

BEFORE THE
GOVERNING BOARD OF THE
PALOMAR COMMUNITY COLLEGE DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against a
Contract Academic Employee of the Palomar
Community College District:

OAH No. L2005040096

Roya Lahijani,

Respondent.

PROPOSED DECISION

Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Marcos, California on April 26, 27, 28 and May 2, 2005.

Andrea Naestad, Esq., Currier & Hudson, represented the Palomar Community College District.

Paul Jordan, Field Representative, California Federation of Teachers, represented Respondent Roya Lahijani, who was present during the hearing.

The matter was submitted on May 2, 2005.

FACTUAL FINDINGS

1. On behalf of Robert P. Deegan, Superintendent/President (Deegan) of the Palomar Community College District (District), Jack Miyamoto, Ph.D. (Dr. Miyamoto), Interim Assistant Superintendent/Vice-President (Assistant Superintendent), Human Resources of the District made and filed the Accusation, dated March 17, 2005, against Roya Lahijani (Respondent) in his official capacity.

2. Respondent is a fourth year contract probationary academic employee of the District serving her third probationary contract pursuant to Education Code section 87608.5, subdivision (b).

3. Based on a review and consideration of all relevant documents during her four years as a contract employee of the District, the Tenure and Evaluations Review Committee (Committee), in its Professor Tenure and Evaluations Review Report (4th year Report) provided to Respondent on February 25, 2005, rated Respondent's performance as an instructor as unsatisfactory and recommended that she not be rehired and therefore denied tenure.

4. On March 3, 2005 the District's Tenure and Evaluation Review Board (TERB) met, examined information and evaluation statements presented and determined that Respondent's 4th year Report conforms to the procedures set forth in Section 173 of the District's Faculty Manual (Faculty Manual) and notified Deegan and Respondent of the foregoing on March 4 and 8, 2005 respectively.

5. In accordance with Education Code section 87607, subdivision (c), on March 8, 2005, Deegan delivered to the District's Governing Board his recommendation not to employ Respondent as a tenured faculty member for the 2005-2006 academic year. Deegan relied on the the Committee's recommendation that Respondent not be rehired and therefore denied tenure based on the 4th year Report. In his opinion, his recommendation related to the welfare of the college and the students thereof.

6. On March 8, 2005, the District's Governing Board reviewed Deegan's recommendation, dated March 8, 2005, and the statements of evaluations reviewed previously by the Committee and thereafter by TERB, including but not limited to the following:

- 1st year full evaluation and supporting documents;
- 2nd year full evaluation and supporting documents;
- 3rd year student evaluations and supporting documents
- 4th year full evaluation and supporting documents;
- letter from tenure and evaluation review coordinator, dated March 4, 2005;
- letter from Respondent to Robert Deegan, President, dated February 25, 2005; and
- letter from tenure and evaluation review coordinator, dated March 8, 2005.

The Governing Board determined that Respondent's performance was evaluated in accordance with the evaluation standards and procedures set forth in Article 4 of the Education Code, commencing with section 87660.

After consideration of the information set forth in this Finding 6, the District's Governing Board voted not to re-employ Respondent as a regular (tenured) employee for the 2005-2006 academic year pursuant to Education Code sections 87607, 87609, subdivision (b) and 87610, subdivision (b) and to direct Dr. Miyamoto to send Respondent a Notice of

Decision pursuant to Education Code sections 87607, 87609, subdivision (b) and 87610, subdivision (b). The Notice set forth the reasons for the decision of the Governing Board.

7. Dr. Miyamoto served Respondent with "Notice of Decision Pursuant to Education Code Sections 87607, 87609(b) and 87610(b) Not to Re-Employ You as a Regular Employee for the 2005-2006 Academic Year and All Subsequent Years" personally and by certified mail, return receipt requested, at Respondent's last known address.

8. On March 14, 2005 Respondent appealed the Governing Board's Decision not to re-employ Respondent as a regular tenured academic employee of the District.

9. In August 2001 the District hired Respondent as an assistant professor in the Life Sciences Department. She was a probationary faculty member (contract) who had a tenure-track contract to become a regular faculty member but had not been granted tenure by the District.

10. Respondent described her relevant education, training and experience. She received two degrees from the University of Oklahoma, a bachelor's of science degree in Chemistry in 1982 and a master's of science degree in Biochemistry in 1984; thereafter Respondent obtained a Ph.D. in Cellular and Molecular Biology in 1990. She did two years of postdoctoral work at the San Diego Zoo Center for Reproductive and Endangered Species. In addition, Respondent worked in private industry with three different companies as a research scientist in the field of biotechnology.

At the time that she was hired by the District, Respondent had limited teaching experience; she had taught a one semester science course at three different colleges in the San Diego County area.

In the Position Announcement for Respondent's position, the duties and responsibilities of the position are to:

- teach future Biotechnology courses and courses such as General Biology, Genetics or Zoology;
- develop molecular biology/biotechnology curriculum and coordinate the planning of the biotechnology offerings at Palomar College;
- involve Palomar College in the network of biotechnology programs in other local colleges and local industry;
- write grants to purchase equipment and supplies to ensure up-to-date curriculum; and
- assist in the coordination of lecture and laboratory instruction among adjunct faculty.

11. Respondent was subject to tenure and evaluations review, a four year evaluation process intended for probationary faculty. The District's procedures for tenure

and evaluations review of probationary faculty, required by Education Code section 87607 are set forth in the Faculty Manual.

The Faculty Manual provides, in pertinent part:

- Tenure and evaluations review is a four-year evaluation process intended for probationary faculty. The faculty member is evaluated during the fall and spring semesters of his/her first three years and during the fall semester of his/her fourth year. The full evaluation process is conducted during the fall semester of the first, second and fourth years of employment. During the spring semester of the first three years of employment and during the fall semester of the third year of employment, only student evaluations occur, with the findings appropriately contributing to the decisions made during completion of the full evaluation process in the fall semesters of the second and fourth years of employment.
- During the first year, by March 15, the Governing Board will either enter into a contract for the following academic year or not enter into a contract for the following academic year and state the reasons for the decision.¹ During the second year, by March 15, the Governing Board will either enter into a contract for the following two academic years or not enter into a contract for the following academic year and state the reasons for the decision.² During the fourth year, by March 15, the Governing Board will either grant tenure or not employ the probationary employee as a tenured employee and state the reasons for the decision. Because the decision to grant tenure must be made in time to meet the March 15 deadline, no student evaluations are required during the spring semester of the fourth year.³

12. According to the Faculty Manual, the evaluation of probation faculty, mandated by Education Code section 87663, is achieved through the tenure and evaluations review committee. Among other things, the Faculty Manual states that each tenure and evaluations committee shall consist of five members, designates the qualifications of each member, the procedures for replacement of a member, the duties of the committee chairperson, the responsibilities of the tenure and evaluations review committee, the criteria for tenure and evaluations review and the method for tenure and evaluations review.

13. According to the Faculty Manual's Method for Tenure and Review, the committee member is required to review:

- The Professional Improvement Form submitted by the evaluatee describing goals for student contact, institutional service, professional service and

¹ Education Code sections 87608 and 87610

² Education Code sections 87608.5 and 87610

³ Education Code sections 87609 and 87610

other activities. A copy of the evaluatee's current approved Professional Development Contract must be attached to this form when submitted.

- Materials submitted by the evaluatee that are used in the classroom or workplace, such as syllabi, exams, etc.
- Evaluations by the appropriate constituency. For instructor evaluatees, student evaluations are obtained from all contract classes taught by the evaluatee.
- Classroom or workplace observation by committee members beginning in the first semester of the tenure and evaluations review process. An observation report must be completed by each observer. During the full evaluations conducted in the fall semesters of the first, second, and fourth years, at least three committee members will make separate observations.
- Written evaluation of the evaluatee referencing the Standards of Performance for Faculty by the department chair.

14. Among other things, according to the Faculty Manual, the committee chair is required to:

- Coordinate the activities of the committee to adhere to the Evaluations Calendar and contact the Tenure and Evaluations Review Coordinator if there are problems.
- Collect and critically review the required and supporting evaluations materials.
- Write the Tenure and Evaluations Review Report only after consultation with the members of the tenure and evaluations review committee.
- Meet with the evaluatee to discuss the results of the evaluation process.

15. In accordance with the Faculty Manual, committee members are required to:

- Discuss the evaluation materials.
- Assist the committee chairperson in writing the Tenure and Evaluations Review Report that describes the evaluatee's job performance.
- Suggest improvements as appropriate
- Recommend (in the first, second and fourth years) that the evaluatee be rehired, not be rehired or be granted tenure, as appropriate.
- Determine re-evaluation frequency to monitor progress in area(s) needing remediation.

16. During her tenure at Palomar College, in addition to her duties related to the development of the biotechnology program, Respondent taught the following courses:

- first year, fall semester 2001 – Biology 200 (Biology for majors) and Biology 101 (Biology for nonmajors); spring semester 2002 – two sections of Biology 100

- second year, fall semester 2002 – two sections of Biology 100; spring semester 2003 – two sections of Biology 100
- third year, fall semester 2003 – Biology 160 (the biotechnology course that she developed) and one section of Biology 100; spring semester 2004 – two sections of Biology 100
- fourth year, fall semester 2004 – Biology 102 (Molecules and Cells) and Biology 160; and spring semester 2005 – two sections of Biology 102.

17. Following her first year, the Committee received and evaluated the required, appropriate materials, determined that she had deficiencies, completed a full evaluation and issued the 1st Year Report that described her performance and included comments and recommendations for improvement. In the 14 areas evaluated, Respondent received a rating of Standard Professional Performance or above, with the exception of the following performance expectations:

- The professor presents material in a clear, well-organized and informative manner, using teaching methods and materials that are appropriate to the subject matter and to the needs of the students.
- The professor demonstrates effective communication skills in the classroom, presenting course material in an interesting and engaging manner.
- The teacher treats students with respect and tolerance, demonstrating patience and a willingness to help when needed, and encouraging student participation and questions.

Respondent received a rating of Substandard Professional Performance for the foregoing items. The Committee's overall recommendation was Standard Professional Performance and recommended that she be rehired.

18. Following her second year, the Committee received and evaluated the required, appropriate materials and completed the full evaluation. The Committee determined that her performance had improved. In the 14 areas evaluated, Respondent received a rating of Standard Professional Performance or above, including in the three areas that had been rated as Substandard Professional Performance in her 1st Year Report. The Committee recommended that she be rehired and receive a two year contact.

19. During her third year, the Committee received only student evaluations.

James Gilardi (Gilardi), the Committee's chair, received two copies of the fall 2003 student evaluations in November 2003; he was disturbed by the results and requested that TERB expedite the release of Respondent's student evaluations for spring 2004. Gilardi and the Committee were "shocked and disturbed" about the results. In their opinion, Respondent had been provided with specific recommendations for improvement in her 1st Year Report; she had shown improvement in her 2nd Year Report; however her student evaluations for fall 2003 reflected deficiencies noted in her 1st Year Report; of specific concern to the

Committee was that, despite three years of teaching, Respondent continued to demonstrate that she is impatient, disrespectful toward, belittles and intimidates many students who are slow to grasp concepts or skills. The Committee agreed that the foregoing was unsatisfactory, that Respondent did not accept responsibility for her role and therefore could not or would not make the changes necessary for her to be an effective instructor.

At that time, the Committee decided that Respondent would not be granted tenure. Gilardi, Berta Cuaron (Cuaron)⁴ and Sara Thompson (Thompson)⁵ met with Sheryl Amador (Amador) to discuss the issue; on the date of the meeting, Amador was the District's President/Superintendent. Based on the discussions in the meeting, Gilardi Cuaron and Thompson learned that Respondent's contract could not be terminated and that the tenure process must proceed and be completed. On May 19, 2004 Gilardi and Thompson met with Respondent and explained that if her student evaluations did not improve that she would not be granted tenure.

20. On May 20, 2004 Respondent requested that she be allowed to teach a summer school class. Gilardi authorized her to teach a summer school class and agreed to consider the student evaluations. These student evaluations reflected significantly higher scores, the scores the Committee expected an instructor to receive, including in the Committee's areas of concern. These evaluations were considered by the Committee. It is not clear from the evidence whether TERB, the District's President or Board of Trustees was aware of or considered the summer 2004 student evaluations.

21. In fall 2004 Ralph Ferges joined the Committee. After his review of the available documentation, he reached the same conclusion as the other Committee members. In the 4th year Report the Committee described Respondent's Professional Performance as Unsatisfactory and recommended that she not be rehired and therefore denied tenure. The District contends that based on the foregoing Respondent did not meet the minimum professional standards of Palomar Community College.

22. Respondent argues that the District failed to comply with the evaluation standards and procedures set forth in Article 4 (commencing with Education Code section 87660) of this chapter and the Faculty Manual. The Committee must evaluate Respondent for the three and one-half year period, in a fair, objective manner, applying consistent standards and providing notice to Respondent of these standards. The Committee did not comply with the foregoing.

- The decision of the Committee not to rehire Respondent and to deny tenure is based solely on the student evaluations. Though an important factor, according to Sections 173A and F of the Faculty Manual (Findings 11 and 13), the Committee was required to consider other factors as well as part of the tenure and evaluations review.

⁴ Vice-President of Instruction

⁵ Dean, Division of Mathematics, Natural & Health Sciences

- Gilardi, the Committee and Judy Crowe, the TERB coordinator, all determined that Respondent's student evaluations were below the average score for the District's instructors. The District established that each of the foregoing has significant experience with the District and have reviewed a reasonable number of student evaluations previously. Most, if not all, explained that they have reviewed sufficient student evaluations to know that the majority of the District's instructors receive scores of 3.0 or higher, on a scale of 1.0 to 4.0 with 1.0 lowest and 4.0 highest, on issues related to respect, approachability and patience. There is no evidence that anyone, orally or in writing, informed Respondent of this standard and that it was an instrumental part of her evaluation.
- Neither Gilardi, any of the Committee members nor anyone from TERB informed Respondent of her poor student evaluations for fall semester 2003 until May 2004; thereby depriving her of any opportunity to attempt to modify and/or correct her conduct. Her only notice prior to that time was that her performance was satisfactory.
- The Committee decided that Respondent would be denied tenure without consideration of the required documentation and without giving her a timely opportunity to remediate. After review of the third year student evaluations in May 2004, the Committee determined that Respondent would be denied tenure and attempted to begin procedures to terminate her employment. According to Gilardi and other Committee members, once the Committee determined that they could not terminate employment at that time, they resumed the tenure evaluation process. The foregoing statement is not credible. According to the evidence, in and after May 2004 there is nothing that Respondent could have done to change the decision of the Committee. Gilardi authorized Respondent to teach a summer school class and agreed that the student evaluations would be considered as part of her tenure evaluation. Though her summer school student evaluation scores in the areas of concern exceed 3.0, the score the Committee expected to see, Gilardi characterized these scores as "slightly higher". Though her student evaluation scores improved in fall 2004, the response of the Committee was the same, too little too late. Finally, Thompson performed an observation of Respondent's class on December 2, 2004, the same date that Gilardi made a statement before the faculty senate that the Committee had decided not to grant Respondent tenure, the issuance of the 4th year Report. Given the foregoing, the Committee made the decision regarding Respondent's in or about May 2004 and did not objectively evaluate data or information received thereafter.

The District argued that it is in the best interest of the college and the students not to reemploy Respondent and to deny her tenure. Given the facts set forth in Findings 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23, insufficient evidence was offered to

establish that the cause exists not to rehire Respondent and therefore to deny tenure and/or that the foregoing is in the best interest of the college and its students.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code section 87740. All notices and jurisdictional requirements contained in this section were satisfied.

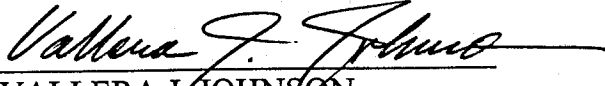
2. The District failed to establish that cause exists not to rehire Respondent Roya Lahijani as a regular tenured academic employee. The Tenure and Evaluation Committee failed to evaluate Respondent's performance in accordance with the tenure and evaluation procedures set forth in Section 173 of the District's Faculty Manual, required by Education Code section 87607, subdivision (a) and consistent with the provisions of Article 4 (commencing with section 87660) of this chapter, by reason of Findings 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23.

3. Given the facts set forth in Findings 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 and Legal Conclusions 1 and 2, pursuant to Education Code section 87740, the evidence did not establish that cause exists not to rehire Roya Lahijani and to deny her tenure and that this is related to the welfare of the college and the students thereof.

ORDER

1. The Accusation served on Respondents Roya Lahijani is dismissed.
2. Respondent Roya Lahijani shall be retained for the 2005–2006 academic year, and she shall become a regular tenured academic employee.

DATED: May 6, 2005


VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings