

BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM

IN THE MATTER OF THE RECOMMENDED DISMISSAL OF ASSOCIATE PROFESSOR
CHRISTOPHER C. HENIGE, A TENURED FACULTY MEMBER AT UW-WHITEWATER

DECISION AND ORDER

PARTIES

Associate Professor Christopher C. Henige, 8651 Hahn Road, Fredonia, NY 14063.

Chancellor Beverly Kopper, University of Wisconsin-Whitewater, represented by Senior
System Legal Counsel Anne Bilder, Office of General Counsel, 1220 Linden Drive, Madison,
WI 53706.

STATEMENT OF THE CASE

This matter is before the Board of Regents of the University of Wisconsin System (Board
of Regents) upon the recommendations of Chancellor Beverly Kopper and the UW-Whitewater
Faculty Hearing Panel that Dr. Christopher C. Henige, tenured associate professor in the
Department of Art and Design, be dismissed from his position.

Any person having a tenured appointment may be dismissed only for just cause and only
after due notice and hearing. *See* Regent Policy Document 20-23; *see also* Wis. Admin. Code §

UWS 4.01. The decision of the Board of Regents with respect to such matters is final, subject only to judicial review under Wis. Stat. ch. 227.

This matter has a long disciplinary history, which is set forth in the findings of fact.

The genesis of this case was the February 21, 2017, UWS 4 complaint submitted by Interim Dean of the College of Arts and Communication, Robert Mertens. Dean Mertens sought Henige's dismissal for harassing and bullying behaviors. Following an investigation, Chancellor Kopper issued a statement of charges proposing dismissal.

In accordance with the provisions of UWS Chapter 4 and the implementing policies of UW-Whitewater, a full evidentiary hearing on the charges was held before a faculty hearing panel on September 8, 2017. The Faculty Panel issued its decision on the matter on October 27, 2017, recommending Henige's dismissal for just cause.

On November 28, 2017, Chancellor Kopper sent a letter to President Raymond Cross recommending the dismissal of Dr. Henige. President Cross referred the matter to the Board of Regents. Regent President John Behling assigned the Personnel Matters Review Committee (PMRC) to conduct the hearing provided for under UWS 4.08. The PMRC reviewed the record, received briefs from Dr. Henige and Chancellor Kopper, and offered Henige the opportunity for oral argument, which he declined. On January 30, 2018, the PMRC voted to recommend Henige's termination for just cause.

On February 8, 2018, at a closed session of the Board, the chair of the PMRC reported its findings and decision to the Board. The Board voted to adopt the findings and decision of the PMRC and to dismiss Dr. Henige.

Based upon the record, the written submissions of the parties, and the recommendation of the PMRC, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Dr. Christopher C. Henige is an associate tenured professor in the UW-Whitewater Department of Art and Design. He began his employment in 2001 and was tenured in 2007.
2. On May 8, 2013, Dean Mark McPhail sent a letter and complaint to Chancellor Richard Telfer stating that Henige was causing serious tension in the Department of Art and Design through his angry and aggressive communications. He stated that his attempts to mediate and intervene with Henige had been unproductive.
3. In an email to Telfer on May 13, 2013, Henige acknowledged the accuracy of the Dean's letter, apologized, and promised to avoid such behaviors in the future. Chancellor Telfer issued a letter of counseling to Henige on June 20, 2013 and warned him that subsequent similar behaviors could lead to discipline.
4. On December 13, 2013, Dean McPhail filed a formal complaint against Prof. Henige for refusing to fulfill professional obligations, insubordination, and creating a hostile work environment for his colleagues.
5. Provost Beverly Kopper assigned Associate Professor James Bronson to investigate those portions of the McPhail Complaint involving refusal to perform and insubordination. She assigned Affirmative Action Officer Elizabeth Ogunsola and Human Resources Director Judi Trampf to investigate the hostile work environment allegations.
6. Dr. Bronson found that Henige had failed to fulfill his professional obligations and had been insubordinate. He concluded that Henige had sent emails to his department members declining to participate in department business using an unprofessional and

insulting tone. Additionally, Bronson found that Henige would often admit to and apologize for bad behavior but then repeat the same behaviors, thereby making himself appear unstable.

7. Ms. Trampf and Dr. Ogunsola found that Henige's behaviors did not reach the level of creation of a hostile environment based on sex, but they did conclude that Henige had created a "very antagonistic, aggressive and intimidating environment" with his email communications.
8. Chancellor Telfer issued disciplinary charges and penalties pursuant to Wis. Admin. Code UWS Chapter 6 and related UW-Whitewater rules on May 12, 2014 with regard to the McPhail Complaint. Chancellor Telfer proposed suspending Henige without pay for three days, giving him a letter of reprimand, and requiring him to seek help to better control his behaviors with colleagues. Dr. Henige did not appeal the charges and served the three-day suspension.
9. On September 5, 2014, Dean McPhail filed a new complaint alleging that Henige had continued to engage in the same sort of behaviors that had prompted his first complaint. Department Chair Susan Messer also filed a complaint alleging that Henige was creating a hostile work environment for her. Both complaints centered around a May 19, 2014 Department of Art & Design meeting at which Henige proposed to eliminate the art history major and presented his proposal in an aggressive way that denigrated female colleagues.
10. Chancellor Telfer appointed Associate Dean Frank Goza to investigate the McPhail/Messer Complaints on October 17, 2014.

11. Dean Goza submitted his report on the McPhail/Messer Complaints on October 17, 2014. Dr. Goza found that Henige had used his presentation at the May 19, 2014 department meeting to deliver strong personal attacks against two colleagues and followed up with aggressive email, public comments, and other negative behavior all supporting the conclusion that Henige had engaged in a sustained pattern of harassment, repeated actions of intimidation, and the creation of a hostile work environment. Dr. Goza noted that Henige's harassment was usually directed at women in his department and often began once they assumed positions of power in the department. He further found that Henige had engaged in physically threatening behavior towards Professor Renée Melton by putting his face close to hers and yelling at her in a menacing way.
12. On December 29, 2014, Chancellor Telfer issued charges on the McPhail/Messer Complaints that Henige had engaged in repeated acts of intimidation and contributed to the development of a hostile environment in the Department of Art and Design. He imposed a written reprimand and a one-month suspension. Henige sought review of the charges and discipline from the UW-Whitewater Faculty Senate.
13. On January 26, 2015 (amended March 23, 2015), Dr. Renée Melton, then Chair of the Department of Art and Design, filed a complaint against Prof. Henige claiming that he had repeatedly called into question her leadership, integrity, and competence.
14. Chancellor Telfer appointed Richard Thal, Program and Planning Analyst at the UW System Administration to investigate on February 20, 2015.
15. Investigator Thal submitted his report on the Melton Complaint on May 14, 2015 concluding that Henige did not violate state law prohibiting harassment. However, Thal found that Henige had violated UW-Whitewater's zero tolerance policy against

intimidating behavior because his conduct towards Melton and other women in the department was uncivil, impeded Melton's ability to function as chair, and that Henige had knowingly attempted to intimidate her.

16. On May 21, 2015, Chancellor Telfer issued charges on the Melton complaint finding that Henige's actions prevented Melton from fulfilling her obligations and that he was engaged in a continuing pattern of harassment and intimidation. Telfer imposed a written reprimand and a one-semester suspension. He also prohibited Henige from engaging in "unmediated correspondence" with any members of the department for the academic year 2015-2016.
17. Henige received a hearing on the McPhail/Messer Complaints from a faculty hearing panel in April 2015. The panel found sufficient evidence to show that Henige "failed or refused to engage in certain professional obligations . . . [and] fail[ed] to maintain a professional level of respect and collegiality with other faculty members . . .". After considering the prior discipline and the seriousness of the charges, the panel unanimously voted to uphold the penalties and remedies assessed by the Chancellor.
18. Chancellor Telfer retired on June 30, 2015 and Beverly Kopper became Chancellor.
19. Henige served his one-month suspension on the McPhail/Messer Complaints in the fall semester of 2015.
20. Another faculty hearing panel heard the Melton complaint on November 13, 2015. The panel found that Henige had communicated in a tone and manner that could reasonably be perceived as harassing, intimidating, and aggressive toward Prof. Melton and, with one exception related to state harassment law, upheld the charges, and the Chancellor's proposed penalty of a one-semester suspension.

21. Chancellor Kopper imposed a directive prohibiting Henige from engaging in unmediated communication with members of his department for academic year 2016-2017 and warned him that additional misbehavior could result in further discipline including dismissal.
22. On June 27, 2016, Henige asked the Board of Regents to review the entire record of the disciplinary proceedings against him. The Board declined to take review in a decision dated November 16, 2016.
23. Following Henige's 6-month suspension, Chancellor Kopper placed restrictions on Henige's return to work. He was to teach online and he was to have only mediated contact with the members of his department—meaning that he was not to communicate with them directly but was to send his communications to (interim) Dean Robert Mertens.
24. Dr. Henige rejected the restrictions asserting that (1) the Chancellor had no authority to impose discipline on him beyond the 6-month suspension; (2) the mediated correspondence requirement violated his rights of academic freedom and free speech; (3) the restrictions on his attending department meetings violated the open meetings law, and (4) the prior disciplines were not fairly imposed.
25. Beginning in August of 2016, Dr. Henige re-established his pattern of harassing and intimidating conduct against the members of his department and the administration for which he had been disciplined before. Among the behaviors he engaged in were:
 - Sent an email to Associate Vice Chancellor and acting Department Chair Greg Cook accusing Messer and Melton of having lied repeatedly and threatened to file lawsuits against “three dozen individuals on campus.”

- Repeatedly claimed to department members and the administration that anyone attending a department meeting would suffer a \$300 fine and be reported to the district attorney. Therein he stated, “I will inform you when the proscription has been lifted and when meetings can resume legally. Do not take the administration’s word for it.”
- Sent an email to a student on or about January 19, 2017, stating “the administration is failing miserably in providing you with the options you deserve...”
- Sent an email on February 9, 2017 to three members of the department stating, “You are being lied to.” Followed that up with a 13-page email message to all faculty and the administration accusing colleagues of lying and committing defamation and characterizing Melton’s actions as “irresponsible and incompetent.”
- Sent a lengthy email on or about February 11, 2017 identifying his “concerns” with Dr. Wilk’s behavior and saying it was “symptomatic of a disturbing pattern.”
- Sent email communications on March 25 and 27, 2017 to department faculty members attacking Mark Flanagan, an instructor in the Department, stating that Flanagan lied to the administration twice and threw him, Henige, “under the bus for Flanagan’s own ‘misconduct.’” Also stated, “As for you, Mr. Flanagan, your duplicity is laid bare for all to see. If your colleagues wish to continue to work with such a person, they can suffer the consequences, but at this point, perhaps retirement is the better part of valor.”

- Questioned acting chair Greg Cook's integrity and contacted a search committee at UW-La Crosse where Cook was a finalist for the Provost position to claim that he was in violation of Wisconsin law and an unsuitable candidate. He also made a similar contact as regards the application of School of Education Dean Katy Heyning.
 - Asserted that members of his department and the administration (Mertens, Messer, Melton, Dale, Flanagan, Cook, McPhail, Wilk, and Provost Elrod) were deceiving department members about the privacy of information.
 - Reasserted threats claiming that "(acting chair) Dr. Cook is not going to do anything to bring order back to the department," and "the solution to get rid of the five people is spot on. You know exactly who they are. The elimination of actual bad actors is up to you... These bad actors have lied repeatedly to you about the circumstances of what has been going on..."
 - Described the revision of art history surveys as ill-conceived and ill-advised while personally attacking Wilk, including accusing her of doing little work.
 - Asked of the department, "Is there an honest belief that we can meet accreditation standards?" [The degrees offered by the department were re-accredited].
26. Throughout this time, Dr. Henige was instructed that he was to have only mediated communications with the department faculty. At no time did Henige acknowledge the directives, accept any responsibility, or provide any evidence of reflection on his past bad behavior.
27. Dean Mertens submitted a complaint under UWS 4 to Chancellor Kopper seeking Dr. Henige's dismissal for cause on February 21, 2017.

28. Chancellor Kopper appointed Shannon Bradbury, Employee Relations and Organizational Development Manager at UW-Milwaukee to investigate the complaint on or about March 8, 2017.
29. In her report, Bradbury concluded, “It does not take an expert to see the sending of repetitive, excessively-long, often humiliating emails as abusive behavior. Dr. Henige’s exhausting messages are angry, frequently threatening, and apparently intended to humiliate and intimidate whoever may be the ‘target of the day’ . . . They cannot work effectively under that constant pressure.”
30. On April 13, 2017, Chancellor Kopper met with Dr. Henige to discuss the investigator’s report.
31. On April 28, 2017 Chancellor Kopper issued a statement of charges for dismissal for (1) insubordination in violating her directive regarding mediated contact with the department members, and (2) engaging in a continuing pattern of conduct that created an intimidating, harassing, and disruptive environment for members of his department.
32. A faculty hearing panel met on September 8, 2017 and took testimony from a number of administration witnesses and Henige.
33. Dr. Cook stated in the hearing that when he first heard the stories about Henige, he thought the members of the department should just get over it, but he then came to realize that they had been living with this treatment for 6-7 years with no escape. Dr. Cook pointed out that Henige’s attacks were directly aimed at the department member’s career, livelihood and sense of self-worth. The faculty’s distress is reasonable reaction seen in that light. Because of the fear in the department, the faculty could not accomplish the curricular and other changes they needed.

34. Dr. Messer submitted a letter to the panel but declined to appear.
35. Dr. Melton submitted a letter to the panel but declined to appear.
36. On a 2-3 vote, the hearing panel rejected the Chancellor's charge that Henige's communications in violation of her "mediated correspondence" directive amounted to insubordination. The panel majority was concerned that Chancellor Kopper could not have extended the directive beyond Henige's semester extension without going through a further disciplinary process. The majority also wondered if "mediated correspondence" had resulted in Henige's opinions about accreditation and curriculum going unshared.
37. The faculty hearing panel unanimously recommended Henige's termination. The panel found that Henige had engaged in behavior creating an environment of intimidation and harassment within the Department of Art and Design and that his continuing pattern of conduct adversely affected his ability to fulfill the duties of his position and had a disruptive impact upon the Department.
38. Chancellor Kopper offered Henige the opportunity to meet with her to discuss the panel's report, but he declined the invitation.
39. In her letter to President Cross, Chancellor Kopper urged the Board to terminate Henige because of the disruptive and deleterious effect that Dr. Henige's behavior had on his colleagues, rendering them unable to express their opinions on matters related to the regular business of the Department out of fear of retaliation by Dr. Henige.

ISSUE

The ultimate issue presented to the Board of Regents is whether, based on the record, there is just cause for Dr. Henige's dismissal from his tenured faculty position.

CONCLUSIONS OF LAW

1. Dr. Henige has been afforded the due process and procedural guarantees required by UWS Chapter 4, Wisconsin Administrative Code.
2. Just cause for the dismissal of Dr. Henige from his position as a full professor in the UW-Whitewater Department of Art and Design has been established by a clear preponderance of the evidence. *See Safransky v. Personnel Board*, 62 Wis. 2d 464, 215 N.W.2d 379 (1974).

DISCUSSION

Charge I: Insubordination

The evidence supports the Chancellor's assertion that Dr. Henige was insubordinate when he failed to follow the Chancellor's directive to engage in mediated correspondence through the Dean rather than via email. The Faculty Hearing Panel raises the question as to whether the directive amounted to discipline that should not have been imposed on Dr. Henige absent due process.

The Board finds that Chancellor Kopper had the inherent authority to require Henige to engage in mediated correspondence and was not required to invoke the disciplinary process to issue her directive. However, even if the charge of insubordination had not been substantiated, the Board finds substantial evidence to terminate Dr. Henige under the second charge.

Charge 2 - Intimidating, harassing, and disruptive conduct

The evidence supports the Chancellor's assertion that Dr. Henige engaged in intimidating, harassing, and disruptive conduct. Dr. Henige began a campaign of abusive, intimidating, and disruptive conduct against his colleagues in 2013. He received progressive discipline for these behaviors including a letter of counseling, a three-day suspension, a one-month suspension, and a one-semester suspension. For each discipline, Henige received the due process provided for in the applicable rules. Dr. Henige was repeatedly instructed that continuing misconduct would result in additional discipline. Though occasionally Henige would apologize and promise to mend his ways, eventually he returned to the same patterns of behavior.

The University is a place of teaching and learning. In order to fulfill its mission, the University, like any other place of business or government, relies on its staff to behave in a professional and appropriate manner. The Board will not tolerate the type of incivility exhibited by Dr. Henige toward his colleagues. As Chancellor Kopper expressed, Henige's insistence in engaging in such misconduct even after he was counseled, warned, and disciplined, demonstrates his inability or unwillingness to change his behavior to conform to those reasonable expectations we must have of professionals on our campus. No one can be expected to work in such an environment.

Dr. Henige's behaviors meet and exceed the *Safransky* test for just cause. His mistreatment of colleagues impaired the ability of his department to pursue its mission and serve its students. Persons could not engage in even the most minor of academic disagreements with Henige without fear of coming under his constant drumbeat of accusations.

The Board rejects Henige's assertion that he had a right grounded in the First Amendment and the general concept of academic freedom to demean and denigrate his colleagues. Neither

the First Amendment nor academic freedom have ever been interpreted to prohibit a public university from restraining uncivil speech that disrupts the workplace. Dr. Henige may have had important things to say and relevant points to make, but those were lost in the insults he inflicted on his colleagues. The courts have long recognized that a public employee's interest in free expression may be outweighed by the public employer's need to effectively perform its mission. *See Waters v. Churchill*, 511 U.S. 661, 668 (1994). Dr. Henige's speech crossed that boundary long ago.

Response to Dr. Henige's procedural arguments

For the reasons set forth, the Board rejects Dr. Henige's procedural arguments.

1) Faculty Hearing Panel selection

UWS 4.03 requires the faculty of each institution to provide a "standing committee" charged with hearing dismissal cases and making recommendations." Dr. Henige argues that the UW-Whitewater must have committee membership elected or appointed rather than via a process, commonly used in UW-System, where the faculty senate chair draws names from an available pool of those willing to serve, and the resulting panel then chooses its chair. This process comports with UW-Whitewater faculty adopted rules, and there is nothing in UWS 4.03 or its use of the term "standing" that imposes an election or appointment requirement. Nor does that term require that committee membership and the chair be named ahead of time. Doing so would likely be impractical.

2) Open Meetings Law

Dr. Henige claims that his department was prohibited from excluding him from meetings by operation of Wis. Stat. sec. 19.89, which prohibits a governmental body from excluding a “duly... appointed” member. It is UW-Whitewater’s position that once Dr. Henige was removed from his service duties, he was no longer a “duly appointed member” of the Department for purposes of attending department meetings. Even if UW-Whitewater is incorrect on this point, the appropriate remedy is for Henige to pursue an enforcement action pursuant to Wis. Stat. 19.97, not to commence a campaign of threats and accusations against colleagues.

3) Inability to call and cross-examine witnesses

Dr. Henige claims that he was unable to force witnesses to attend his hearing, and that this violates the adequate due process guarantees of UWS 4.05. He is incorrect. Neither the parties nor the panel (nor the Board for that matter) has the ability to compel witnesses to appear in the proceeding. Nor is such a power commonly conferred in internal personnel proceedings.

Dr. Henige also complains that he was unable to cross-examine Melton and Messer because they submitted written statements. UWS 4.05(1)(e) does permit Henige the right to cross-examine adverse witnesses, which he was unable to do. However, there is also no prohibition on the Board’s considering hearsay evidence or receiving statements in lieu of testimony.

To resolve the dispute, the Board has chosen not to rely upon the Melton and Messer written statements.

4) Swearing of witnesses

Dr. Henige objects that hearing witnesses were not sworn and cannot therefore be held to criminal perjury standards. There is no requirement in UWS Chapter 4 that witnesses be sworn, nor does such a requirement usually attach to an internal personnel proceeding.

5) Collusion between the Panel and the Administration

Dr. Henige alleges collusion but presents no concrete information supporting his suspicions. University officials receive the benefit of the doubt that they are acting with integrity unless the facts create an impermissibly high probability of actual bias. *See Marder v. Board of Regents of the University of Wisconsin System*, 2005 WI 159, para. 34. The Board does not see any evidence of bias or collusion.

6) Hearing time limits

Dr. Henige states that he was given insufficient time to present his case to the faculty hearing panel, but he does not state what evidence he would have presented had he more time. Dr. Henige was given the same amount of time as the Chancellor and did not use it all. It is very common in the courts and in administrative cases for parties to be given time limits. The Board finds that the faculty hearing panel's imposed time limits were reasonable and appropriate.

7) Standard of proof

Dr. Henige correctly points out that UWS Chapter 4 does not impose a specific standard of proof for most cases (sexual misconduct being the exception). Under Wisconsin administrative law, if there is no rule stating otherwise, the required burden of proof in an

administrative proceeding is that of other civil cases which is that the facts be established “to a reasonable certainty by the greater weight or clear preponderance of the evidence.” *Reinke v. Pers. Bd.* 53 Wis. 2d 123 at 137 (1971). The Board has applied the “clear preponderance of the evidence” standard of proof in its most recent faculty termination cases and continues to apply that standard here.

8) Definition of “just cause”

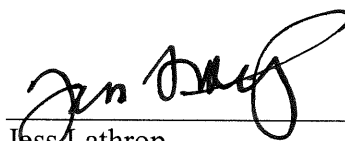
In a somewhat convoluted argument, Henige takes issue with the Board’s use of the just cause definition in *Safransky v. Personnel Bd.*, 62 Wis. 2d 464 (1974). The Wisconsin courts have held neither that the *Safransky* case does not provide an adequate definition of just cause nor that a public employer’s use of the definition is incorrect.

Dr. Henige argues that the Board should determine whether there is sufficient rational connection or nexus between his misconduct and the performance of his duties of employment. This is a reasonable interpretation of part of the *Safransky* standard, which looks to impairment of the effective performance of duties. What Henige appears to overlook is that engaging professionally with colleagues is his duty. Chancellor Kopper asserts that Henige’s failure to communicate professionally is a failure of performance. Dr. Henige also overlooks that part of the *Safransky* standard where the employer looks at the effect of the misconduct on the efficient performance of the workplace. Here it is abundantly clear that the Department of Art and Design cannot function with Henige as a member; its efficient performance is undoubtedly impaired by Henige’s misconduct.

ORDER

For the foregoing reasons, the Board of Regents orders that Dr. Christopher C. Henige be dismissed from his position as an associate professor in the UW-Whitewater Department of Art and Design, effective February 8, 2018, the date of this decision and order. This decision may be judicially reviewed by filing a petition for review in the appropriate circuit court, as specified in Wis. Stat. section 227.53(1)(a)(3), Wis. Stats., within 30 days of the mailing of this order, which must name as a party respondent the Board of Regents of the University of Wisconsin System.

Dated at Madison, Wisconsin, this 12 day of February, 2018.



Jess Lathrop
Interim Executive Director and Corporate Secretary
Office of the Board of Regents