had been a serious failure and the instructor had assigned a failing grade for the course. The course information given out to students had indicated that final grades might vary from total scores "based on the ability of a particular test to measure knowledge acquisition." While the Board has some reservations about discretion to vary grades, it could understand the instructor's reluctance to award a passing grade where the most important element in the evaluation of the student, based on all of the course material, showed such serious lack of comprehension. The student had notice of the instructor's retention of an overriding power of judgment and it certainly was not exercised arbitrarily. In any event, the record was such as to justify the Faculty Council's decision. The appellant had failed two other subjects as well.

The appellant cited an earlier decision of the Board - decision #9 - which had upset a Faculty decision to fail a student because of his weak overall record. The Board (at the time it was known as the Subcommittee on Academic Appeals) had found the discretion claimed by the Faculty not to be legally justified. The case is distinguishable, however, in that there was no such discretion provided for in the Faculty's regulations and the appellant had met the stated passing requirements.

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There was evidence that the appellant had had a minor automobile collision the morning of one of the examinations he had failed. However, the Board did not see it as justifying its interference with the result of the examination.

Appeal dismissed.

Secretary
September 18th, 1987

Chairman

