

**BEFORE THE  
BOARD OF TRUSTEES  
CONTRA COSTA COMMUNITY COLLEGE DISTRICT**

**In the Matter of the Election Not to Re-Employ:**

**JAMES CLARK, Respondent.**

**OAH No. 2023030701**

**PROPOSED DECISION**

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on April 24, 25, and 26, 2023, by videoconference.

Attorneys Kathryn Meola and Mike Ambrose represented complainant Micaela Ochoa, Executive Vice Chancellor for Administrative Services of the Contra Costa Community College District.

Attorney Derek K. Ulmer represented respondent James Clark, who was present for the hearing.

The matter was submitted for decision on April 26, 2023.

**FACTUAL FINDINGS**

1. Respondent James Clark began his first year of full-time probationary employment as a teaching faculty member in the Contra Costa Community College

District at the beginning of the fall 2019 semester. Respondent taught biology at Los Medanos College, a community college that is part of the District.

2. When the 2019–2020 and 2020–2021 academic years ended, the District re-employed respondent for subsequent academic years.

3. On February 15, 2023, the former President of Los Medanos College (Bob Kratochvil), the current Interim President of Los Medanos College (Pamela Ralston), and the Interim Chancellor of the District (Mojdeh Mehdizadeh) recommended to the District’s Board of Trustees that the District not re-employ respondent as a faculty member. On that date, the District’s Board of Trustees adopted District Resolution No. 3C, stating the District’s intention not to re-employ respondent after the 2022–2023 academic year.

4. Before March 15, 2023, respondent received notice that the Board of Trustees had adopted Resolution No. 3C, along with copies of the resolution and of the documents the District Board relied on in considering and adopting it.

5. Respondent timely requested a hearing.

6. Acting in her official capacity as the District’s Executive Vice Chancellor for Administrative Services and as Interim Chancellor Mehdizadeh’s designee, complainant Micaela Ochoa signed an accusation against respondent, alleging cause not to re-employ him for additional academic years. As cause, the accusation alleges that the District’s Board has determined, based on evaluations and recommendations in accordance with the Education Code, that respondent’s performance as a faculty member does not justify continuing his employment.

7. Respondent filed a timely notice of defense to the accusation.

## **Evaluation Procedure**

8. Through a collective bargaining agreement (CBA) with the labor organization representing the District's faculty members, the District has agreed to a process for evaluating probationary classroom faculty members.

9. In pertinent part, during a probationary faculty member's first, second, third, fifth, and seventh teaching semesters, the CBA requires the District to assemble a three-member tenure review committee (TRC) to evaluate the faculty member. The committee members may change from one semester to another, but always must include at least one faculty member from the same department as the probationary faculty member and one person who is either the probationary faculty member's immediate supervisor or a dean. The TRC members are not anonymous.

10. Each evaluation must incorporate classroom observations of the probationary faculty member by each TRC member; information obtained through anonymous surveys of students in the probationary faculty member's classes that semester; a self-evaluation by the probationary faculty member; and input from the department chair(s) or relevant dean(s), if those persons choose to provide it.

11. The CBA requires the TRC to use an objective, evidence-based approach that evaluates the probationary faculty member with reference to a list of "observable or measurable" performance criteria. The criteria include factors relating to effective teaching and student support and also to participation in departmental management and curriculum-improvement tasks.

12. The TRC must prepare a portfolio for that semester's evaluation, including documents reflecting the information described in Finding 10 as well as a summary report. The summary report must distill the TRC's evaluation into one of four

conclusions: "Consistently High Ratings," "Satisfactory," "Needs Improvement," or "Unsatisfactory Performance."

13. Based on its portfolio and summary report, each semester's TRC must make a recommendation to the college president regarding whether to continue the faculty member's employment.

a. If the TRC's evaluation conclusion is "Consistently High Ratings" or "Satisfactory," the TRC must recommend that the District continue the faculty member's employment. It may (and in some circumstances must) recommend that the District grant tenure to the probationary faculty member.

b. If the TRC's evaluation conclusion is "Needs Improvement," the TRC may recommend that the District terminate the faculty member's employment, that the District continue the faculty member's probationary employment, or that the District grant tenure to the faculty member.

c. In addition, however, if the TRC's evaluation conclusion is "Needs Improvement," the CBA calls for the TRC to work with the faculty member to develop "a specific plan for performance-improvement." The chair of the faculty member's department must submit a progress report regarding the performance improvement plan to the college president at the end of the plan period. The CBA states that this progress report "is intended to help inform the [college president's] decisions related to tenure and the probationary process," but that the progress report "shall not include a specific recommendation" as to whether the faculty member's probationary employment should continue or end.

d. If the TRC's evaluation conclusion is "Unsatisfactory Performance," the TRC must recommend that the District terminate the faculty member's employment.

14. The college president must receive and review the TRC's recommendation and all related evaluation reports, such as classroom observation reports, student evaluations, the faculty member's self-evaluation, and any performance improvement plans and progress reports. The college president must use this recommendation and reports to develop and forward a recommendation to the District's Chancellor regarding whether the probationary faculty member's employment should continue (and if so, whether in probationary or tenured status) or end. The Chancellor, in turn, must make a recommendation to the District's Board.

15. The CBA generally permits a probationary faculty member to file a grievance to assert any objection to the procedures the District has followed in evaluating that faculty member. The CBA does not make its grievance procedure available "to appeal discharge or a decision by the [District] Board not to renew his/her contract," however.

## **Respondent's Evaluations**

16. TRC's evaluated respondent several times during his four probationary employment years. Ryan Pedersen, who then was Dean of Instruction, Math and Sciences,<sup>1</sup> served on all of respondent's TRC's. The other two TRC members varied from evaluation to evaluation during this time.

---

<sup>1</sup> Pedersen now is Senior Dean of Planning and Institutional Effectiveness.

### **FIRST THREE TEACHING YEARS (2019–2020, 2020–2021, 2021–2022)**

17. For the fall 2019 semester (respondent's first), his TRC rated his performance "Satisfactory."

18. Respondent's second teaching semester was the spring 2020 semester, which included the onset of the COVID-19 pandemic and an abrupt shift to videoconference instruction. The evidence did not establish either that a TRC completed an evaluation of respondent for that semester or, if not, that respondent objected at the time that one should have occurred.

19. For the fall 2020 semester (respondent's third), his TRC rated his performance "Consistently High." Despite this overall rating, the summary evaluation report noted that a few students had commented in surveys to the effect that respondent sometimes seemed "intimidating or condescending." Pedersen also contributed a dean's note describing:

complaints from students and colleagues [who] felt that [respondent's] communication was at times abrasive and aggressive. [Respondent] has been informed of these complaints and has been instructed that going forward, he should be aware of the potential for his communication to be perceived in this manner and work to prevent this from becoming a long-term pattern. During this Fall 2020 evaluation semester, no such concerns or complaints have been brought forward. This is a good sign.

20. For the spring 2021 semester (respondent's fourth), his TRC rated his performance "Needs Improvement." Following respondent's spring 2021 evaluation,

the spring 2021 TRC and respondent developed a performance improvement plan for respondent. The plan called for several activities during the 2021–2022 academic year to help respondent avoid seeming harsh or impatient to students and colleagues.

21. For the fall 2021 semester (respondent's fifth), his TRC rated his performance "Satisfactory." The TRC noted that respondent's performance improvement plan was in progress during the fall 2021 semester.

22. Early in the fall 2022 semester (respondent's seventh), Pedersen prepared a progress report regarding the performance improvement plan respondent had undertaken during the 2021–2022 academic year. Pedersen's report stated that the plan's objective was for respondent "to be less abrasive and to respond to others with more patience, humility, and empathy." Respondent had completed all activities the performance improvement plan required "in a timely, thoughtful and well-organized manner," and seemed to be using "best practices . . . to offer more positive encouragement [and] more supportive direction." Pedersen noted one student complaint "toward the beginning of the Fall 2022 semester" about respondent's "tone and communication,"<sup>2</sup> as well as some similar student comments in surveys for respondent's fall 2021 evaluation. Pedersen encouraged respondent to "continue to improve in his reception of student and collegial criticism with patience and humility."

---

<sup>2</sup> Finding 40.a describes this complaint in greater detail.

#### **FOURTH PROBATIONARY YEAR (2022–2023)**

23. A TRC evaluated respondent again for the fall 2022 semester. The TRC members were chair Jancy Rickman, a fellow biology professor; mathematics professor Scott Hubbard; and Pedersen.

24. Pedersen was a teaching faculty member in mathematics between 2008 and 2017, and served on several TRC's during this period. After becoming Dean of Instruction, Math and Sciences, he served regularly on TRC's. He estimates that he has served on between 30 and 50 TRC's during his career at Los Medanos College.

25. Rickman has taught at Los Medanos College for 18 years. She has served on many TRC's and recalls having chaired six.

26. Rickman identified the three committee members to respondent in late August 2022, and the committee met with respondent in early September 2022 to plan the evaluation process.

27. Rickman observed respondent in class on October 5, 2022; Hubbard observed him on October 12, 2022; and Pedersen observed him on October 20, 2022. The committee also received results from anonymous student surveys; a written self-evaluation from respondent; respondent's course syllabi; and a statement from the biology department's co-chairs, Jill Bouchard and Roy Kyle Hanks. Finally, Pedersen contributed a dean's statement to add to his classroom observations of respondent. Rickman drafted the TRC's summary report and recommendation, and Hubbard and Pedersen concurred in it after cooperating with Rickman to edit it.



28. The fall 2022 TRC concluded that respondent had demonstrated “Unsatisfactory Performance.” On that basis, the fall 2022 TRC recommended that the District terminate respondent’s employment.

### **Classroom Observations**

29. Respondent taught three course sections during the fall 2022 semester: one section of Bio30 (an introductory human anatomy and physiology course), and two sections of Bio45 (a more in-depth human physiology course). Rickman and Pedersen observed respondent teaching Bio45, and Hubbard observed a session of Bio30.

30. All three TRC members reported having observed respondent to be an effective, organized classroom instructor. The TRC summary evaluation report reflects this consensus.

### **Student Surveys**

31. Twenty-seven of 58 students in respondent’s two fall 2022 Bio45 classes returned anonymous surveys about respondent. Most responding students gave him high ratings, although one stated that respondent “rarely . . . answers questions clearly.” The surveys also offer responding students the opportunity to describe what they “like best” about the instructor and to give “suggestions for improvement.” Several of respondent’s fall 2022 Bio45 students praised him for teaching, and testing, not just for memorization but for understanding. One student criticized an offensive remark the student believed respondent had made during class, but the criticism suggested that the student had misunderstood the remark rather than that respondent had intended the unkind meaning the student heard.

32. Seven of 28 students in respondent's fall 2022 Bio30 class returned surveys. Most of these students also praised respondent, but at least one reported a very negative opinion.<sup>3</sup> For example, although one student stated that respondent "never makes you feel bad about asking a question," another commented that respondent rarely gave students the opportunity to ask questions, and "makes you feel stupid when you don't understand something he has said, and you do ask a question." Likewise, although one or more students described respondent as "respectful," "encouraging," and "kind," another described respondent as "defensive" and "pompous." One student called respondent "the best professor I've ever had," but another regretted that the semester had advanced too far for the student to drop the class, and vowed never to "take another class from him again."

33. In testimony, Rickman acknowledged readily that the student surveys had produced positive reports about respondent's skill both in teaching to a group and in working individually with students. In light of her experience serving on TRC's and reading similar survey responses, however, Rickman described these positive answers and comments as qualitatively unremarkable; students who like their instructors and take time to respond to anonymous surveys frequently praise their instructors in similar terms.

34. The negative comments from one or more of respondent's Bio30 students were more noteworthy to Rickman than the positive comments, for two

---

<sup>3</sup> Respondent believes that all negative answers and comments on the Bio30 survey were from the same individual student. This belief is plausible; but because the surveys are anonymous, they offer no certain way to trace an individual person's responses from one question to another.

reasons. First, the criticism was specific to respondent's demeanor, and to his ability to communicate with students who had not understood his initial explanations. Second, the criticism was similar to the student criticism in previous semesters that had resulted in respondent's "Needs Improvement" rating in spring 2021 and in his performance improvement plan.

35. Rickman summarized the student survey results in the TRC's evaluation report. The report describes the positive answers and comments, but gives greater emphasis to the negative comments. For the reasons stated in Findings 33 and 34, this qualitative rather than quantitative emphasis is reasonable.

