

BEFORE THE
BOARD OF TRUSTEES
IMPERIAL COMMUNITY COLLEGE DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. L2007030797

DONALD W. LOTTER,

Respondent.

PROPOSED DECISION

Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in El Centro, California on April 30, and May 1, 2007 and in San Diego, California on May 3, 2007.

Frank A. Oswalt, III, Esq., Oswalt & Associates, represented Imperial Community College District.

Fern M. Steiner, Esq., Tosdal, Smith, Steiner & Wax, represented Respondent Donald W. Lotter, Ph.D. who was present during the hearing.

The matter was submitted on May 3, 2007.

FACTUAL FINDINGS

1. Paul Pai, Ed.D. (Complainant) made and filed the Accusation, dated March 20, 2007, against Donald W. Lotter, Ph.D. (Respondent), in his official capacity as the Superintendent/President of the Imperial Community College District (District).
2. Respondent is employed by the District as a certified employee.
3. Pursuant to Education Code section 87740, on February 20, 2007, Complainant gave notice to the Board of Trustees of the District (Board) of his recommendation that the board give notice to Respondent that his services would not be required for the 2007-2008 school year and stated the reasons for this recommendation.
4. Prior to March 15, 2007, in accordance with the requirements of Education Code section 87610, the Board served Respondent with Notice of Initial Decision Not to

Reemploy Respondent for the ensuing school year, 2007 – 2008 (Notice). Attached to the Notice were the supporting documents and the reasons for the decision. Respondent had completed his second contract year, and the ensuing school year (2007 – 2008) would be his third contract.

5. On March 5, 2007, Respondent appealed the Board's Decision not to re-employ him as a contract employee of the District.

6. The District hired Respondent as an Agriculture instructor. He is 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.

7. Respondent has an impressive background and expertise, particularly relevant to the duties and responsibilities of an Agriculture instructor.

He holds a Ph.D., master of science degree in ecology, master of professional studies in international agricultural studies and rural development; his bachelor of science degree is in agronomy and range science. Respondent received the majority of his education at the University of California, Davis (UC Davis); he obtained his master of professional studies from Cornell University (Cornell). Prior to being employed by the District, Respondent's experience included working as a freelance journalist, a fellow and post-doctoral researcher, all in the field of agriculture.

In the job description, entitled "Career Opportunity" for "Agriculture Instructor", the duties and responsibilities of the position include, but are not limited to:

- Provide instruction in agriculture courses with approved Imperial Valley College (IVC) curriculum and established course outlines.
- Participate in curriculum development, the evaluation and revision of courses, course materials, instructional methods, self-study, program revision and master plan.
- Attend and participate in campus division, department program, and review meetings and activities.
- Serve on college committees as may be assigned.
- Maintain an active Agriculture Program Advisory Committee (Ag Advisory Committee).
- Provide outreach and articulation services to other educational organizations.
- Comply with published college policies and procedures.

When he was hired by the District, Respondent had limited teaching experience; previously, he taught one course at the University of California, Santa Cruz in 1981, and had been a teaching assistant at Cornell.

8. In community colleges, there are divisions, and within the divisions are departments that are discipline specific.

Agriculture Science (Ag Sci) is an applied science. Gonzolo Huerta (Huerta) is the Dean of Instruction, Applied Sciences. On August 21, 2005, he notified Respondent that the Agriculture Department had been transferred from the Industrial Technology Division to the Science Math and Engineering Division (SME), the consequences thereof and Lianna Zhao (Zhao) would be his Division Chair, i.e., his supervisor.

9. Applied science courses are distinguishable from academic subjects. Applied science is the new term for vocational education or career technical education. These courses are intended to prepare students for entry level employment after achieving a certificate or associates of arts degree, or to prepare students to attend a four-year college or university. By contrast, academic subjects are the general education that supports the applied science degree and are part of transfer programs to four-year colleges or universities.

10. In order to achieve the goals described in Finding 9, each of the applied science departments has a program advisory committee. The majority of the members are from business and industry in the community. The function of the advisory committee is to provide advice to the teachers to assure that curriculum prepares students to be competent in the field upon graduation. Instructors make an effort to alter curriculum to reflect recommendations from advisory committee members. Given the facts in Findings 9 and 10, the interface between the teacher and the advisory committee is essential and extremely important.

Huerta's office has published a Program Advisory Committee Handbook (Handbook) intended to be used by all advisory committees, although it is not always so used. It is available to new faculty members from Huerta's office, the Division chair or the secretary of the Division. Respondent received a copy of the Handbook in August 2006.

Each advisory committee is chaired by a member from business and industry; the full-time professor and Division Chair serve as advisors to the chair. According to Huerta, it is easier for an individual from business and industry to communicate with each other; therefore, the dynamics of the committee are more effective; in addition, there is a certain level of conflict if the instructor runs the committee, and he/she has certain things that he or she wants to do; the advisory committee may go in a direction that the members may or may not believe is appropriate; to neutralize the foregoing, the business and industry chair and instructor work jointly to operate the advisory committee; it is a matter of direction of the committee.

The Ag Advisory Committee was in existence prior to Respondent's arrival. The members were Imperial Valley farmers and from businesses that support the agricultural industry, teachers of agriculture in the high schools, and any individual interested in working with the Agriculture Department. When Respondent was hired, Huerta provided him with a list of the members of the Ag Advisory Committee.

11. Faculty members in the Department are responsible for preparing, updating and modifying course outlines. As the only full-time professor, Respondent had this responsibility.

The course outline serves several purposes. One purpose is to be the record of what is being taught within the course. A second purpose is to provide information to an instructor hired by the college to teach the course, rather than have each teacher independently develop a course outline. A third purpose is to permit evaluation of the course by other four-year colleges or universities to determine whether credits will be transferable.

12. Respondent has been subject to tenure review probationary faculty. The District's procedures for tenure review of probationary faculty are set forth in the collective bargaining agreement between the District and its employees. The provisions relevant to this proceeding are as follows.

11.1.2 Evaluation Criteria describes the relationship between the teacher and the students, the classroom teaching duties and professional responsibilities.

11.1.3 Individual Tenure Review Committee

A. The Individual Tenure Review Committee shall be composed of three members:

- one member selected by the candidate from tenured division members,
- the current division chairperson, and
- the Chief Instructional Officer or designee

F. Individual Tenure Review Committee members' duties and responsibilities are

3. To take care to base the evaluation only on the candidate's professional characteristics and ability to teach.
4. To recognize that the candidate may have a different philosophy of education and teaching style than theirs, and let the main concern be the effectiveness of the candidate in the classroom....

11.1.4 Evaluation Process

A. An orientation meeting shall be held for all newly hired full-time probationary faculty members during their first semester of employment. Each probationary faculty member shall be given a copy of the job description announcement which she or he was hired, a blank copy of the administrative and peer evaluation form, and a blank copy of the student evaluation form for faculty. It is partially on the basis of the criteria that have been incorporated

into these forms that the probationary employee is to be evaluated. The chairperson of the Individual Tenure Review Committee shall be responsible for ascertaining that the probationary employee has received a description of, and has understood, the evaluation process.

B. The evaluation process shall include the following general steps:

1. An orientation meeting for the committee members called by the division chairperson, during which a committee chairperson shall be elected.
2. An orientation meeting with the candidate in which the committee explains the evaluation criteria, the evaluation process, and the tenure review procedures.
3. A formal evaluation of the candidate in accordance with the tenure review procedure.
4. A committee meeting:
 - a. to consider all evaluation input, and
 - b. to decide on the recommendation for the candidate's subsequent-year status, and
 - c. to design a plan of instructional improvement for the candidate, if appropriate.
5. A committee meeting with the candidate:
 - a. to discuss employment recommendation, and
 - b. to recommend a plan for instructional improvement, if appropriate.
6. The submission of the Individual Tenure Review Committee's recommendation to the college president.

C. The candidate shall be evaluated in the following areas and in the following manner:

1. An evaluation of classroom performance by the Individual Tenure Review Committee in accordance with the following:
 - a. a minimum of one classroom observation per committee member will be conducted during the second, fourth and seventh semesters;

2. An evaluation of classroom performance by students using a student evaluation form or SGID.
3. An evaluation of duties and responsibilities of the candidate conducted by the division chairperson who shall evaluate:
 - a. the candidate's adherence to assigned responsibilities, and
 - b. the candidate's performance of departmental and campus duties, such as attending meetings and serving on committees....
- E. The candidate has the right to respond to any complaint, any concern, or any other issue regarding this tenure review process....

11.1.6. Duties to be Performed During the Candidate's Subsequent Semesters of Employment

- A. The committee shall meet to review all the pertinent areas of the evaluation and evaluation materials.
 - B. Classroom observations shall be made by the committee members.
 - C. The candidate shall submit a self-assessment.
 - D. The Division Chairperson shall conduct the duties and responsibilities evaluation.
 - E. The committee shall decide upon an employment recommendation for the candidate, and if appropriate, shall establish a specific course of action for helping the candidate improve in recognized areas of weakness.
 - F. The committee shall meet with the candidate to discuss the recommendation, and, if appropriate, to present a course of action for the candidate to improve in recognized areas of weakness.
 - G. The committee shall submit its employment recommendation, along with copies of appropriate substantiating documents, to the college president, who shall, in turn, present the recommendations of the committee and the substantiating documents to the Board of Trustees no later than the regular February board meeting.
 - H. Items 11.1.5 4 and 11.1.6 1 through 7 shall be completed by the end of the candidate's second, fourth and seventh semesters of employment.
13. Respondent's tenure review committee (Committee) consisted of:

- Kendra Jeffcoat, Ph.D. (Dr. Jeffcoat), Vice-President, Academic Services, also known as Vice-President, Instruction; She retired June 2006 and was replaced by her interim replacement, Gary Rodgers (Rodgers),
- Zhao, SME Division Chair, and
- Barbara Nilson (Nilson), a Mathematics teacher at IVC and member of SME Division; her family has been involved in farming for 49 years; she was the facility member selected by Respondent and the chair of the committee.

14. Prior to June 4, 2006,

- the members of the Committee had an orientation meeting;
- the members of the Committee had an orientation meeting with Respondent during which all necessary explanations and forms were provided to him;
- the members of the Committee evaluated Respondent and completed the classroom visitation report;
- in her capacity as Division Chair, Zhao completed the "Evaluation of Duties and Responsibilities Teaching Faculty" form;
- Respondent completed his self-assessment;
- students completed evaluation forms of Respondent's classes; and
- in addition to documentation regarding the foregoing, the members of the Committee reviewed the job description for the position of Agriculture Instructor.

15. The members of the Committee held meetings on June 4 and 6, 2006.

After review of Respondent's performance during his first year, 2006-2006, the members of the Committee found significant deficiencies. He explained that he had spent his time performing functions (such as grant writing) other than those the Committee had been anticipating of the Agriculture Instructor. In an effort to assist him in prioritizing his duties and tasks in line with his job functions, the Committee established a specific course of action for helping him improve in recognized areas of weakness through a Remediation Plan. Respondent agreed that the items on the Remediation Plan were obtainable goals with reasonable deadlines and would guide him in some of the necessary duties expected in his position as the primary instructor in Agriculture. The Remediation Plan was signed by the members of the Committee and Respondent on June 7, 2006.

16. The Remediation Plan provides as follows.

"Recommendations from Tenure Review Committee

Steps toward improvement to be reviewed by December 2006

1. Conduct Agriculture Advisory Committee meetings at least bimonthly with agenda and minutes to be turned in to Division Chair and Vice President of instruction.
2. Conduct regular Ag Club meetings (recommend monthly) to plan events and community involvements.

Suggested:

- Involvement of Ag club officers in promotion of the agriculture program
 - Participation in Cattle Call Parade
 - Participation in Midwinter Fair
 - Participation in Farmer's Market
 - Participation in 4H Barbeque
 - Presentations at civic organizations such as Kiwanis's and Rotary
3. Revise Ag. Course outlines
 - Courses that have been taught 2005-2006
 - Courses that will be taught 2006-2007
 - Compare the curriculum of IVC courses with those of other Community Colleges and their articulation for transfer
 - Submit those updated or revised Course Outlines and C and I forms to the Division Chair for approval in October Division meeting
 - Approved revisions presented to C and I in November 2006
 4. Document all participation in community outreach activities
 - Visits to local schools, FFA or 4H
 - Develop a list of interested students for future contact for building the AG program at IVC

The Tenure Review Committee will meet with Dr. Don Lotter by the end of Fall semester 2006 to review steps taken toward remediation and make our recommendations to the Board of Trustees for consideration for rehire before the March 15, 2007 Board meeting."

