

[Back to Volume Ten Contents](#)

The Danger of Campus Bans on Bullying

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Abstract

Colleges are increasingly adopting policies to ban bullying on campus. But these prohibitions on bullying pose serious risks to freedom of expression at colleges and universities. Antibullying policies are often vague and ill-defined. Taking a concept originally used to define misconduct by one child toward another and applying it to adults in higher education is a step that endangers free speech. Antibullying policies are particularly dangerous because they can be used by administrators to punish dissenting faculty and whistleblowers. Instead of taking the risky step of punishing bullying on campus, colleges ought to enhance protections for free expression and due process, so that individuals can speak out against bullying without having to fear dire consequences.

Policies against bullying are being increasingly called for at colleges and universities. But are they effective tools against abuses on campus? And do they threaten freedom of expression with vague, overbroad policies that endanger academic freedom? I argue that the beneficial aspects of antibullying regulations largely duplicate existing campus rules, while the danger to intellectual freedom posed by antibullying policies is substantial.

As the term has been most commonly used, *bullying* is about one child saying mean things to another child. The world of children is regulated because children are more vulnerable to harm and lack the same rights as adults have. Taking what is, at its core, a concept for protecting children and making an enforced

policy for adults at universities is a severe threat to free expression. Antibullying policies, as a kind of universal harassment rule, also undermine the fundamental purpose of harassment in stopping discrimination. Antibullying policies are so broad that they might become the tool of choice for repression. Indeed, colleges and universities have already used antibullying rules as a tool for bullying dissident professors and whistleblowers who are critical of the administration.

What Do Antibullying Policies Say?

Antibullying policies, such as the one at Oregon State University, are often alarmingly broad: “Bullying is defined as conduct of any sort directed at another that is severe, pervasive or persistent, and is of a nature that would cause a reasonable person in the victim’s position substantial emotional distress and undermine his or her ability to work, study or participate in his or her regular life activities or participate in the activities of the University, and actually does cause the victim substantial emotional distress and undermines the victim’s ability to work, study, or participate in the victim’s regular life activities or participate in the activities of the university.”¹

These standards are very vague. “Emotional distress” is an ill-defined term, and it seems that anything causing emotional distress would affect someone’s “regular life activities,” whatever those are. If feeling upset causes the victim to skip lunch, has that undermined her or his regular life activities? The explanations offered in Oregon State’s policy only make this worse: “The policy doesn’t prohibit, for example, conduct that might be rude or inconsiderate but is not severe, pervasive or persistent.” It’s disturbing that rudeness would be considered a punishable offense, as long as it’s considered “severe.” If we want professors to be truth-tellers, banning severe rudeness seems like a bad approach. The Oregon State bullying policy also notes that “workplace bullying is a form of incivility.” By announcing that bullying is banned and is a form of incivility, Oregon State is indicating a ban on incivility as well.

McNeese State University until recently defined bullying as “engaging in actions which cause another person to experience a reasonable fear that he or she will experience unauthorized social exclusion, humiliation, intimidation, or the unlawful use of physical force.”² It’s difficult to understand what “unauthorized social exclusion” could mean, let alone what a reasonable “fear” of it might be. However, on May 15, 2019, McNeese State updated its policy to define bullying as “engaging in repeated actions which cause another person to experience intimidation, the unlawful use of physical force or harassment that is so severe, pervasive [*viz.*], and objectively offensive that it denies the victim equal access to the university’s resources or opportunities.”³ This new definition largely duplicates harassment standards.

Yet McNeese State University retained the same old language in its policy defining the types of behavior as examples of bullying: “Verbal Bullying: slandering, ridiculing or maligning a person or his/her family; persistent name calling which is hurtful, insulting or humiliating; using a person as the butt of jokes; remarks that would be viewed by others in the community as abusive and offensive; persistently interrupting another person or otherwise preventing another person’s legitimate attempts to speak; use of nicknames after being warned that the nickname is considered by the victim to be offensive; constant criticism on matters unrelated to a person’s job performance or description or on matters that cannot be documented.” To say that ridiculing or maligning someone is prohibited is a very broad standard. By updating the bullying standard while keeping the previous examples of verbal bullying, McNeese State’s policy is likely to create confusion. Nevertheless, the revised policy reflects the fact that colleges are adjusting their policies to avoid poorly defined antibullying provisions.

In 2018, the Justice Department sued the University of Michigan over an antibullying policy because “it offers no clear, objective definitions of the violations.”⁴ The University of Michigan responded the same day by revising its policy and limiting the meaning of bullying to this: “Any written, verbal or physical act, or any electronic communication, directed toward a person that is intended to cause or that a reasonable person would know is likely to cause, and that actually causes, physical harm or substantial emotional distress and thereby adversely affects the ability of another person to participate in or benefit from the university’s educational programs or activities. Bullying does not include constitutionally protected activity or conduct that serves a legitimate purpose.”⁵ But even this amended policy poses dangers. “Emotional distress” is a terrible standard for a university policy because emotional distress is sometimes good. If someone commits plagiarism and is discovered, that causes emotional distress, but we should absolutely encourage reporting plagiarism. Likewise, encountering sharp criticism can cause emotional distress, but this is an essential part of academic engagement. Provisions like the University of Michigan’s that exclude protected expression or anything that “serves a legitimate purpose” presumably protect almost anything, which raises the question of whether antibullying regulations are adding meaningful assistance to individuals who are mistreated.

DePaul University’s Code of Student Responsibility includes a ban on “causing significant emotional harm through bullying or other means.”⁶ DePaul apparently enforced this rule in one 2013 case by disciplining a student who publicly revealed the names of thirteen students who had admitted to vandalizing a pro-life display on campus.⁷ The uncertainty created by antibullying regulations can make students, faculty, and staff fearful of speaking out.

How Bullies Use Antibullying Policies: The Case of Chicago State University

One danger that advocates of antibullying policies fail to consider is that, for bullies, antibullying rules can be an effective tool to silence those with less power. So-called bullies with power often can intimidate those who work for them and prevent charges from ever being made. But they can arrange for bullying charges to be filed against a low-level staffer or professor who dares to dissent.

The clearest example of the danger antibullying policies pose to academic freedom comes from Chicago State University. The cyberbullying policy at CSU was enacted as a mechanism for the administration to silence faculty critics. After LaShondra Peebles, interim vice president of enrollment and student affairs at CSU, was fired, she revealed in 2015 that at one meeting the president of the university and other top administrators “discussed whether a cyber-bullying policy could be used at CSU to discipline Professor [Phillip] Beverly and shut down the Faculty Voice blog. The cyber-bullying policy was promoted by the CSU officials who attended as a response to the Faculty Voice blog and a means to close down the blog.”⁸

In 2018, CSU agreed to pay \$650,000 to settle the First Amendment lawsuit filed by the dissenting faculty members who created the CSU Faculty Voice. CSU also agreed to change its cyberbullying policy, which banned “any communication which tends to embarrass or humiliate,” an extremely broad standard for suppressing speech. CSU’s director of public relations even filed a complaint under the cyberbullying policy against Professor Robert Bionaz (one of the contributors to the CSU Faculty Voice) for comments he made in person, not online.⁹ When antibullying policies can be used by administrative bullies against faculty members, they make the problem of campus bullying worse.

Censorship and Bullying

It is increasingly common for faculty who are fired for expressing their political beliefs to be accused of bullying, even if there are no explicit antibullying policies. The AAUP in 2015 issued a report criticizing administrators at Louisiana State University, Baton Rouge—which was already on the AAUP’s list of censured administrations—for firing tenured professor Teresa Buchanan. The administration accused Buchanan of “a history of inappropriate behavior that included verbal abuse, intimidation, and harassment of our students.”¹⁰

Stopping bullying became a key excuse in Buchanan’s firing, even though the primary complaint against her was her use of profanity that offended some people. When the Louisiana State University at Baton Rouge faculty senate voted 39–5 to censure LSU chancellor-president F. King Alexander and two other top administrators for their roles in the dismissal of Buchanan, the LSU administration responded, “We stand

behind the decision made by our dean, former provost, president and Board of Supervisors and what it represents—that our students have the right to learn in an environment free of sexual harassment, bullying and verbal abuse.”¹¹

After Steven Salaita’s appointment with tenure was rescinded by the University of Illinois at Urbana-Champaign prior to his arrival on campus because of his tweets criticizing the Israeli government, Miriam Elman argued that “disparaging and bullying speech like Salaita’s contradicts our professional obligations and responsibilities.”¹² The AMCHA Initiative’s Student Voices project published testimonials from more than 100 students about “being intimidated, harassed or bullied as a Jewish and/or a pro-Israel student,” such as speeches on campus by critics of Israel such as Salaita, who, according to one account, “painted a picture that could be interpreted to suggest Jews control academia and silence views they don’t like.”¹³

When Northwestern professor Jacquelyn Stevens was suspended and banned from campus by the administration she had publicly criticized, the chair of her department, Sara Monoson, publicly demanded her dismissal, accusing Stevens of “bullying of staff, students and faculty in her department.”¹⁴

The University of Nebraska at Lincoln suspended from teaching graduate assistant Courtney Lawton after she protested against a student who was tabling on campus for Turning Point USA. Lawton yelled, “Neo-fascist Becky right here. Wants to destroy public schools, public universities, hates DACA kids” and gave her the middle finger. The AAUP censured the administration because it violated due process and reacted to political pressure in the case.¹⁵ The Republican governor sent out a fundraising letter that noted, “Recently, employees of our taxpayer funded state university system have been caught bullying students for their conservative beliefs.”¹⁶ An antibullying policy, if one had been in place, might have given UNL administrators a mechanism to punish Lawton without violating due process.

If the desire to halt bullying is used to justify so many attacks on academic freedom, it’s reasonable to think that formal policies in higher education against bullying will only make the problem much worse. Numerous left-leaning professors are attacked for expressing their political views and have their careers threatened and sometimes destroyed. If antibullying policies are adopted, we are likely to see many of these attacks on academic freedom described as efforts to stop bullying. In New Jersey, which has a strict antibullying law, a high school student was told by an assistant principal that she could be punished for criticizing Israel on Twitter.¹⁷ There is a real danger that antibullying rules in colleges and universities can be used to silence controversial political speech.

Advocates of Antibullying Regulations

Defenders of rules against bullying argue that colleges need to take action against the problem and can do so without threatening freedom of expression. Clara Wajngurt of Queensborough Community College argued in a 2014 essay for *Academe* that colleges need antibullying policies: “Freedom of expression and thought are essential, but rules of conduct must reflect the college’s mission and be enforced. Colleges and universities must develop clear statements of organizational values that foster a culture of mutual respect.”¹⁸

The policy that was proposed at Queensborough Community College had very broad criteria: “Bullying includes ridiculing, insulting, instigating, spreading rumors or maligning a person, either verbally or in writing; addressing abusive, threatening, derogatory or offensive remarks to a person; and/or attempting to exploit an individual’s known intellectual or physical vulnerabilities.”¹⁹

Although Wajngurt argued that “bullying is an escalating process in which the person who is bullied is in an inferior position.” the actual policies on bullying almost never reflect this. Indeed, the proposal for Queensborough Community College declared that it “shall apply to all College administration, faculty, staff, students, contractors, consultants and vendors and persons who enter the campus.” Even if antibullying policies were limited to power imbalances, that would do little to protect controversial professors on campus. It would be relatively easy for a top administrator to find a staffer or student who could complain about something mean said by a professor.

What Bullying Means

Leah Hollis’s article “The Ironic Interplay of Free Speech and Silencing: Does Workplace Bullying Compromise Free Speech in Higher Education?” in the 2018 *Journal of Academic Freedom* argued for the importance of policies banning bullying on campus. “By definition,” Hollis claimed, “bullying, even if considered an act of free speech, is driven by a power differential.”²⁰ That might be Hollis’s definition, but the reality of antibullying regulations is very different.

According to Hollis, “When bullying occurs, the reasonable exchange of potentially controversial ideas bleeds into a license to treat others with disdain and intimidation.” The idea that treating something with “disdain” should be a punishable act on campus is an extremely dangerous kind of restriction on free speech. Disdain is common to academic dialogue, and sometimes it is appropriate. Is it wrong to treat a racist professor with disdain? Hollis even mentions “disrespect” as one of the terms associated with bullying. When Hollis says that a reasonable exchange of ideas “bleeds into” bullying by disdain, it reveals the direct threat to

free expression posed by antibullying regulations. There will be a chilling effect on the exchange of controversial ideas if it can easily be interpreted to bleed into bullying.

Hollis used many different terms to describe bullying in her article, including “unethical and aggressive speech” and “abusive and intimidating speech.” These words convey a dangerous tolerance of censorship. Viewing outspoken women and people of color as “aggressive” or “intimidating” is a common result of prejudice. What would protect such outspoken individuals from facing academic trials because their controversial ideas and approaches are deemed as bullying by white men in power? Hollis also noted that “though some believe that academic freedom and free speech entail a right to incivility, that same incivility compromises the academic environment.” The AAUP has long been suspicious of the use of “civility” (or its close cousin, “collegiality”) as a basis to punish faculty. When bullying is defined as incivility, it poses a severe threat to free speech, especially for women and people of color who are challenging the status quo.

According to Hollis, her “analysis is not an argument to eradicate controversial speech.” Certainly, Hollis is not arguing for getting rid of all controversial speech. But the question is whether antibullying regulations might tend to silence controversial speech, even if that is not the goal. And there are many reasons to fear that this is exactly what has happened, and will happen.

Bullying and “Status-Free” Harassment

One problem with antibullying policies is that they can remove the focus on discrimination found in current antiharassment policies. Hollis noted, “Some researchers have considered bullying to be a status-free style of harassment . . . , whereby a target is bullied regardless of status or protected class. However, women, people of color, and gender or sexual minorities who occupy positions of diminished power are proportionally more likely to be subjected to bullying.” But the notion of antibullying regulations as “status-free” harassment could undermine the core purpose of harassment policies, which is to stop discrimination.

Even if people with diminished power are more likely to be subjected to bullying, it doesn’t necessarily follow that these individuals would benefit from antibullying regulations. For example, it’s quite plausible that young men of color on a campus, even if they might be less likely to commit a crime than to be victimized, are nevertheless disproportionately stopped by police on campus. The same could be true of bullying: The racist enforcement of regulations means that people of color sometimes are harmed more than helped by additional rules giving additional power to the authorities to punish people. If a white male threatens a person of color on campus with a gun, it does not mean that imposing “stop and frisk” rules on campus will help people of color.

Regulations created and enforced by people in authority on campus are not always beneficial to those with diminished power. In fact, the opposite is often true. But even if women and people of color turned out to be the primary filers of bullying complaints, that would not be proof of a desirable policy. After all, the suppression of academic freedom, even if somehow it did primarily target powerful white men on campus, would still be detrimental to everyone it affected and to free discourse on campus generally. The fact that harassment policies already exist to address racist, sexist, and homophobic behavior indicates that the primary beneficiaries of universal harassment policies in the form of bans on bullying might be conservative straight white men. They are the ones who feel left out of harassment rules, and antibullying policies may provide a way to stop “incivility” against them while removing discrimination from the conversation.

Antibullying policies are usually broader than harassment policies because there are established legal precedents that limit abuses of harassment policies to threaten free speech. If it’s easier to have someone punished under an antibullying policy than a harassment policy, then victims of misconduct will tend to gravitate toward those policies. But it is difficult to see how women and people of color will benefit from regulations that remove discrimination from the focus of concern. The AAUP has expressed concern about the broad application of harassment rules and how they can be misused to target the free speech of professors. The dangers are only magnified with antibullying policies.

One particular danger of antibullying regulations is how they might affect faculty in the classroom. If a professor chastises students for failing to read the assignments and prepare for class, is the professor bullying? If a professor criticizes a student’s argument, can the professor be accused of bullying? Could any professor who makes a harsh comment about Donald Trump be deemed to have bullied pro-Trump students?

This is not a hypothetical problem. In Italy, the far-right governing League party demanded that the University of Bologna ban a textbook in a political science course because it describes the League as an extreme right-wing party. The League argued that Italy’s broad antidiscrimination policies should protect pro-League students from having to read books that are critical of their political views.²¹ When “universal” antidiscrimination rules such as antibullying policies allow conservative groups to claim the status of oppressed minorities, academic freedom is endangered.

Alternatives to Antibullying Regulations

Bullying policies threaten to undermine harassment policies and endanger academic freedom. For these reasons, there should be no bullying policies at any college. Even if bullying is a major problem in higher education, it does not necessarily follow that antibullying regulations are a good solution. Antibullying

regulations too often can be used to empower bullies rather than restrain them. This doesn't mean nothing should be done about bullying. Many kinds of bad actions can be punished through other means. Existing policies that address harassment and other misconduct are usually sufficient to deal with the worst cases of bullying. Inventing entirely new categories to regulate speech is always dangerous.

According to Hollis, "Those who report workplace bullying in higher education described the bully's behavior as a part of an overall strategy to eliminate or silence the target." If that's true, then the solution to workplace bullying is to prevent bullies from eliminating or silencing their targets. And that means protecting due process and free expression on campus.

There are better options than antibullying policies to help reduce bullying. One approach is to help create a culture of respect on campus. Voluntary actions to promote positive behavior are preferable to attempts to impose respect by use of threats. Colleges can create offices that help resolve interpersonal conflicts and deal with cases that some regard as bullying.

A second option is to increase protections for freedom of speech on campus, so that people can name and shame bullies without fear of retaliation. One of the worst problems with bullying is that the victims feel powerless to speak out against their bullies. Empowering those who are bullied is absolutely critical to limiting bullying and its negative impact. By protecting the freedom to speak out against bullying, we can take a positive step without running the risks to free expression that antibullying rules entail.

Hollis rejects the idea that free speech can be an effective tool against bullies: "Whether we see the role of free speech as assisting targets of workplace bullying in their self-advocacy or as validating bullies' right to speak harshly, practically speaking, the power dynamics of bullying silence the one with the least power, the target." But if bullying silences those with the least power, then surely protections for free speech are an essential part of the solution. Bullies already have free speech because they have power, and there is no evidence that a regime of censorship will actually stop bullies (especially since speech is only one of the tools used by bullies, and bullies often control the regime). In addition, bullies are most effective when they can operate covertly. Free speech to criticize bullies publicly is one of the most powerful tools to keep them in check.

When colleges protect whistleblowers and dissenters, when they defend due process and free expression, the power of bullies to punish victims is undermined. Antibullying policies are often used to bully victims and silence them. Policies that protect academic freedom are the best tool for fighting bullies, and the only ones compatible with a free university.

Notes

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