

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

In the matter of

Professor Sabina Burton
UW-Platteville

Recommendation of dismissal for
cause

Reply Brief of the University of Wisconsin-Platteville

Dr. Burton has submitted a seventy-two-page brief to this Board, the majority of which presents argument that is irrelevant to the matters at hand. To save time, we will not be addressing Dr. Burton's teaching, scholarship, or past disputes with her chairs and colleagues. Nor will we respond to allegations, such as the assertion that Dr. Shields tried to prevent Burton's supporters from testifying, that are presented without actual support. We address only those two grounds on which dismissal is sought (breach of confidentiality and unprofessional behavior towards colleagues) and the process that was provided.

In summary, Dr. Burton appears to believe that because she passed along a student complaint in 2012, she is entitled to bully her colleagues at will and release confidential information without repercussion. No reasonable employer, public or private, would condone Dr. Burton's conduct or allow her to remain employed in the face of this record.

Dr. Burton argues that she should receive progressive discipline rather than termination. In essence, she believes that the letters of direction, the counseling, and the declined offers of meetings, were not sufficient to apprise her of acceptable work place conduct and that, instead, she

will only understand how to behave as a responsible, professional faculty member if she is first given a suspension or other, lesser discipline. Such an argument is an offense to this board, to the UW-Platteville and to the faculty and staff across the system.

We note that, at no point in her brief, does Dr. Burton address either her bullying behavior or her breach of trust. She expresses no remorse. She makes no promises to improve. She ignores and obfuscates the seriousness of her misdeeds. She introduces seventy-two pages of red-herring argument in attempt to distract this board into ignoring the unanimous recommendation of the UW-Platteville faculty committee and the chancellor.

The following are responses to the more relevant of Dr. Burton's assertions:

1. The Roter investigation report.

Wis. Admin. Code section UWS 4.02(1) requires a chancellor to initiate an investigation when a complaint is brought that that could lead to dismissal. Chancellor Shields complied by engaging Dr. Petra Roter, of the UW System Administration, who submitted the report on which he made the decision to bring charges. Dr. Roter was an impartial investigator with no ties to the UW-Platteville Department of Criminal Justice.

To deflect attention away from her behavior, Dr. Burton sets forth many complaints about the Roter report: (1) it was not sworn to, (2) no "original" was provided, (3) Dr. Roter did not submit to cross-examination. These arguments entirely ignore the purpose of the investigation which was to inform the chancellor on whether to bring charges of dismissal. The Roter report was not used as evidence in the fact-finding portion of the hearing. Neither the faculty committee nor the chancellor relied upon the investigation report in making their recommendations. Once the report served its purpose to inform the charging decision, it was no longer relevant to the

proceedings. We also note that chapter 4 does not require a sworn investigation report, provision of an original, nor that the investigator submit to cross- examination.

Despite its insignificance, Dr. Burton used up at least an hour of her limited hearing time to cross-examine Chancellor Shields about the investigation. What complaints she had about the report, she had ample opportunity to bring before the committee. The Board may review those arguments in the transcript. In the end Burton presented (and cites to) no evidence refuting anything of substance in the report. She disagrees with the report, to be sure, but that is to be expected.

2. Confidentiality of Personnel Evaluations

Dr. Burton argues that the meetings she attended, secretly recorded, and then posted publicly were not confidential because no one specifically told her that they were. This admission serves only to prove the accuracy of the Chancellor and the Faculty Committee's findings. Can Dr. Burton be so disrespectful of standard norms in academia (not to mention virtually all professional work places) as to fail to understand that evaluation discussions of junior faculty are confidential unless she is told?

If nothing else convinces this Board that termination is the only possible resolution of this case, this argument by Dr. Burton should do it. Even to this day, Dr. Burton does not believe that she did anything wrong. It would be entirely impossible for any unit of the University of Wisconsin-Platteville to have any trust in her ability to maintain confidentiality because she simply does not understand when keeping confidences is necessary.

3. Wis. Stat. 943.30.

Wis. Stat. 943.30(1) makes it a felony to accuse someone of a crime “with the intent thereby to extort money.” Failing to recognize the irony, Dr. Burton accuses Chancellor Shields and the Faculty Committee (along with her Criminal Justice Colleagues) of committing just such a crime by pursuing her dismissal. Dr. Burton has not been accused of a crime as part of this process. She has been accused of sharing confidential information, violating trust, and demeaning or harassing her colleagues. An employer is permitted to hold an employee accountable and require professional work place behavior without running afoul of Wis. Stat. 943.30.

4. Provision of a copy of chapter 4 proceedings.

Dr. Burton argues that the Chancellor violated section UWS 4.02(2) by not including a “statement of the appeal procedures available to the faculty member” with the charging statement.

Dr. Burton was provided with copies of UWS chapter 4 when she was notified of the complaint and placed on administrative leave. The charging statement repeatedly made clear that the procedures that were to be employed were to be found in UWS chapter 4 which is freely available from many, many places. Dr. Burton herself admits that when she asked for copies of procedures, she was given them. She was represented by competent counsel throughout most of the proceedings and was always able to ask for copies of anything they needed. In addition, in the body of the charging document, a statement of appeal procedures was made as follows:

You are entitled to a hearing on this matter. If you wish to have a hearing, you must file your hearing request with the Faculty Senate within 20 days of your receiving this statement of charges as required by Wis. Admin. Sec. UWS 4.04.

It appears that because the UW-Platteville cannot prove that it included a physical copy of UWS chapter 4 with the actual charging statement, Dr. Burton believes she has identified

a loop hole requiring dismissal of all charges. The argument is a bridge too far. It would have been a denial of due process had Dr. Burton been unaware of the procedures and therefore unable to file for a timely hearing, for example, but that is not the case here. Dr. Burton was well-aware of the applicable procedures and never denied any right provided therein. At most, the error is harmless, and the Board can move forward to adjudicate the case.

5. Standing faculty committee

We admit to not fully understanding Dr. Burton's argument about the selection of the hearing panel, which is probably evidence enough that it lacks merit. UWS 4.03 requires a faculty to provide a "standing committee" charged with hearing dismissal cases and acting as the board's hearing agent. UWS 4 is silent as to what method a faculty should employ to populate the standing committee. UW-Platteville has, by faculty rule, provided for the members of the standing committee to be established at the time of need rather than having them wait around for something to come up. Such a process makes the utmost sense given faculty scheduling constraints and the need for impartial faculty members who are not already somehow involved in these issues.

UW-Platteville followed its established process in naming the members of the faculty committee. Dr. Burton was permitted to object to and exclude a proposed member (which she exercised) and she even requested and received the recusal of the first named committee chair. Dr. Burton is entitled to nothing more about the makeup of the faculty committee.

6. Open Meetings.

Dr. Burton alleges various violations involving proper notice of the hearing under Wisconsin's Open Meetings Laws. She states that she has brought a complaint before the district

attorney. That is the proper way to handle such violations. Even if there were an error when the faculty committee noticed the meeting, it would be up to a court to decide what the remedy would be.¹

In any event, the Board need not take up the Open Meetings matters. Those must be adjudicated by a court of competent jurisdiction.

7. Scheduling of the May 25th hearing.

Dr. Burton, with no prior notice and with no medical excuse, showed up in the person of her husband at the hour that the May 25th hearing was set to begin, and announced that she was too ill to attend. Despite having originally agreed to the May 25th date, Dr. Burton now complains that the hearing should never have been set for May 25th because that date was a few days beyond the twenty days after her request for hearing and because she was off-contract on May 25th.

Dr. Burton fails to read UWS 4.04 which provides that the 20-day time limit may be enlarged by “order of the hearing committee” which is what happened here. In addition, there is nothing in chapter 4 that prohibits the faculty committee from scheduling the hearing for a time “off contract.” The hearing was Dr. Burton’s choice. No one was making her attend a hearing if she did not want to attend one.

8. Time limits for the hearing.

Dr. Burton received 5 hours of hearing time to put on her case. This is more time than the chancellor needed to present his case and more time than many faculty have been provided for a

¹¹ Such remedies have seldom involved a reversal of the underlying decision.

dismissal hearing. Time limits are common in internal proceedings, just as they are common in courts—no one is permitted to argue endlessly.

Some might say that Dr. Burton used her hearing time unwisely. She spent substantial time cross-examining Chancellor Shields about matters other than the events set forth in the charges, failed to call any witnesses on her behalf, waived her right to cross-examine the witnesses against her, and spent most of her own testimony addressing matters that were not before the committee. But such was Dr. Burton's choice. She knew how much time she had available and even was granted additional time.

9. Documentary evidence.

One hundred percent of the documentary evidence respondents used to prove its charges was provided to Dr. Burton prior to the hearing. When she reviewed the May 25th hearing transcript, Dr. Burton discovered reference in Dr. Solar's testimony to a written complaint he had made against her. She waited until shortly before the third hearing in November to request a copy of the complaint. A copy was then provided to her, but she never made any use of it and makes no demonstration now as to why she was prejudiced by its having been withheld.²

Respondent did not seek to introduce the Solar complaint because we were not relying on it to prove the charges. We relied on Dr. Solar's in-person testimony. It is not respondent's responsibility to anticipate documents that Burton might want to see. Burton received everything she asked for. She does not win the dismissal of her case on these grounds.

² Dr. Burton first attempted to obtain a copy of the Solar complaint through the public records process, but her request had to be denied under Wis. Stat. sec. 19.36(10)(b). However, Dr. Burton was informed that she could obtain the record through the Chapter 4 process, and ultimately did so. Once she had the complaint she never attempted to make any use of it.

9. Just cause.

Throughout this case, respondent has maintained that the definition of “just cause” to be applied to UWS Ch. 4 termination decisions is that which the Board has used in its prior faculty dismissal decisions since at least 2001. No court has told the Board that it should use another standard.

Dr. Burton argues that the Board should apply the just cause standard found in UW System’s “General Operations” policy, specifically UPS Operational Policy Gen 14. UPS Gen 14 applies, as made clear in the text itself, to the University Staff. The policy was one of several adopted by the UW System when it was charged with developing its own civil service system under Wis. Stat. sec. 36.115(2). The just cause process applied to the faculty is set forth in UWS 4. The *Safransky* standard, of which Dr. Burton complains, is only a frame work for analyzing the seriousness of misconduct. This framework is entirely missing from UPS Gen 14 and if such a frame work were applied in a university staff case, it is likely that *Safransky* would be used.³

Nevertheless, should the Board choose to apply UPS Gen 14 to Dr. Burton’s case, just cause for dismissal would still exist:

- The two letters of direction establish that Burton had notice of workplace expectations.
- The expectation that Dr. Burton keep evaluative material confidential and engage in professional behavior towards colleagues is reasonable.

³ It is odd that Dr. Burton request that the Board apply the University Staff procedures for determining just cause given her argument that she should not be subject to *Safransky* because she is a tenured professor. She seems to imply that tenured professors should be given more freedom to behave badly than university staff which seems untenable. She is correct that university staff do not have academic freedom, but protections for academic freedom are imbedded in UWS 4 and, in any event, this case is in no way about academic freedom.

- The Roter investigation was objective and there is no evidence demonstrating otherwise.
- Termination is supported by substantial evidence introduced during the hearing.
- There is no evidence that Dr. Burton is being held to a different standard from other faculty. No evidence was introduced to show that any other UW-Platteville faculty member engaged in unprofessional behavior even remotely equivalent to that displayed by Dr. Burton.
- The recommended discipline of termination relates to the charges.

Conclusion

Dr. Burton has not refuted the charges against her. Substantial evidence supports her discipline. The fact that Dr. Burton has essentially promised that she will not modify her behavior and will not act professionally supports the faculty and chancellor recommendation of dismissal.

Dated this 4th day of April, 2018.

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