17. On December 11, 2006, the Committee met with Respondent to evaluate the Remediation Plan. They listened to his explanation of the steps that he took towards meeting each of his goals; they requested his responses and level of effort in each of the areas. The following is a summary of the findings of the Committee.

A. The Ag Advisory Committee met on September 19, October 26 and December 9, 2006.

- There was no agenda emailed or distributed at the meeting until December. For each of the three meetings he asked a Committee member to take notes. The hand taken notes were never reviewed, corrected or approved by the members at any of meetings thereafter.
- In Fall 2005, the 2005-2006 Ag Advisory Committee members from the community hosted a banquet at Walter Britzschgi's (Britzschgi) home to welcome Respondent. Approximately 15 Ag Advisory Committee members were present and provided lively discussion about the Agriculture program. By December 2006, all of those community members stopped attending the Ag Advisory Committee meetings. Only IVC affiliated individuals (administrator, division chair, faculty, potential consultant) continued to attend the meetings.
- Some of the active members of the Ag Advisory Committee were not notified of the meetings beginning Fall 2006. When a member of the Ag Advisory Committee came to the October meeting, in response to questioning, Respondent informed him that he was intentionally not invited nor was he welcomed to attend the meeting.

B. Respondent sent notification of Ag Club meetings and activities to IVC All Users. Some evidence was given to the Committee regarding student participation in these events:

- August 31, 2006 Ag club meeting announcement – no documented evidence.
- September 6, 2006 guest speaker, Roberto Gonzalez Jr. announcement – no documented evidence.
- IVC student representative was sponsored by USDA to attend HACU Conference in October 2006 in Texas.
- Club to sell Espresso in September 2006 was postponed, and no documented evidence to indicate completion.
- Cal Poly San Luis Obispo trip in October 2006.
- Cattle Call Parade – distributed carrot cello-bags and fliers on nutrition.

C. From August 2005 to May 2006, there were numerous meetings and correspondence regarding Ag course outline of record revisions that are necessary for the accreditation of the college. Some of the Ag course outlines of record are seriously outdated. Included in the Remediation Plan, the Committee and Respondent agreed that six of 17 Ag course outlines of record, AG 120, AG 140, AG 170, AG 220, AG 230 and AG 250 should be updated or revised. The revised course outline of records and Curriculum and Instruction (C and I) forms were due in October 2006.

- The Division office provided assistance to convert the printed course outlines into electronic form; Respondent failed to make changes and/or updates by the deadline indicated in his Remediation Plan.
- By February 10, 2007, none of the six course outlines and forms was ready for approval.

- Only Ag 250 course outline and forms were emailed to C and I Co-Chair and the Division Chair on February 5, 2007 and returned to him for corrections.

D. No documentation was presented to the Committee by Respondent regarding visits to local schools, FFA or 4H, or a developing list of interested students for future contact for building the Agriculture program at IVC.

Based on the records that the Committee had and the evidence Respondent provided, the Committee determined that insufficient effort was made on Respondent's part to meet the goals of remediation. The Committee took reasonable steps to assist Respondent in performing his duties at IVC. The members of the Committee are committed to ensuring that the goals and missions of IVC continue to foster excellence in education through the maintenance of the integrity of programs while at the same time being responsive to the greater community through gathering input from our advisory committees.

18. Insufficient evidence was offered to establish that Respondent and the Agriculture Department of IVC were banned from using the UC Davis facility where Ag Advisory Committee meetings had been conducted.

19. During the December 11, 2006 meeting, Respondent explained to the Committee that he had been sick.

20. Except as set forth in Findings 18 and 19, this record is consistent with the Committee's findings, described in Finding 17.

21. During the hearing, Respondent provided evidence of his efforts to fulfill his duties prior to June 2006 and to comply with the District's Remediation Plan, dated June 7, 2006.

- He provided documentation of minutes of Ag Advisory Committee meetings, photographs of Ag Club and outreach activities located on the Agriculture Department's website.
- He did not provide the course outlines in a timely manner. He was overwhelmed with work as a new teacher. He was on the District's layoff list in March 2006 and spent considerable time seeking employment until notified that he would be retained. Finally, wife suffered from breast cancer in 2005, and he visited her in Canada. Following the June 2006 meeting with the Committee, he participated in a three-week fellowship program and went backpacking in the Sierras in August 2006. During his vacation in the Sierras, he contracted dysentery. Thereafter, he was extremely fatigued, though he was able to attend classes and Division meetings.
- Given Huerta's direction to him regarding the Ag Advisory Committee, he believed that he had a right to exclude Britschgi from the Ag Advisory Committee meeting; he believed that Britschgi was involved in the letters

of no confidence submitted to the District and therefore a negative influence and that he did not have the best interests of the students in mind.

22. Respondent was hired because both the District and community recognized the need for a successful Agriculture Program at IVC. He was the sole full-time faculty member in the Department and therefore responsible for its leadership and potential success. The criteria developed by the District for a successful Agriculture Program at IVC were reasonable.

Respondent appeared to be the individual who could achieve the District's intended goals. He has excellent credentials and experience. He is an intelligent, educated, articulate man. He is concerned about the welfare of students and the people of Imperial Valley. His classroom evaluations by the Committee and the students were good.

After his first year of teaching, the members of the Committee determined that Respondent had deficiencies that were of concern to them. During the discussion of the foregoing, the Committee members developed the Remediation Plan to provide clear guidance regarding priorities. In Respondent's opinion, he needed additional funding to further develop the Agriculture program. As early as June 2006, Zhao informed Respondent to cease the grant writing and spend his time teaching. The District has been patient and has offered Respondent assistance to achieve the agreed upon goals, set forth in the Remediation Plan. Despite that, Respondent pursued and continued to pursue grant writing and developed a new course outline, rather than complying with the requirements of the Remediation Plan.

23. Respondent's management of his relationship with the agriculture community has discouraged outside participation in Ag Advisory Committee activities. The District received two letters of "no confidence" from some members of the Ag Advisory Committee. Following the exclusion of Britschgi, members outside IVC did not attend the meetings.

Respondent did not distribute an agenda for the September 2006 and October 2006 meetings. Minutes taken during the September, October and December 2006 meetings were not reviewed, corrected or approved by members.

Prior to the hearing, Respondent made no real effort to effectively communicate or provide documentation of Ag Club activities, minutes from the Ag Advisory Committee meetings or outreach activities to the Division Chair or Vice-President of Instruction.

Insufficient evidence was offered to establish that Respondent's mishandling of his relationship with the Ag Advisory Committee resulted in him and the IVC Agriculture Department being banned from the use of University of California – Davis Extension Facilities as a meeting site for the Ag Advisory Committee.

24. By February 7, 2007, Respondent had not completed the course outlines required in the Remediation Plan, as provided in the Remediation Plan.

Updated course outlines are required to be presented to the accreditation team, scheduled to visit the college in March 2007. Complainant did not offer sufficient evidence to establish that outdated course outlines can threaten accreditation of the college.

25. Though Respondent provided some photographs on the Agriculture Department's website, Respondent did not provide the documentation of outreach required by the Remediation Plan, i.e., a list of students who attended the event.

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. In the "Recommendation Not to Reemploy Contract Faculty Member", dated February 7, 2007, submitted by Complainant set forth the reasons for the decision. The evidence established:

A. Respondent failed to maintain a successful Ag Advisory Committee:

- Community members no longer attend Ag Advisory Committee meetings;
- Respondent excluded Britschgi, President of the Committee from the October 2006 meeting;
- The college has received two letters of "no confidence" concerning Respondent from some of the local agricultural community members;
- Respondent failed to comply with the Remediation Plan to formalize Ag Advisory Committee meeting documents; no agenda was distributed for September and October 2006 meetings; minutes taken were never reviewed, corrected or approved by members.

B. Course Outlines were not updated as agreed in the June 2006 Remediation Plan:

- Respondent failed to meet agreed-upon deadlines to update six course outlines

C. No documentation of student community outreach:

- Respondent did not provide the documentation of community outreach agreed upon in the Remediation Plan.

3. The District established that cause exists not to rehire Respondent Donald W. Lotter as a regular tenured academic employee, by reason of Findings 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 and Legal Conclusions 1 and 2.

4. Given the facts set forth in Findings 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 and Legal Conclusions 1, 2 and 3, pursuant to Education Code section 87740, the evidence established that cause exists not to rehire Donald W. Lotter, Ph.D.; this is related to the welfare of the college and the students thereof.

ORDER

1. The appeal of Donald W. Lotter, Ph.D. is denied.
2. The Accusation served on Respondent Donald W. Lotter, Ph.D. is affirmed.

DATED: May 7, 2007



VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings