

BULLYING AT HARBOR STATE UNIVERSITY: THE ROLE OF WORKPLACE PROTECTIONS, POLICY AND LAW

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“Widespread concerns about decreased collegiality along with perceptions of increased incivility and bullying have led many institutions of higher education to consider how to balance the legitimate enforcement of respectful and productive workplace conditions with adequate protections for academic freedom and individual rights to expression” (Shiell, 2015).

Introduction

Reed Billings, a tenured, senior professor in the School of Management at Harbor State University (HSU), felt a sense of relief wash over him as he made the final edits to his official university bullying complaint against Professor Frank Burns, the School of Management’s Assistant Director. Billings mentally crossed the item off his to-do list as he clicked the “send” button delivering the e-mail to the inbox of the Director of the School of Management.

No other Management faculty member had filed a grievance about Burns’ behavior, even though there were multiple examples of his confrontational behavior towards the School’s untenured faculty members with and without Ph.Ds. (See Exhibit 1: Timeline of Key Events). The untenured faculty members felt powerless, given Burns’ influence over routine tasks such as class assignments and schedules, as well as impactful career events such as tenure and

promotion. As a tenured professor, Billings believed that he had to file the grievance, because he felt Burns' recent outburst was over the top, and it was the next step in the School's conflict management process.

After clicking the send button, Billings reflected upon whether his bullying grievance was on solid ground with the grievance committee. The workplace protections of academic freedom and tenure were sometimes used as a shield. Would the grievance committee properly apply HSU policy at the time? Did HSU's policy address the impact of evolving state and federal laws concerning bullying in the workplace?

The Critical Incident

Bullying in the workplace had been generally defined as the systematic negative treatment of a target, over an extended time, in situations that the target cannot defend against, with a negative effect on the workplace environment (Einarsen *et al.* 2020). In academia, the opinion of a single faculty member had been found to have profound implications on another's work, reputation, and career; academia created an atmosphere in which junior faculty could be vulnerable to bullying behaviors (Mahmoudi *et al.* 2021). The Timeline of Key Events (Exhibit 1) shows examples of Burns' behavior toward the School of Management faculty at HSU, particularly his behavior towards untenured faculty. However, the latest incident with untenured, non-Ph.D. faculty member, Raymond Patrick, was the straw that broke the camel's back, thought Billings. The incident occurred when Patrick asked Burns if he (Patrick) could change his teaching schedule for the next semester. Burns not only disagreed, but he chastised Patrick for even asking, loud enough for other faculty members in their offices to hear. Billings had previously considered filing an official grievance but had not done so, Billings had hoped that informal conversations with Burns would curtail Burns' behavior and restore the school's generally collegial environment.

The School of Management had established formal steps for conflict resolution. Accordingly, the Director of the School was reluctant to act unless an official grievance was filed, despite the historical examples of Burns' behavior. Billings' grievance alleged that Burns' behavior substantiated workplace bullying. Billings knew that the HSU faculty handbook did not have a section covering bullying, nor even defined it, but he hoped that the grievance committee would find a justifiable way to stop Burns' behavior (see Appendices 1 and 2). Likewise, only a few U.S. states had passed laws addressing workplace bullying, which did not include the state where HSU was located. Unfortunately, there was no federal law to guide the committee's decision about Billing's bullying grievance (Healthy Work Campaign 2019).

Exhibit 1. Timeline of Key Events

Source: College Professional Ethics Committee (2021)

| Dates | Events |
|---------------|---|
| 2016-2018 | Burns touted his doctorate from a renowned institution to elevate his opinions over others'. |
| 2016-2018 | Burns openly and aggressively criticized faculty, especially lower-ranked, in public settings to undermine their research. |
| 2016-2018 | Burns treated invited external professionals when they attended School of Management functions or gave presentations at the School of Management in a demeaning manner. |
| 2017 | Burns harassed and threatened fellow faculty members with a vote against their tenure if they complained about additional work from an increase in class size. |
| 2018 | Burns verbally and physically confronted an untenured, non-Ph.D. faculty member in an angry manner loud enough for other faculty in their offices to hear. |
| October 2018 | Billings filed a formal grievance against Burns with the Director of the School of Management. |
| October 2018 | The Director of the School of Management forwarded a formal grievance against Burns to the College Professional Ethics Committee for review. |
| November 2018 | The College Professional Ethics Committee categorized Billings' grievance into four charges. |

Workplace Environment

The School of Management at HSU had a reputation for promoting an understanding and acceptance of cultural and ethnic differences. Billings liked that HSU was committed to equal opportunity for all people and pledged to take direct and affirmative action to achieve that goal. While HSU policy did not specifically cover bullying, it explicitly denounced racism, sexism, homophobia, bigotry, harassment, or other forms of human rights violations and had several anti-racism and anti-bias initiatives actively working at every layer of university governance (see Appendix 1). Overall, Billings believed that HSU and the School of Management, in particular, was a good place to work.

Faculty members were encouraged to communicate their disagreements to each other when disputes occurred. With the exception of Burns, senior tenured colleagues seldom pulled rank when they had disputes with untenured and junior faculty. Nonetheless, there were some instances where university and department decisions were necessarily based on seniority or rank. For example, only tenured faculty members could sit on the promotion and tenure (P&T) committee, which evaluated the work of untenured faculty. In addition, due to a lack of faculty at the highest rank of full (senior) professor, Burns was one of the few faculty members able to serve on the committee. Accordingly, Burns was a longstanding member of the committee, so lower-ranking tenured professors, as well as untenured faculty, avoided directly confronting him since they knew that he would evaluate them when they sought promotion or tenure (P&T). Some junior faculty members even felt that filing a formal grievance against Burns would cause him to retaliate during P&T decisions.

Billings believed a generally collegial and accepting culture was prevalent in the School of Management at HSU, and the incidents described in Exhibit 1 were exceptions. For example, Burns regularly touted his doctorate was awarded from a renowned institution in his subject area when other faculty members presented their research. While critique of academic research was highly valued within the School, Burns aggressively critiqued other faculty in

public settings in order to undermine their research under the guise of encouraging higher quality research. Likewise, when dealing with administrative matters, Burns was often caught up in minutia, which delayed vital decision-making. When challenged by other faculty to decide, Burns often stalled by engaging in what many faculty felt were lengthy, nonproductive discussions.

Billings was concerned that Burns' behavior negatively affected the School's ability to recruit new faculty, encouraged current faculty to leave, and fostered a noncollegial culture.

Workplace Protections of Academic Freedom and Tenure

Billings understood tenure was a cherished career goal for faculty and could be defined as

“an indefinite appointment that can be terminated only for cause or under extraordinary circumstances such as financial exigency and program discontinuation, ... whose principal purpose is to safeguard academic freedom, which is necessary for all who teach and conduct research in higher education” (AAUP 2021).

Billings knew that academic freedom has been described as three fundamental freedoms: (1) freedom in the classroom, (2) freedom in research, and (3) freedom to speak or write freely in an academic and professional environment (Reichman 2021). Critics of tenure and academic freedom had stated that it *“has [also] degenerated into a narrow claim of privilege by professorial elite, insulated from public accountability”* (Reichman 2021). Thus, critics realized that academic freedom and tenure had the potential to be to be misused or serve as a shield for inappropriate behavior (Reichman 2021). A *Washington Post's* YouTube video *“What is tenure?”* (Exhibit 2) explained tenure in under two minutes (Washington Post 2018), specifically the importance of permanence to protect professional autonomy (Reichman 2021).

Exhibit 2. What is Tenure?

Source: Washington Post YouTube Video (2018)
<https://www.youtube.com/watch?v=OdNgrxWEYtg>



The HSU Faculty Handbook supported the idea that tenure was a goal most faculty sought because it provided them with permanent job security and the academic freedom to pursue new, controversial, and unusual work, and to engage in collegial debate regarding the work of others.

Institutional Policy and Grievance Process

After filing a formal grievance, the next steps in the formal conflict management process required the School of Management Director to forward the official grievance to the Dean of the College of Business, who promptly forwarded them to the College Professional Ethics Committee (CPEC) who would review the case in detail. The CPEC used the Faculty Handbook and HSU policy to guide decisions regarding grievances. The Faculty Handbook laid out general values of professional ethics and did not list workplace bullying as a violation of professional ethics (Appendix 1). HSU did not have policies in place that defined workplace bullying, so the CPEC steered clear of categorizing Billings' grievance statements as allegations of "workplace bullying." Accordingly, the CPEC categorized the allegations against Burns, based on the Faculty Handbook, into the following three charges:

Exhibit 3. College Professional Ethics Committee's Charges Based on the Grievance's Allegations

Source: College Professional Ethics Committee (2021)

| | |
|---|--|
| 1 | Professor Burns had discriminated against faculty members who did not hold a Ph.D. by excluding these faculty members from leadership roles, refusing to consider non-Ph.D. applicants for tenure track faculty positions, and denigrating the creative works of non-Ph.D. faculty. |
| 2 | Professor Burns had failed to demonstrate respect for others' opinions and/or failed to be objective in his professional judgment during promotion and tenure meetings as well as peer review meetings. |
| 3 | Professor Burns had harassed fellow faculty members by threatening to vote against a faculty member's tenure if he complained about the additional work from choosing to increase his class size, implying that a faculty search was mishandled, and questioning the validity of a request for faculty fellowship leave. |

Workplace Bullying State and Federal Law

Under federal law, discrimination in virtually all employment circumstances based on race, color, religion, sex, national origin, sexual orientation, and gender identity was prohibited by Title VII of the 1964 Civil Rights Act. Title VII did not explicitly prohibit bullying, but courts had interpreted unlawful discrimination to include harassment (WBI 2021). Although HSU was not located in a state with workplace bullying laws, it could have looked to other states' laws that addressed those situations for guidance. In 2018, only California, North Dakota, Tennessee, Utah, and Virginia had any type of workplace anti-bullying law regulating the reporting and filing of civil actions against employers, protection from retaliation, and training (CFEA 2021; HWC 2019). In 2020, the U.S. territory of Puerto Rico passed a law directly prohibiting workplace bullying, and requiring all employers to adopt policies and protocols advising employees about their rights (Puerto Rico Act 90-2020). In 2021, the Rhode Island Senate passed a bill providing workers protection from bullying and harassment in the workplace that went to their House of Representatives for consideration (Rhode Island Senate Bill 2021-S 0196).

Conclusion

Shortly after filing the bullying grievance against Burns, Billings reflected on how this situation came about. He worried about its outcome. He hoped that the grievance would at least start a process to reduce workplace negativity and restore collegiality while protecting tenure and academic freedom. Billings realized the incident that accelerated his decision to file the grievance had many potential concerns (ethics, justice, and power asymmetry) yet he was concerned with how Burns' behavior went unchecked, behind the shield of tenure and academic freedom. He also thought about the likely influence of HSU policies on dealing with possible hostile, bullying behavior at HSU. He wondered how solid his grievance was from the perspectives of HSU policy, as state laws continued to evolve.

In retrospect, he wondered: (1) what role do critical factors related to academic freedom and tenure play at HSU that allowed Burns' behavior to go unaddressed and unresolved? (2) What factors influenced whether HSU should have had anti-bullying policies in its Faculty Handbook? And finally, (3) how had the legal and policy landscape changed from 2018 to 2021? Would these changes have affected the legal environment in which Billings' grievance was set?



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Appendix A

Excerpts from the Harbor State University Faculty Handbook

Academic Freedom

Academic Freedom, Professional Ethics and Tenure

Harbor State University (HSU) subscribes fully to the 1940 Statement of Principles of the American Association of University Professors regarding academic freedom and regarding tenure except as altered below in Section I.D.2.a.

Section I.D.2.a is consistent with the statement adopted by the American Association of University Professors in June 1978.

Statement on Professional Ethics

a. Faculty, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognize the special responsibilities placed upon them. This primary responsibility to their subject is to seek and to state the truth as they see it. To this end, they devote their energies to developing and improving their scholarly competence. They accept the obligation to exercise self-discipline and judgment in using, extending, and transmitting knowledge. Faculty members should practice intellectual honesty. Although they may follow subsidiary interests, these interests must never seriously hamper or compromise their freedom of inquiry.

b. As teachers, professors encourage the free pursuit of learning in their students. They hold before them the best scholarly and ethical standards of their discipline. Professors demonstrate respect for students as individuals, and adhere to their proper roles as intellectual guides and advisors. Professors make every reasonable effort to foster honest academic conduct, and to ensure that their evaluations of students reflect each student's true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment of students. They acknowledge significant academic or scholarly assistance from them. They protect the academic freedom of their students.

c. As colleagues, faculty have obligations that derive from common membership in the community of scholars. Faculty do not discriminate against or harass colleagues. They respect and defend the free inquiry of associates. In the exchange of criticism and ideas, professors show due respect for the opinions of others. Professors acknowledge academic debt and strive to be objective in their professional judgment of colleagues. Professors accept their share of faculty responsibilities for the governance of their institution.

Appendix B

Examples of Professor Burns' Behavior Contained in the Grievance

Source: College Professional Ethics Committee (2021)

- At a meeting in Burns' office, an untenured tenure-track faculty member asked Burns if he could change his teaching schedule in a future semester. This infuriated Burns so much that Burns pointed his finger in the faculty's face and shouted, loud enough for other faculty members in the offices throughout the floor to hear, *"As someone who will vote on your tenure, you better not pull any of this crap with me."*
- At a School of Management faculty meeting, an untenured tenure-track faculty presented a proposal for a change to the School's mission statement. Burns attacked the proposal, the process, and that person in such a brutal way that numerous faculty members personally apologized to the untenured tenure-track faculty immediately afterward.
- As the Assistant Director of the School of Management, Burns was responsible for faculty teaching and service assignments. He had a reputation for assigning courses to instructors outside of their requested course area when they got on his *"bad side."* He had re-assigned faculty members' service obligations based on ethereal criteria and did not generally offer a suitable alternative service opportunity.
- During an untenured tenure-track faculty member's presentation of a paper, Burns asked whether the untenured tenure-track faculty was the first author, while knowing that this was not the case. Burns' statement was meant to show his high standard of co-authorship. However, this standard was contrary to HSU policy that did not establish solo-authored publications as vital to promotion and tenure. Further, Burns' statement was contrary to Burns' own publication record; he had primarily been a co-author on papers with multiple authors.
- Burns stated on numerous occasions that he believed it was only appropriate for faculty members holding a Ph.D. to achieve the rank of full (senior) professor, despite policies at all levels of university that faculty being considered for tenure and promotion were to be judged solely on the merits of their teaching, research, and institutional service.
- Many instructors in the School of Management stated that Burns' behavior was unprofessional and non-collegial, ranging from severe mood swings to deliberate slights and threats.
- Burns openly criticized faculty members with lower rank. He was demeaning to invited external professionals when they attended School of Management functions or gave presentations at the School of Management.

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