### **Self-Evaluation**

36. Respondent prepared a self-evaluation report for the fall 2022 TRC. It began by stating that respondent perceived the college to have offered him "limited support . . . forcing a need to become excessively self-reliant."

a. Respondent described his teaching methods, which emphasize encouraging students to learn by asking questions and by collaborating to find the answers, and which test conceptual understanding rather than memorization.

b. He then went on to discuss poor working relationships with colleagues in the biology department, "where outside of general lack of support and hostility that I feel at times, it seems that **no one** in the department is aware of what I do" [emphasis original]. Respondent praised himself for having overcome "prejudicial objection" from other biology faculty to reclassify the Bio30 course as one eligible for transfer credit in the California State University system. He also described efforts, in cooperation with a national organization for undergraduate anatomy and physiology instructors, to develop disability accommodation strategies for laboratory courses.

c. Finally, respondent summarized his professional goals for the near future. He hoped to “work with my colleagues to improve the courses that we offer our pre-health students,” and to coordinate course offerings more closely among the biology, nursing, and kinesiology programs. Respondent criticized the biology department’s current anatomy and physiology courses as reflecting a “gross misunderstanding” of national standards and expectations for anatomy and physiology instruction. At the same time, he stated that he believed the chief obstacle to meeting his near-term professional goals was “a general lack of support (evident by the harassment and hostility that I feel when I voice an opinion that might be different from what a member of the [biology] department wants echoed).”

37. Respondent’s self-evaluation is part of his fall 2022 TRC portfolio, but the TRC evaluation report also summarizes it. The summary highlights respondent’s efforts to revise and improve the curriculum and materials for his courses, both to prepare his students more effectively for health-care careers and to make their educations more affordable. The summary also emphasizes respondent’s perception that his colleagues in the Los Medanos College biology department are hostile and unsupportive, as well as his belief that some of the department’s courses need substantial revision. The summary in the TRC evaluation report is brief, but reasonable.

### **Co-Chairs’ Statement**

38. Bouchard and Hanks provided a lengthy departmental co-chairs’ statement for the fall 2022 TRC evaluation report, and also sent Pedersen supporting documentation for several of the specific matters their statement described. Each testified about personal observations, including the observations that informed their statement.

39. As background information, the co-chairs' statement described "student and colleague complaints" about respondent's "communication style" that arose during his first few teaching semesters. In spring 2020, for example, two students complained that respondent had "yelled" at them. The biology professor who served on respondent's fall 2020 TRC remarked that some students seemed to find respondent "intimidating or condescending." In spring 2021, the semester for which respondent's evaluation resulted in a performance improvement plan, students again called him "condescending," "rude and abrupt," and "[n]ot very approachable." Bouchard and Hanks also described respondent's 2021–2022 performance improvement plan, noting that despite his good-faith efforts to improve, some students in fall 2021 "continued to rate him low on treating students with respect."

40. Because of the history summarized in Finding 39, Bouchard and Hanks were especially attentive during fall 2022 to how respondent interacted with students. They received two noteworthy, unsolicited communications from students about respondent during this semester. Bouchard and Hanks included summaries of these student complaints and their responses with their statement to the fall 2022 TRC.

a. In early September 2022, a student who was in respondent's Bio30 class and also in a class taught by Bouchard complained to Bouchard that respondent had displayed anger to the Bio30 class. Bouchard and Hanks arranged a meeting with the student, at which the student stated that respondent had "yelled and slammed his hands on the desk" during a laboratory session and that he "answers questions in a rude way." Bouchard and Hanks then met with respondent, who said that his student interactions so far that semester had been "nothing but positive and [I] feel that I am being slandered." Later in the semester, the student told Bouchard that respondent's communication style had improved during the semester.

b. In late September 2022, respondent emailed another student in his Bio30 class, after overhearing the student complaining to classmates about the class.<sup>4</sup> His email said that he had noticed “a pattern of behavior . . . that does not allow for the positive and open classroom environment that I have attempted to establish and maintain this term,” and invited the student to schedule a meeting with him. Respondent copied Pedersen and Dean of Student Success Dave Belman on this email (without indication to the student), explaining at the hearing that he wanted to alert them that the student might need additional support, or that disciplinary action such as removal from the class might become necessary.

c. The student did not answer respondent’s email. Instead, the student emailed Bouchard and Hanks. The student complained about the heavy course workload, and acknowledged having voiced a similar complaint to classmates during a laboratory session. The student also stated that respondent “gives us information that is difficult for intro students to understand and then looks at us like we are idiots when we do not understand and says [it’s] our fault we do not attend the optional reviews.”

d. Bouchard and Hanks met with the student, and later with respondent. They encouraged the student to bring concerns directly to respondent, such as by accepting his invitation to a meeting. They also encouraged respondent to avoid saying or implying that students needed to attend additional class review sessions to succeed in the course. Bouchard and Hanks did not document, or recall in testimony,

---

<sup>4</sup> Respondent described the student as “aggressive and combative” toward him as well as classmates; the student described “using my freedom of speech to state my feelings about the class.”

having addressed with respondent the student's complaint that the course simply involved too much work.<sup>5</sup>

41. Bouchard's and Hanks's statement offered a different perspective on respondent's actions (described in his self-evaluation, as summarized in Finding 36.b) to make Bio30 a transfer-eligible course. According to them, respondent pursued this change unilaterally, without having first discussed it with and obtained agreement from other biology department faculty members. Although respondent's self-evaluation had presented this change as a positive achievement for respondent, the departmental co-chairs' statement characterized it as having caused tension within the department.

42. In their statement, Bouchard and Hanks also summarized, and included supporting documentation about, a conflict that arose during the fall 2022 semester among respondent and several other biology department faculty members including Rickman.

a. Pedersen tasked the biology department with a comprehensive program review, with an initial phase of that review due in early October 2022. Bouchard and

---

<sup>5</sup> The co-chairs' statement notes, however, that multiple instructors and TRC evaluators over several years repeatedly expressed concern that respondent, as the lead faculty member for the Bio30 course, presents and asks other instructors to present too much material in too much depth for an introductory course. They also emailed respondent about this issue, referencing a "recent faculty concern," later in the fall 2022 semester, but the evidence did not reflect what discussion (if any) followed this email.

Hanks divided the department into committees for this initial phase, each of which would review a segment of the department's overall program offerings. They assigned respondent to a committee with Rickman and faculty member Briana McCarthy.

b. Respondent understood his committee's task somewhat differently than did Rickman and McCarthy. They stated their views to him, in commenting on his initial contributions to their committee's work, and he responded by explaining why he disagreed. Respondent later characterized McCarthy's communication to him as "excessively hostile and borderline threatening," which is an unreasonable interpretation of a polite though significant professional disagreement.

c. McCarthy then emailed other biology department faculty members who were not on her, Rickman's, and respondent's committee, asking them for input on the committee's work. They received input from at least one other faculty member. Meanwhile, respondent also attempted to revise his work to meet Rickman's and McCarthy's criticism.

d. On Friday, October 7, Rickman emailed McCarthy and respondent again regarding her effort to pull together the committee's work product for submission to the department chairs. She suggested discussing the work product further, or proposed that if respondent agreed without discussion the committee could substitute material some other faculty members had prepared for what respondent had written.

e. The next morning, respondent replied: "Thank you for remind[ing] me that my contributions to this department is not wanted." He followed up a few days later with further email to Rickman describing her and McCarthy as having shown him "general hostility and dismissiveness" during their committee's work. Although the evidence did not show how Rickman and McCarthy behaved during any in-person or



videoconference meetings about the project, the email in evidence did not show either of them to have expressed hostility or dismissiveness to respondent despite their apparent disagreement with him.

g. For the next phase of the comprehensive program review, the departmental co-chairs assigned respondent to a committee with Hanks and another faculty member. Respondent's initial email to this committee about its work said that he hoped to follow the others' lead, "given how I was treated in the previous group effort." Respondent later sent a longer email to Hanks, complaining that the committee in the first phase had treated him disrespectfully and that Bouchard had compounded this slight in a later faculty meeting by calling attention to his group's work "in what I take as an effort to further the hostility through humiliation."

h. In their statement to the TRC, Bouchard and Hanks characterized the conflict described in Findings 42.a through 42.g as having resulted chiefly from respondent's inability to take criticism or disagreement constructively, his insistence on prioritizing his own views, and his haste to assume that colleagues harbor malice toward him. This characterization is reasonable in light of all evidence.

43. Bouchard and Hanks concluded their statement by stating their concern that respondent's uncooperative, argumentative

behavior, which was recognized and noted by the Dean on the FA2020 evaluation summary form, will persist as efforts to coach and correct have not seemed to provide the desired results, and will ultimately hamper student learning, collegial civility, and departmental business. As chairs, we have already spent a significant amount of time, beyond the

usual expectations of chair duties, dealing with the multitude of issues that originate from this one colleague.

Bouchard underscored this concern in testimony, noting regretfully that she did not expect when she drafted the statement that respondent's collegiality would improve if he received tenure.

44. Aside from offering their statement to the TRC, Bouchard and Hanks did not participate in the TRC's deliberations or recommendation. Moreover, the recommendation is confidential until the District Board has acted on it. Hanks did not know until the District Board had adopted Resolution 3C that respondent's fall 2022 TRC had recommended terminating respondent's employment, but now that he knows what the TRC recommended he agrees with that recommendation. Bouchard also agrees with the TRC's recommendation, even though she had been "rooting for" respondent and had hoped earlier in their professional relationship that he would succeed at Los Medanos College.

### **Dean's Statement**

45. Pedersen also attempted in early November 2022 to discuss the fall 2022 conflict described above in Finding 42 with respondent. When Pedersen emailed respondent to schedule a meeting, respondent replied that he hoped Pedersen's "concern included excessively hostile emails that was sent to me pertaining to a collegial effort." Pedersen told respondent that he "would absolutely encourage the discussion of any hostile emails you have received," and asked respondent to forward them. Respondent again replied, accusing Pedersen of being "dismissive" to respondent's reports of an "excessively hostile environment."

46. Based on all his interactions with and observations of respondent over respondent's career at Los Medanos College, Pedersen's statement in the fall 2022 TRC evaluation summary report was critical of respondent's communication skills. Pedersen stated that respondent "has demonstrated significant difficulties over the course of his tenure-track employment," including complaints from students and colleagues regarding "unprofessional and abrasive communication." Pedersen noted as well that such conflicts had persisted despite respondent's performance improvement plan, and that respondent continued a defensive response to criticism, rather than taking "personal responsibility for his behavior toward students or colleagues." In light of all evidence, this statement is reasonable.

47. Pedersen also summarized these concerns in the "Non-Classroom Observations" section of his own portion of the TRC report. He noted that respondent "struggles to take what is intended as constructive feedback without being defensive," and that respondent "had ongoing and significant difficulties working with and collaborating with his colleagues." In light of the matters stated in Findings 19, 20, 41, and 42, these summary statements are reasonable.

## **President's and Interim Chancellor's Recommendations**

48. After respondent learned that the fall 2022 TRC would recommend against granting tenure to him, he composed a 19-page, single-spaced letter disputing the TRC's recommendation and asking the College President not to accept it. Respondent encouraged the President, Chancellor, and Board to give greater weight to positive student comments, and less to negative comments, than the fall 2022 TRC had given. He also described, from his perspective, several incidents over his four teaching years that he believed had contributed to the TRC's overall conclusion that he was harsh or unsupportive toward some students. Finally, respondent disagreed with

the “unreasonable mischaracterization” that he is unable to collaborate politely or effectively with other faculty members. This letter accompanied the TRC evaluation report as the “Evaluatee comments.”

49. Former College President Kratochvil received and reviewed the TRC’s recommendation and supporting documents, including the letter summarized in Finding 48. When Ralston assumed the role of Interim President, she also reviewed the TRC recommendation and supporting documents. In addition, Ralston discussed the TRC recommendation with Bouchard, Hanks, Pedersen, Rickman, and with Natalie Hannum, Los Medanos College’s Vice President of Instruction.

50. As described above in Finding 4, Kratochvil, Ralston, and Mehdizadeh jointly recommended to the District Board that the District not re-employ respondent after the 2022–2023 academic year. Their recommendation included copies of the TRC’s fall 2022 evaluation summary report; the TRC members’ classroom observation reports; student evaluations from respondent’s fall 2022 courses; respondent’s written self-evaluation; and the performance improvement plan progress report.

51. At the hearing, respondent attacked the fall 2022 TRC’s evaluation as having reflected bias against him rather than an objective consideration of available information. He also suggested that Rickman, Bouchard and Hanks, and Pedersen had manufactured or manipulated complaints against him to support a pre-determined effort to deny him tenure. No evidence supported these contentions. To the contrary, to the extent that any of these participants in the fall 2022 TRC’s decision began the fall 2022 semester with concerns about respondent’s fitness for tenure, the evidence established that these concerns arose not from unfair bias but from personal observations of and interactions with respondent over the previous three academic years. No evidence established any potential basis for the fall 2022 TRC’s

recommendation to the College President other than a concern that respondent's inability to communicate effectively with some students and with most colleagues threatened the welfare of Los Medanos College and its students.

52. No evidence established any potential basis for Kratochvil's, Ralston's, and Mehdizadeh's recommendation to the District Board other than the fall 2022 evaluation resulting from the process described above in Findings 9 through 13 and 23 through 47. No evidence established any potential basis for the District Board's adoption of District Resolution No. 3C other than Kratochvil's, Ralston's, Mehdizadeh's, and the fall 2022 TRC's recommendations.

## **LEGAL CONCLUSIONS**

1. Because of the matters stated in Findings 1 and 2, the District needed at the conclusion of the 2022–2023 academic year to determine whether to re-employ respondent permanently or to terminate his employment. (Ed. Code, § 87609; *cf. id.*, §§ 87608, 87608.5.)

2. The matters stated in Findings 3 and 4 establish that the District gave proper initial notice to respondent that it proposed not to re-employ him after the 2022–2023 academic year. (Ed. Code, § 87610, subd. (b).) The matters stated in Findings 5 through 7 also establish that the District properly arranged this hearing to give respondent an opportunity to challenge this proposed action. (*Id.*, §§ 87610.1, subd. (b), 87740, subds. (a)–(c).)

3. To make its decision regarding whether the District should continue to employ respondent, the District Board must rely on “statements of the most recent

evaluations” and on recommendations from the Interim Chancellor and the Los Medanos College President. (Ed. Code, § 87607.)

4. The matters stated in Findings 49 through 52 establish that Mehdizadeh, Kratochvil, and Ralston based their recommendation to the District Board regarding respondent’s re-employment on the fall 2022 TRC’s evaluation portfolio, report, and recommendation, and that the District Board in turn based its adoption of District Resolution No. 3C on this same information. These matters do not establish that any factor other than the fall 2022 TRC’s evaluation portfolio, report, and recommendation influenced either the recommendation by Kratochvil, Ralston, and Mehdizadeh or the District Board’s decision.

5. The District may decline to re-employ respondent only for cause relating “solely to the welfare of the colleges and the students thereof.” (Ed. Code, § 87740, subd. (d).) The District Board has discretion to determine whether such cause exists (*id.*), but it must act in accordance with “policies and procedures concerning the evaluation of probationary employees” (*id.*, § 87610.1, subd. (b)).

6. The matters stated in Findings 23 through 52 establish that the District complied substantially with the procedure (described in Findings 9 through 15) by which the District has agreed to evaluate probationary full-time faculty members.

7. For probationary faculty members in their first three employment years, the Education Code limits judicial review of a governing board’s decision whether to continue or terminate probationary employment. (Ed. Code, §§ 87608, 87608.5 [both stating that “the governing board, at its discretion and not subject to judicial review except as expressly provided in Sections 87610.1 and 87611, shall elect” whether to continue or terminate probationary employment].) For a probationary faculty member

in the fourth probationary year, however, the Education Code says only that the college's "governing board shall elect" whether to terminate employment or grant tenure. (Ed. Code, § 87609.)

8. The parties agree that the statutory difference described in Legal Conclusion 7 limits the District Board's discretion with respect to respondent, requiring that decision to be reasonable. Accordingly, complainant bears the burden in this proceeding of establishing the decision's reasonableness through a preponderance of the evidence. Because of the matters stated in Findings 49 through 52 and in Legal Conclusions 4 and 7, the reasonableness of the District Board's decision depends solely on whether the fall 2022 TRC's recommendation is reasonable.

9. The matters stated in Findings 23 through 47 confirm that over four academic years, respondent failed to develop cooperative working relationships with his biology department colleagues, largely because he refused to accommodate their views when he and they disagreed. Respondent was both thin-skinned and abrasive, and (as illustrated in Finding 48) responded frequently to disagreement or criticism by rehashing conflicts at length from his own perspective. Moreover, despite several years' efforts, respondent continued to provoke complaints from students that he was irritable and impatient and that his introductory course was confusing and excessively demanding. The fall 2022 TRC's recommendation is reasonable.

10. The matters stated in Findings 23 through 52 and in Legal Conclusions 2, 4, and 9 constitute cause to give notice to respondent that his services will not be required for future academic years. In accordance with Education Code section 87740, subdivision (d), the cause relates solely to the welfare of the District and its students.

## RECOMMENDATION

The Contra Costa Community College District may give notice to respondent James Clark that the District will not re-employ him following the 2022–2023 academic year.

DATE: 05/05/2023



JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings