



November 12, 2021

Special Hearing Committee  
Truckee Meadows Community College (TMCC)  
7000 Dandini Boulevard  
Reno, NV 89512

Dear Special Hearing Committee:

Dr. Lars Jensen was terminated because he received two consecutive unsatisfactory evaluations.<sup>1</sup> Pursuant to the Nevada System of Higher Education (NSHE) Code, Title 2, Chapter 6, Section 6.11.2(f), the special hearing officer shall prepare a written report which shall contain, as to the person charged, the following:

1. Findings of fact as determined by the special hearing officer together with a determination that the person charged did or did not commit the act or acts charged;
2. A finding that the act or acts did or did not constitute one or more of the causes for discipline or suspension or termination for cause established in this Code or other applicable stated prohibition, policy, procedure, rule, regulation or bylaw of a System institution.
3. Such further information as the special hearing officer may consider appropriate.

The following is the report of the hearing officer.

**A. PROCEDURAL HISTORY – AY 2019-2020 UNSATISFACTORY EVALUATION**

1. On January 30, 2020 Dean Ellsworth issued a written reprimand and notice of rights under NSHE Code 6.6.4 to Dr. Jensen regarding events that occurred at the January 21, 2020 Math Summit. Dr. Jensen was reprimanded for violation of Section 6.2.1 of the NSHE Code (d)-insubordination and (n) -the intentional disruption or unauthorized interruption of functions of the system, including but not limited to classes,

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<sup>1</sup> Pursuant to NSHE Code 5.13.2 (b), Evaluation Procedure, an overall "unsatisfactory" rating in two consecutive annual performance evaluations shall be cause for termination of employment.

convocations, lectures, meetings, recruiting interviews and social events, on or off premises of the System. Specifically, Dean Ellsworth stated that Dr. Jensen disregarded her directive to not disrupt the meeting by distributing a handout ("On the Math Pathways – Looking Under the Hood") during the meeting. Jensen Exhibit U.<sup>2</sup>

2. Subsequently Dr. Jensen filed 3 grievances under TMCC NFA Contract Art. 14, Section 14.4(2), all pertaining to events at the Math Summit. In his February 3, 2020 grievance Dr. Jensen alleged Dean Ellsworth violated his rights to free speech and academic freedom at the Math Summit. In his February 27, 2020 grievance Dr. Jensen alleged his February 3, 2020 grievance was not timely decided.<sup>3</sup> In his April 10, 2020 grievance Dr. Jensen grieved the written reprimand from Dean Ellsworth.<sup>4</sup> On April 30, 2020, An advisory decision on the grievances was issued by Dr. Marie Murgolo, Vice President for Academic Affairs, to President Hilgersom. On April 21, 2020 Dr. Murgolo met with Dr. Jensen, TMCC NFA Chapter President Scott Huber, and Kim Studebaker, TMCC Interim Human Resources Director regarding the grievances. Vice President Murgolo recommended denial of the February 3<sup>rd</sup> grievance as it did not allege any adverse employment action, and recommended denial of the February 27<sup>th</sup> grievance under NFA Article 14, Section 14.6. Vice President Murgolo recommended denial of the grievance of the written reprimand. After interviewing 16% of the faculty who attended the Math Summit Vice President Murgolo concluded that Dr. Jensen distributed the handout during a meeting of the Math Summit and not during a break. Vice President Murgolo also found that Dr. Jensen's free speech rights were not violated by being required to distribute his handout by placing it in the Parking Lot or by placing it on a table near the door where all participants could take a copy. Therefore, Vice President Murgolo concluded Dean Ellsworth acted correctly when she placed the written reprimand in Dr. Jensen's file. TMCC Exhibit 20; Jensen Exhibit TT.

3. On May 19, 2020, Dean Ellsworth provided Dr. Lars Jensen with his AY 2019-2020 evaluation. In order to receive a satisfactory evaluation the faculty member must fulfill all applicable criteria in Primary Job Responsibilities, S1-S-4. In S1(a), *Primary Job Responsibilities – Professional Conduct*, Dr. Jensen self-evaluated himself in this section as "achieved." The Department Chair concurred with the "Excellent 2" performance achievement self- evaluation. However, Dean Ellsworth found that S1(a) had not been met, stating, *inter alia*:

I respectfully disagree that S1(a) was achieved over the year, and thus the overall evaluation is unsatisfactory. Professor Jensen exhibited insubordination in two instances, one which was documented in relationship to the Math Summit and is on record in HR, and the other one in regard to the requested alteration of

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<sup>2</sup> Dr. Jensen's handout, "On the Math Pathways – Looking Under the Hood," was included in the Math Summit Parking Lot Comments/Questions/Responses. TMCC Exhibits 17 and 18.

<sup>3</sup> On March 30, 2020, Dean Ellsworth denied Dr. Jensen's February 3 and 27, 2020 grievances. Jensen Exhibit SS.

<sup>4</sup> On September 3, 2020, President Hilgersom issued a letter denying all three of Dr. Jensen's grievances. Jensen Exhibit UU.

a course syllabus. I requested that his syllabus be "fixed" because of the approach to not allow students to take the final unless they were scoring a certain level going into the final.

TMCC Exhibit 24, 067-078.

4. Subsequently, Dr. Jensen filed an NFA Contract Article 13 grievance regarding his unsatisfactory evaluation for AY 2019-2020.<sup>5</sup> In her September 24, 2020 response to the Article 13 grievance Dean Ellsworth stated that Dr. Jensen received an unsatisfactory rating because he violated NSHE Code Section 6.2.1(d) and (n) based upon insubordination and interrupting a function of the system. Dean Ellsworth stated that Dr. Jensen failed to follow directions given to him by Dean Ellsworth at the Math Summit on January 21, 2020 (insubordination) and by distributing handouts at the Math Summit without authorization (interruption of a System function). In addition, Dean Ellsworth stated Dr. Jensen was insubordinate when he did not make changes to his Fall-2019 syllabus as requested by Dean Ellsworth – specifically, to remove the prohibition on taking the final exam if certain scores were not obtained in other areas of the course prior to the final, even though the final exam was worth 60% of the final grade.<sup>6</sup> However, Dean Ellsworth stated that if Dr. Jensen believed he was compliant with her request by allowing students to take the final exam she would dismiss the second instance of insubordination on the evaluation. TMCC Exhibit 24, at 079-083. Thereafter, Dr. Jensen informed Dean Ellsworth he had been compliant. TMCC Exhibit 24, at 095-101.

5. Dr. Jensen's Article 13 grievance was referred to the Annual Performance Rating Appeals Committee (APRAC). Dr. Jensen provided his statement of disagreement with Dean Ellsworth's decision to the APRAC. TMCC Exhibit 24, at 084-087.<sup>7</sup>

6. October 13, 2020 the Annual Performance Rating Appeals Committee (APRAC) responded to Dr. Jensen's Article 13 grievance regarding his unsatisfactory evaluation for AY 2019-2020. The APRAC found that Dr. Jensen was insubordinate at the Math

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<sup>5</sup> The grievance was submitted on or about August 8, 2020. In the grievance Dr. Jensen claimed Dean Ellsworth attempted to forcefully collect his handout from the hands of participants who had already receive it (page 2, paragraph 1). In addition, Dr. Jensen alleged Dean Ellsworth directed him not to post to campus listservs. Exhibit KK, page 6, bullet 8. Following the Math Summit, on February 5, 2020 Dr. Jensen sent an email to the TMCC list serve regarding his position on the lowering of math standards. Jensen Exhibit II.

<sup>6</sup> Dr. Jensen's Fall-2018 and Spring 2019 syllabi provide: "To qualify for the final exam your homework average, your test average, and your project average must each be 60%." TMCC Exhibits 6 and 7. Dr. Jensen's Fall-2019 syllabus provides: "Your test average, your homework average, and your project average must each be at least 60% on the day before the final or you fail the course." TMCC Exhibit 8. Dr. Jensen's Spring-2020 syllabus provides: "Your course score is entirely determined by your score on the final exam." TMCC Exhibit 9.

<sup>7</sup> On September 3, 2020 Dean Ellsworth responded to Dr. Jensen's Article 14 grievance alleging that his freedom of expression was violated and that his academic freedom was suppressed at the January 21, 2020 Math Summit, addressed the matter of Dr. Jensen's syllabus for the 2018-2019 school year, and discussed other issues. TMCC Exhibit 23.

Summit, stating he appeared to have deliberately chosen to defy authority and to not respect his supervisor's specific direction regarding handouts at the Math Summit. The APRAC further found that the purpose of the Math Summit was to inform, not deliberate, and it was clear that the *Parking Lot* white board was the vehicle intended for the distribution of comment and question, and that Dr. Jensen appeared to have disrupted the System meeting through the distribution of unauthorized handouts during the Math Summit. On the issue of the syllabus, the APRAC found that Dr. Jensen made a modicum effort to comply with the Dean's request and thus was not insubordinate regarding syllabus content and grading policies. Procedural Record, Exhibit 3.

7. On October 22, 2020, in a final decision of the Article 13 grievance, Vice President Murgolo upheld Dean Ellsworth's decision regarding Dr. Jensen's unsatisfactory rating on his AY 2019-2020 evaluation. TMCC Exhibit 24, 094.

8. Dr. Jensen appealed the denial of his February 3, 2020 grievance alleging Dean Ellsworth violated his rights to free speech and academic freedom at the Math Summit, and appealed the denial of his February 27, 2020 grievance alleging his February 3, 2020 grievance was not timely decided.<sup>8</sup> On November 24, 2020, NSHE Chancellor Melody Rose, Pd.D. affirmed the denial of the grievances finding, *inter alia*, that Dean Ellsworth did not violate Dr. Jensen's freedom of expression or academic freedom as, *assuming arguendo*, that Dean Ellsworth cut him off when he was starting to ask a question, the action in isolation did not amount to a violation of NSHE policy and was consistent with First Amendment regulations on content neutral time, place and manner restrictions that are narrowly tailored to serve a significant government interest. The Chancellor stated that in lieu of allowing Dr. Jensen to finish asking a live question right before the break, TMCC provided him with an alternative channel of communication to express himself, i.e. that he was able to distribute his explanatory handout during the Math Summit and that ultimately TMCC did not prevent him from expressing his opinions on the co-requisite policy. TMCC Exhibit 22; Jensen Exhibit WW.<sup>9</sup>

9. On December 21, 2020, President Hilgersom affirmed the decision to place the written reprimand in Dr. Jensen's personnel file. President Hilgersom stated that Vice President Murgolo's decision on the unsatisfactory rating was final, and that the unsatisfactory rating in the evaluation shall remain. TMCC Exhibit 21.

10. On July 27, 2021, NSHE Chancellor Rose issued a decision on Dr. Jensen's request to overturn the decision by President Hilgersom. Chancellor Rose affirmed her previous decision that there was no violation of Dr. Jensen's freedom of expression or academic freedom during the Math Summit. Regarding the AY 2019-2020 unsatisfactory evaluation, Chancellor Rose noted that although final personnel decisions reside with the TMCC President, allegations of improper discrimination and retaliation warrant review

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<sup>8</sup> This appeal was filed on or about September 30<sup>th</sup>, 2020. See TMCC Exhibit 22.

<sup>9</sup> The record includes an undated letter to Chancellor Rose from Dr. Jensen pertaining to, *inter alia*, his April 10, 2020 grievance and Dean Ellsworth and President Hilgersom's decision denying his grievances. Jensen Exhibit VV.

and therefore she conducted an investigation into those allegations. In dismissing Dr. Jensen's grievance, Chancellor Rose concluded, *inter alia*, that there was no evidence that the decisions of Dean Ellsworth, Vice President Murgolo, or President Hilgersom regarding Dr. Jensen's evaluation were retaliatory or discriminatory and that Dean Ellsworth presented reasonable justifications for the personnel decision. TMCC Exhibit 27.

## **B. PROCEDURAL HISTORY – AY 2020-2021 UNSATISFACTORY EVALUATION**

1. On July 24, 2020, Dean Flesher sent an email to the Math and Physical Sciences Division, including Dr. Jensen, stating, *inter alia*, that to return to campus all faculty must complete four training modules available through Canvas. The faculty return date was stated as August 13, 2020. In addition, the email directed that anyone teaching in an online format must adhere to the approved Faculty Standards of Online Teaching posted on the WebCollege website, and that Standard 1 requires faculty to complete Canvas I, II, and III prior to teaching online. TMCC Exhibit 28; Jensen Exhibit MM.

2. On August 1, 2020, Dean Flesher sent another email to faculty, including Dr. Jensen, reminding them of the *Standards for Online Instruction*, Standard 1.1 for first-time online instructors, Standard 1.2 for recurring faculty, and Standard 1.3 for faculty teaching online courses for more than three semesters, and reminded faculty that completion of the training is part of the satisfactory requirements for the Annual Plan. Dean Flesher stated that if a faculty member felt, through ongoing experience by using Canvas as an assist, they had mastered the content of Canvas I, II and II, and instead have completed a more extensive Canvas training to prepare for teaching online, to please email her. TMCC Exhibit 30; Jensen Exhibit NN.<sup>10</sup>

3. On October 10, 2020, Dean Flesher sent a written notification to Dr. Jensen that he was not meeting the satisfactory requirements that he had checked on his Annual Plan, specifically the Canvas Faculty Standards for Online Instruction, Standard 1.1. Dean Flesher referenced the emails to faculty regarding the requirements, the emails from the WebCollege informing faculty of available Canvas training, and of the VPAA updates that included the Canvas information.<sup>11</sup> The notification also informed Dr. Jensen that he was not meeting Standard 2.3, the requirement to have a substantive assignment due the first week of class, because he had not posted a grade to ensure attendance and thus the standard was not being met, and that Dr. Jensen was not meeting Standard 2.6 of the Faculty Guidelines in that course objectives were not stated. Dean Flesher requested that Dr. Jensen remedy her concerns before December 1, 2020, which were to complete all required Canvas trainings, provide a grade to the first week assignment, correct his syllabus to reflect course objectives, and provide feedback to students that is personalized and specific. TMCC Exhibit 33; Jensen Exhibit N.

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<sup>10</sup> On August 11, 2020, another email was sent from Dean Flesher to the department referencing required Canvas training. Jensen Exhibit OO, page 2.

<sup>11</sup> See TMCC Exhibit 44.

4. On October 13, 2020 Dr. Jensen wrote to Dean Flesher stating that he was perfectly proficient in Canvas.<sup>12</sup> Dr. Jensen responded that after speaking with his probation committee he would go through the Canvas training anyway. Dr. Jensen stated he did not provide a grade value to the mandatory first week assignment and that the consensus in the Math Department is that no grade value is required. Regarding the issue on course objectives, Dr. Jensen stated he had a link to the course outcomes on his syllabus. Dr. Jensen stated he also provided feedback to students that was personalized and specific. Dean Flesher responded to Dr. Jensen suggesting that there be a way to confirm the first week assignment was completed, i.e. recording "complete or incomplete." Dean Flesher noted that the syllabus did not list or link to any Course Objectives and stated that she found no evidence in Canvas of any feedback that addresses student's work or performance in the class. TMCC Exhibit 34.

5. On October 6, 2020, Dr. Jensen submitted his Annual Plan. TMCC Exhibit 32. On November 24, 2020 Dr. Jensen submitted a second Annual Plan. TMCC Exhibit 35. Between November 24, 2020 and January 8, 2021, a series of emails took place between Dr. Jensen and Dean Flesher regarding the November 24, 2020 Annual Plan. TMCC Exhibit 36.

6. On December 8, 2020, Dean Flesher sent an email to all department faculty, including Dr. Jensen, informing them, *inter alia*, that they would need to submit their furlough days into Workday and provided them with information on furlough days. TMCC Exhibit 39.

7. On December 16, 2020, the Faculty Evaluation Committee adopted two objectives for Dr. Jensen which were agreed to by Dean Flesher and Dr. Jensen: (1) Dr. Jensen is to participate in TMCC Mathematics Department and other campus discussions at all times in a professional and respectful manner to colleagues and administrators and; (2) Dr. Jensen is to show respect for the Dean's supervisory role by responding to requests in a timely manner per the Annual Plan. TMCC Exhibit 38.

8. On April 2, 2021, the Faculty Support Committee wrote to Dean Flesher informing her that from the Committee's perspective Dr. Jensen met the two objectives agreed to in the December 16, 2020 document. TMCC Exhibit 40; Jensen Exhibit M.

9. On May 17, 2021, Dean Flesher gave Dr. Jensen an unsatisfactory evaluation for AY 2020-2021, stating:

I am rating Dr. Jensen as Unsatisfactory for two reasons. First, he did not achieve item S3b) on his Annual Evaluation.<sup>13</sup> Secondly, the objective of the

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<sup>12</sup> In his Article 14 grievance of August 31, 2021 Dr. Jensen stated he had never used Canvas. Jensen Exhibit K, page 3, paragraph 4.

<sup>13</sup> S3(b) - *Primary Job Responsibilities -Department Division Duties, Respond to chair/dean/director requests in a timely manner.*

Faculty Support Committee's remedy plan to regain Satisfactory performance, was not fully achieved. Objective 2 states the [sic] Dr. Jensen is to show respect for the Dean's supervisory role by responding to requests in a timely manner per the Annual Plan. This was not done. My conclusions are based on the outline of reasons in the attached evaluation report. The items outlined in the attached evaluation report demonstrate Dr. Jensen's persistent and continual defiance to the dean's supervisory role. Dr. Jensen has demonstrated a consistent pattern of defiance and disrespect by his refusal to apply repeated directives and not responding to the dean's requests in a timely manner.

TMCC Exhibit 41 at 182.

10. In the report attached to the evaluation, Dean Flesher stated that her conclusion Dr. Jensen did not meet the criteria for item S3b) was based on the following:

(i) The Dean had to request revisions to Dr. Jensen's Annual Plan seven times, between 11/24/20 and 1/8/21 reexplaining multiple times previous explanations as to why the plan was not adequate or approved and, in resubmitting his annual plan, Dr. Jensen did not follow through on the Dean's requests;

(ii) Dr. Jensen did not comply with the Dean's directive to complete his Canvas I-III trainings, prior to teaching online; Dr. Jensen did not complete the trainings until mid-October, 2020;

(iii) Dr. Jensen did not submit his Annual Plan per the Faculty Senate Guidelines or as requested by the Dean via email and at the Division meeting in August, 2020;<sup>14</sup>

(iv) Dr. Jensen did not follow through on a request to clearly state the course approved student outcomes on all of his syllabi;

(v) Dr. Jensen's syllabus was not comprehensive and did not contain the TMCC Gateway Policy that is a required statement for Gateway courses; and

(vi) Per the Dean's request, all faculty were to submit their furlough days in Workday for tracking. Emails were sent multiple times with instructions. Dr. Jensen did not comply with this request.<sup>15</sup>

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<sup>14</sup> See TMCC Exhibit 31, at 120, "Annual Plan," and the directive to not duplicate an item and count as two activities, and that other activities as agreed upon by the Dean must be done through a conversation/email with the Dean prior to submitting the Annual Plan.

<sup>15</sup> Immediately after Dr. Jensen was provided with the unsatisfactory evaluation on May 17, 2021 he attempted to put his furlough requests into Workday which was initially rejected by Dean Flesher. Jensen Exhibit III.

In addition, Dean Flesher stated that Dr. Jensen's conduct was in violation of NSHE Code 6.2.1 (Insubordination). Dean Flesher also stated she did not concur with several items in section C – Commendable/Excellent Requirements.

TMCC Exhibit 41 at 172-186.

11. On June 3, 2021, Dean Flesher notified President Hilgersom that Dr. Jensen received two consecutive Unsatisfactory ratings on his Annual Evaluation on May 16, 2020 and again on May 17, 2021. Dean Flesher stated Dr. Jensen was in violation of NSHE Code, Title 6, Sections 6.2.1 (a)-(d), and (bb) (incorporating NSHE Code, Title 2, Chapter 5, Section 5.13.2(b), which is cause for termination pursuant to NSHE Code, Title 2, Chapter 5, Sections 5.13.2(b) and NSHE Code, Title 2, Chapter 6, Section 6.2.6 [sic]. TMCC Procedural Record, Exhibit 1.

11. On June 9, 2021, President Hilgersom appointed Dr. Natalie Brown, Academic Advisement Director, to investigate the allegations in Dean Flesher's June 3, 2021 notification. TMCC Procedural Record, Exhibit 2.

12. On June 30, 2021, Dr. Brown issued a charging letter to Dr. Jensen. In making the decision to issue a charging letter, Dr. Brown reviewed Dr. Jensen's AY 2019-2020 and AY 2020-2021 performance evaluations and related documents. TMCC Procedural Record, Exhibit 3.

14. On August 31, 2021, Dr. Jensen filed a NFA Contract Article 14 grievance against Dean Flesher, alleging Dean Flesher violated NFA Contract Article 12.8 which provides:

The Dean shall use the contents of the annual self-evaluation, student evaluations, classroom observation(s) where applicable, and elements of the faculty member's annual plan to designate an overall rating for the faculty member under the section "Performance Rating Achieved."

Jensen Exhibit K.

13. On September 24, 2021, the APRAC issued its decision finding that the Unsatisfactory evaluation should stand. The APRAC found that Dr. Jensen failed to meet the following Faculty Standards on the TMCC Annual Performance Evaluation for AY2020-21:

Item S2h) Faculty teaching online classes will adhere to the TMCC Faculty Standards for Online Instruction.

The APRAC noted that Dr. Jensen failed to meet Faculty Standards 1.1, 1.2, 2.3, 2.6, 3.4, 3.6, and 4.

Item S3a) Attend department and division meetings.



Item S3b) Respond to chair/dean/director in a timely manner.

The APARC stated it was their opinion that the above constitutes a continued pattern of unsatisfactory behavior in spite of faculty support and feedback from the Dean. The APARC stated their recommendation was based on the Faculty Standards in the TMCC Performance Evaluation and the two Faculty Support Committee Objectives. The Committee did not consider claims of insubordination under NSHE Code 6.2.1. TMCC Exhibit 43, at 211-213.<sup>16</sup>

14. On September 27, 2021, Jeffrey Alexander, Vice President of Academic Affairs, issued his decision agreeing that the Unsatisfactory rating for AY 2020-2021 should stand. TMCC Exhibit 43 at 210.

### **C. TESTIMONY PRESENTED AT THE HEARING**

Pursuant to NSHE Code Title 2, Chapter 6, section 6.9.4, I have determined that the following summarized testimony possesses reasonably probative value, materiality, and relevancy to the stated reasons for the unsatisfactory evaluations.<sup>17</sup>

#### **1. Dean Ellsworth**

Dean Julie Ellsworth supervised Dr. Jensen from 2017 to 2020. During the 2018-2019 academic year, in December, 2018, Dean Ellsworth received a complaint from a Student pertaining to the fact that he was not permitted to take a final exam in Dr. Jensen's class. Subsequently, Dean Ellsworth discussed with Dr. Jensen the need to change his syllabus regarding his grading process in that a Student could not take the final exam unless the Student had achieved 60% averages in 3 categories (homework, tests and projects). Dean Ellsworth and Dr. Jensen disagreed about the final exam requirement. Dr. Jensen did not change his final exam policy in his Spring 2019 syllabus. Dean Ellsworth testified she gave Dr. Jensen a commendable instead of excellent in his AY 2018-2019 evaluation due in part to her issues with Dr. Jensen's final exam policy.

After discussions with Dr. Jensen during the late fall of 2018 and early spring of 2019, Dr. Jensen informed her he would modify his Fall 2019 syllabus to reflect her requests and she left it to his professionalism to do so. In March, 2020, Dean Ellsworth discovered that Dr. Jensen had amended his Fall 2019 syllabus to provide that the Student's test average, homework average, and project average must each be at least 60% on the day before the final or the Student failed the course. Dean Ellsworth stated the syllabus change was not the intent or spirit of their discussions. However, she stated that she would not dictate to a faculty member what should be in their syllabus.

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<sup>16</sup> Prior to the APRAC's decision, on September 1, 2021 Dean Fleisher sent a response to Dr. Jensen, TMCC Exhibit 43 at 227-230, Jensen Exhibit QQ, and Dr. Jensen had submitted his response to the Unsatisfactory evaluation to the APRAC. TMCC Exhibit 43, at 214-226.

<sup>17</sup> With all do respect to those who testified, opinion testimony and speculation has not been considered as it is not relevant to the facts of what actually occurred during AY 2019-2020 and AY 2020-2021 pertaining to the unsatisfactory evaluations.

With regards to the Math Summit held on January 21, 2020, Dean Ellsworth testified that the purpose of the Math Summit was to inform and communicate to the campus, broadly, about some of the changes there were happening in Math including the implementation of a corequisite mandate.<sup>18</sup> The Summit also provided for break-out time for certain Math division committees. She had a planned, packed schedule and that approximately 50 people attended the Summit. Dean Ellsworth stated they knew there could be too much to say and not enough time so they had a process called "the Parking Lot" and introduced this at the beginning of the meeting – there was a big white board in the middle of the main room and there were sticky notes and pens on all the tables. If a person had a question or a comment and there was not time, or if they had more to say, something could be written on the sticky notes and/or added to the Board.<sup>19</sup> Everyone was told they would compile all the comments and questions received and email them to all participants after the Summit.

Dean Ellsworth testified that during the morning session, as they were going through the power points, participants could ask questions or make comments; she stated she had to skip some slides due to time constraints. At close to 10:15, which was the scheduled break time, Dr. Jensen raised his hand and was called on. He was not asking a question but had begun making a statement. They were getting very close to the point where they needed to take the break; according to the schedule the breakout sessions for the Math 120 and Math 124 committees would start at 10:30 and those not participating in the break-out sessions would return to the main room for feedback on action items.<sup>20</sup> Dr. Ellsworth stated that she did, unfortunately, have to tell Dr. Jensen they needed to stop but that anything else he wanted to say could go on the Parking Lot. She stated Dr. Jensen was given what time was remaining, and that people had started getting up for the break. Dean Ellsworth testified that if anyone was speaking at that point she would have been wrapping it up to meet the time expectation. They then closed for the break and Dr. Jensen left the room. Close to the end of the break Dr. Jensen came back with a stack of papers and came into the main room and started passing them all around the tables. She testified she did not know what it was as she did not have time to read it as she was getting ready for the next portion of the Summit. Dean Ellsworth asked Dr. Jensen to please not put his papers on the tables as there was other stuff on the tables and they had a lot going on. Dr. Jensen continued to hand out his paper. Dean Ellsworth stated she asked Dr. Jensen to come out to the hallway with her as she did not want to have a discussion in front of colleagues. She again asked Dr. Jensen to not hand out his papers in the middle of the event and that he could put it on the Board, and he could put a stack by the door on the table and they would tell everyone to take one on their way out. Dr. Jensen refused and went back into the main room and continued to pass out his papers, and then went into the break-out rooms and passed them out.

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<sup>18</sup> Dean Ellsworth testified that she fought hard against the corequisite mandate but that is what the Board of Regents decided so they had to implement it.

<sup>19</sup> TMCC Exhibit 46, at page 233.

<sup>20</sup> TMCC Exhibit 46, at 232.

Dean Ellsworth described the role of the Chair with regards to an evaluation which is prepared and submitted by the faculty member. The Chair's role is primarily to collect and review the evaluation to make sure nothing is missing and to let her know if something does not look right. Some Chairs make comments on the evaluations but they are not supervisors of the faculty member. As for the evaluation, there are a core series of items marked "S" and all of those must be achieved in order to receive satisfactory or above.

## 2. *Dean Anne Flesher*

Dean Flesher testified as to the various emails sent to the faculty in her division in July and August, 2020 pertaining to the Canvas training requirement and the Faculty Standards for Online Teaching, in addition to other ways the Canvas training information was being communicated through the VPAA and WebCollege. The emails sent on July 24, August 1, and August 11, 2020 were not contract working days. Dean Flesher stated that prior to remote instruction in March, 2020 there was no record of Dr. Jensen using Canvas as an assist or teaching online using Canvas. In her August 1, 2020 email to faculty, Dean Flesher informed faculty that if they felt that through ongoing experience using Canvas as an assist they have mastered the content of Canvas I, II and II and instead have completed a more extensive Canvas training to prepare for teaching online to please contact her. Dr. Jensen never contacted her regarding being waived from the Canvas requirement and did not take the Canvas training prior to teaching online. Dean Flesher stated that the entire math division faculty, except for Dr. Jensen, completed the Canvas I, 2, and 3 trainings before the beginning of the semester.<sup>21</sup>

On August 20, 2020, Dean Flesher held a division meeting. At the division meeting, which Dr. Jensen attended, Dean Flesher discussed the Annual Plan.<sup>22</sup> Her presentation included instructions on how to complete the Annual Plan, including an instruction to not duplicate an item and count it as two activities. Dr. Jensen submitted his first annual plan on October 6, 2020, and a revised annual plan on November 24, 2020. Dean Flesher testified there were five corrections she requested Dr. Jensen make to his annual plan.<sup>23</sup> She testified there was a lot of back and forth regarding the revisions and that by December 3, 2020 things were not corrected including that Dr. Jensen was still duplicating activities and not correctly using the multiplier. Dean Flesher stated that the annual plan process with Dr. Jensen started on October 6, 2020 and ended around January 8, 2021 and that three months to bring an annual plan to a point where she was able to approve it was extreme as compared to any others.

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<sup>21</sup> According to the Faculty Standards for Online Instruction, 1.1, First-time online instructors will complete the Canvas I, II, and II training before teaching online. TMCC Exhibit 29. Dean Flesher testified that Dr. Jensen was not a first-time online instructor but that he had never taught using Canvas. Dean Flesher stated that they were going into a fully remote semester where Canvas had not always been used but that during the Fall 2020 semester all information would be funneled through Canvas which was why she directed the training. Dean Flesher stated that Dr. Jensen did not comply with 1.2.

<sup>22</sup> TMCC Exhibit 31 at 120.

<sup>23</sup> See TMCC Exhibit 36.

Dean Flesher testified as to the letter of instruction she issued to Dr. Jensen on October 10, 2020 stating that Dr. Jensen was not meeting the satisfactory requirements that he had checked on his Annual Plan, which included that Dr. Jensen had not taken the required Canvas training. She also testified that Dr. Jensen was informed he was not meeting Standard 2.3, the requirement to have a substantive assignment due the first week of class, because he had not posted a grade to ensure attendance and thus the standard was not being met. Dean Flesher stated that this standard was important for both financial aid and Veteran's benefits. Dean Flesher stated she was also concerned that Dr. Jensen had not met Standard 2.6 of the Faculty Guidelines in that course objectives were not stated on his syllabus and there was no other way for Students to know what they could expect out of the course. The final area outlined in the October 10 notification was Dean Flesher's concern that there was no indication of a personalized feedback system from Dr. Jensen to the students at that time, which was six weeks into the semester. Dean Flesher testified that Dr. Jensen did not correct Standard 2.3 or 2.6, and that he took the Canvas training October 16, 2020 which resulted in him missing a department meeting without permission.

With regards to the issue of furloughs, Dean Flesher testified regarding her December 8, 2020 email and attachments she provided to faculty on the requirement to submit furlough days in Workday.<sup>24</sup> Dean Flesher stated Dr. Jensen did not accomplish this task until after he received his annual evaluation on May 17, 2021 and then he put in for final days of the semester. She stated that to her knowledge, he was the only one that had not put their furlough days into Workday at the time she gave Dr. Jensen his annual evaluation.

As to the unsatisfactory evaluation she gave Dr. Jensen, Dean Flesher testified she considered the report from the Faculty Support Committee, which concluded, in their April 2, 2021 opinion, that Dr. Jensen entered into campus discussions with colleagues and administrators in a respectful and professional manner and that he showed respect for the Dean's supervisory role and responded in a timely manner to her requests. Dean Flesher testified that the unsatisfactory evaluation was based upon an exhaustive list of instances pertaining to not following through with the Dean's requests in a timely manner including the extensive email thread from November 24, 2020 to January 8, 2021 regarding the annual plan, and that in the end the annual plan still did not contain the revisions she requested as it contained an overinflated use of multipliers, the numerous times she had to remind Dr. Jensen of the Canvas training, Dr. Jensen not following through on requests pertaining to the syllabus, and not putting furlough days into Workday.<sup>25</sup> She stated it was the combination of all the instances of lack of follow through which tipped the scales to an unsatisfactory. As to the Chair's role in the evaluation, the Dean testified that the Chair reviews the annual plan for completeness and accuracy but

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<sup>24</sup> TMCC Exhibit 39.

<sup>25</sup> See TMCC Exhibit 41 at 183-186.

they are not evaluators and the NFA Contract does not give a Chair the authority to evaluate a faculty member.<sup>26</sup>

### 3. *Professor Scott Huber*

Professor Scott Huber is a tenured professor in the Biology Department at TMCC. Professor Huber was a past president of the NFA Chapter of TMCC and has known Dr. Jensen for 25 years.

Professor Huber explained the process for when a faculty member receives an unsatisfactory evaluation. A Faculty Support Committee is formed of 3 individuals: one member is selected by the faculty member, one is selected by the Dean, and the third is selected by the other two members. This Committee is to work with the faculty member to resolve the difficulties that rendered the unsatisfactory evaluation and make it so that in the following evaluation cycle the individual would be successfully absolved of the unsatisfactory. The Committee first meets with the evaluator to discuss the issues and objectives to resolve the issues, and then meets with the faculty member. The Committee then comes to an agreement on the objectives. The Committee came up with two objectives for Dr. Jensen.<sup>27</sup> Mr. Huber stated they had two or three formal meetings between the Committee members themselves, formal meetings with the evaluator, meetings with the Committee and Dr. Jensen, and exchanged a great deal of emails. When questioned as to how the Committee determined that Dr. Jensen met Objective 2 (that Dr. Jensen show respect for the Dean's supervisory role by responding to requests in a timely manner per the annual plan), he testified that he was not aware of any time that Dr. Jensen interacted with the Dean in an aggressive manner or in a contradictory or condescending way, that every email he saw was cordial, and he did not see any language in the emails that would remotely be insubordination. Professor Huber stated the only emails he had access to and that the Committee looked at were clarifying emails, and there was no consideration of Dr. Jensen's actual behavior or any follow up of whether Dr. Jensen was doing what he was asked to do.

With regards to emails received when a faculty member is off contract, Professor Huber testified that with virtually every faculty member he has met they respond to emails whether they're on contract or not, and that during the first week of the contract it is a priority to make sure you have read/scanned all of your emails and are up to date with all directives to be ready for the classroom on day one.

### 4. *Professor Julie Elizabeth Hammett*

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<sup>26</sup> The third witness called by TMCC was Ms. Kim Studebaker, Interim Human Resources Director. Ms. Studebaker testified about the general grievance process and the status of Dr. Jensen's grievances. The Hearing Officer has determined her testimony is not relevant to this matter.

<sup>27</sup> TMCC Exhibit 38.

Professor Hammett is a tenured professor of Anthropology at TMCC and has been with TMCC for 25 years. Professor Hammett recently completed two consecutive terms on the Faculty Senate, and recently served as NFA Chapter Secretary and was a former president. Professor Hammett has known Dr. Jensen since the late 90's. Professor Hammett attended the Math Summit and testified that Dean Ellsworth was presenting a power point and fielding some questions. She testified that she saw Dr. Jensen's hand up for a while and Dean Ellsworth finally called on him and after he spoke for 15-20 seconds Dean Ellsworth said they were out of time. Professor Hammett stated that Dr. Jensen asked for one minute and Dean Ellsworth said no, that they were out of time, and told him to put his information on the Parking Lot. She stated that during the break Dr. Jensen went to his office and came back with a page of comments of concern and went around the room handing them out.

With regards to Canvas training requirements in the Faculty Standards for Online Training, Professor Hammett testified she had taken Canvas trainings before they developed Canvas 1, 2 and 3, and many of the faculty had not taken Canvas I, II, and III. She assumed that those who had taught online for some years were grandfathered in. She stated that the agreement is that most of the standards are guidelines. Professor Hammett testified she spoke with someone at WebCollege a couple of weeks before the hearing and was told that less than half of the full-time faculty are listed as having taken Canvas I, II, and III, but stated that the person who told her this was behind on updating the list of those who have taken the training.

With regards to course objectives, Professor Hammett stated that course objectives are supposed to be stated on the syllabus.

##### 5. *Professor Cheryl Cardoza*

Ms. Cardoza is the current president of the TMCC Chapter of the NFA and has been with TMCC for over 19 years. Professor Cardoza, a professor in the English Department, formerly served on the Faculty Senate. Professor Cardoza represented Dr. Jensen during his grievance process.

Professor Cardoza discussed the difference between the annual plan, which is the faculty member's proposal for what they are going to do for the year in terms of their evaluation process, which is done around Labor Day and can be modified up until March 31<sup>st</sup>. She stated that faculty members are only supposed to make sure that the annual plan works within general consensus and that they are not required to have their annual plan approved; they go through a process where the chair and the dean review the plan and can offer comments but they are not approving the process, referencing Article 12 of the NFA Contract. However, she testified that the Dean is the one who signs off on the annual plan. The self-evaluation is at the end of the year and is one of the tools used to supervise faculty. Professor Cardoza testified that the NFA contract is clear that it is not the only tool and other tools include the annual plan, observations of the teaching of the faculty member, and student evaluations. Ratings are not added to the annual plan until it is an

annual self-evaluation. As to the Chair's role, they assist faculty with the annual plan. At the end of the process, they verify the tally and verify faculty activities.

6. *Professor Theodore Joseph Lambert, III.*

Professor Lambert is a professor in the Math Department and has worked for TMCC for 18 years. Professor Lambert testified about his grading policies, which require a threshold of 60% on the final or students get a D and stated that it was pretty standard procedure in math classes to have this type of gateway grading policy. As to furlough days, Professor Lambert's understanding was that if you wanted to submit specific furlough days there were requirements that you must meet. But if you did not want to submit specific furlough days, then they would be assigned to you either way because the furlough days were not optional.

Professor Lambert also testified regarding a support letter he wrote for Dr. Jensen which stated Dr. Jensen used to manage the Moodle server (which they ran their online courses on for many years) and was the primary site administrator for the ALEKS system.<sup>28</sup>

7. *Professor Rebecca Porter*

Professor Porter is a mathematics professor and has been with TMCC for 38 years. Professor Porter submitted a support letter for Dr. Jensen.<sup>29</sup> Professor Porter attended the Math Summit. Professor understood that the purpose of the Math Summit was to inform the disciplines that would use Math 120 about the new corequisite Math 120.

Professor Porter stated that when Dr. Jensen asked his question he was cut off very quickly, in mid-sentence, maybe 20 to 30 seconds after he started, but they all got the gist of what he was saying in that he had concerns with Math 120 and lower standards. Professor Porter stated that about 10 to 15 minutes passed from when Dr. Jensen was cut off to the start of the breakout sessions. During the breakout session Dr. Jensen gave them a piece of paper, quietly, without speaking, and that she did not see any signs of disrespect.

Professor Porter testified regarding her syllabus policy, explained in Jensen Exhibit KK, in that prior to the Spring of 2020, for at least 10 years, she required students to reach 94% on the ALEKS pie (homework) to qualify for the final. Professor Porter stated this was a common policy in the Math Department and she was never told it was a problem. In the Spring of 2020, when she learned that the Dean was concerned that they were not allowing students to take the final, she permitted all students to take the final but the final would have no impact on students scoring below 94% on the pie. Once she learned what Dr. Jensen was experiencing she discontinued this use of the policy (although the classes she used it for are no longer being taught).

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<sup>28</sup> Jensen Exhibit B.

<sup>29</sup> Jensen Exhibit J.

8. *Danny C. Clark.*

Danny C. Clark is a former part-time math instructor at TMCC who taught for 17 years. Mr. Clark testified regarding a statement he had made at the request of Dr. Jensen pertaining to the Math Summit.<sup>30</sup> He stated that he thought Dr. Jensen's question was related to the efficacy of the changes to the program and if they were well considered, but that he was cut off before he finished. Mr. Clark felt Dr. Jensen was calm, rational and not insubordinate, and thought he passed out his paper during a break.

9. *Professor Heiu Do*

Professor Heiu Do became Chair of the Math Department in AY 2020-2021. Professor Do testified that, in January, 2021, during the division meeting, he received instruction from Dean Flesher to evaluate the faculty on their annual plans. He stated he was supposed to verify the activities on the annual plan and rate the evaluation, but as a non-supervisor anything that has to do with student evaluations goes to the Dean. Professor Do stated he rated Dr. Jensen as excellent based on verification of the points listed by Dr. Jensen but not on observations of Dr. Jensen. Professor Do stated that if Dr. Jensen reported accurately and correctly on his annual plan, then he is considered a professor in excellent standing. Points, values and multipliers that faculty can use on their annual plan are set by various committees and Senate Faculty. Professor Do stated he does not weigh in on any of the subjective elements of the annual plan, such as attitude and respect as that is the Dean's role.

He stated he did not consider Canvas training to be a huge factor for rating the faculty. Professor Do stated Dean Flesher informed faculty that there is "replacement to the training" if the faculty can demonstrate that they have taken some sort of Canvas training, not the I, III or III in particular, but any other training to show proficiency in Canvas. Professor Do stated that the Chair does not observe the faculty's Canvas ability and that it is something the Chair would look into.

Professor Do attended the Math Summit. Professor stated that the Math Summit was the first public opportunity and invitation for everyone to learn about the new Math 120 corequisite. He stated that Dr. Jensen was called to speak when he had a question but was not sure he got to finish. He stated that he knew what Dr. Jensen was going to ask, as Dr. Jensen's opinion about Math 120 was not new or surprising at that point. Dr. Jensen's opinions on Math 120 were brought to the Department meeting before the Math Summit, and he had spoken to individual faculty about his opinion before the Math Summit. In reference to Dr. Jensen's handout, Professor Do stated he did not see anyone object to his handing out the paper.

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<sup>30</sup> Jensen Exhibit KK, page 7.



10. *Edmond Patrick Burke*

Mr. Burke was a former Biology professor at TMCC, having been with TMCC since 1996. Mr. Burke served on the Faculty Support Committee for Dr. Jensen. Mr. Burke testified that the Committee was satisfied that Dr. Jensen met Objective 1 and 2. He stated the Committee met with the Dean at least twice and met three or four times with Dr. Jensen. They reviewed the letter of instruction from Dean Ellsworth in developing the objectives. He believed that Dr. Jensen followed the Committee's recommendations much more than expected and was open to suggestions. In reviewing Dr. Jensen's performance they looked at his annual plan and the revisions to the plan and went over the concerns. He stated they did not hear from the Dean that things were not being followed and were unaware of any issues or problems from the Dean until Dr. Jensen got an unsatisfactory evaluation in May. Mr. Burke stated that the other member of the Committee, Matthew Leathen, observed Dr. Jensen's teaching. Mr. Burke testified that they were blindsided when Dr. Jensen got a second unsatisfactory. He stated that in the Dean's evaluation letter she outlined different issues that were going on which the Committee was unaware of so they were not given any chance to try to correct or advise Dr. Jensen on those issues.

11. *John Carl Wilson*

Mr. Wilson is an independent writer and a writing fellow for Heterodox Academy. Mr. Wilson testified at the objection of TMCC which was overruled. Mr. Wilson discussed the key principles of academic freedom but did not have any personal knowledge of the facts surrounding the unsatisfactory evaluations.

12. *Professor Keith Dan Hooper*

Professor Hooper has been teaching in the Math Department since 2016. Professor Hooper testified that when Dr. Jensen was handing out his paper to participants in the breakout room he was respectful. Professor Hooper stated that, when he was Chair of the committee working on Canvas Training Faculty Standard 1.1, it was the intent that long-time online instructors were grandfathered in in terms of that training.

13. *Professor Damien Ennis*

Professor Ennis is a tenured professor in the Math Department. He attended the Math Summit and described it as a presentation by the administration about the curricular changes to corequisite pathways for Math 120 and the future of Math 126 – it was not as much sharing as it was a presentation. He recalled Dr. Jensen being quickly cut off from speaking. Professor Ennis was in the breakout room when Dr. Jensen came in and handed out a stack of papers and he did not feel it was an interruption. He stated Dr. Jensen was professional and calm.

With regards to furlough days, Professor Ennis stated that at the division meeting they were told that if you did not put the furlough days in yourself it would be done for you. He

stated no one was made aware that not entering furlough days would affect faculty evaluations.

14. *Professor Thomas Justin Cardoza*

Professor Cardoza is a tenured professor in the Humanities Department at TMCC. On September 23, 2021 Professor Cardoza wrote a letter of support for Dr. Jensen.<sup>31</sup>

#### D. FINDINGS OF FACT<sup>32</sup>

##### Unsatisfactory Evaluation for AY 2019-2020:

**1. Issue:** Did Dr. Jensen engage in the conduct alleged in the AY 2019-2020 evaluation regarding the January 2020 Math Summit? If so, did such conduct result in a violation of NSHE Code 6.2.1 (d) – Insubordination, and (n) – the intentional disruption or unauthorized interruption of functions of the system, including but not limited to classes, convocations, lectures, meetings, recruiting interviews and social events on or off the premises of the System, and or violate S1a) of the Annual Plan? <sup>33</sup>

**Finding:** Based upon the preponderance of the evidence, Dr. Jensen's conduct at the Math Summit, where he willfully disregarded Dean Ellsworth's directives to not disrupt the meeting by distributing his handout ("On the Math Pathways – Looking Under the Hood") during the meeting violated S1a) of the Annual Plan and NSHE Code 6.2.1 (d) and (n).<sup>34</sup>

The purpose of the Math Summit was to inform and communicate to the TMMC campus, broadly, some of the changes that were happening in math including the implementation of a corequisite mandate. Due to the limited time to address questions and comments from participants during the event, and the tightly planned schedule, the participants, including Dr. Jensen, were informed of a white board marked as the Parking Lot prominently situated in the main meeting room where participants were encouraged to

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<sup>31</sup> Jensen Exhibit OOO.

<sup>32</sup> Under NSHE Code 6.9.14, the standard of proof is a preponderance of the evidence, i.e. that the evidence establishes that it is more likely than not that the misconduct occurred.

<sup>33</sup> As previously set forth, in order to receive a satisfactory evaluation the faculty member must fulfill all applicable criteria in *Primary Job Responsibilities*, S1-S4, regardless of whether other criteria on the evaluation have been met. S1a) governs professional conduct.

<sup>34</sup> The NSHE Code does not specifically define insubordination. While "Insubordination" in relation to the Chancellor is defined as "disobedience of a lawful written order," NSHE Code, Title 1, Article VII, Section 3, 14(c)4, there is no support for Dr. Jensen's argument that to be insubordinate he need to have violated a written order by Dean Ellsworth. As set forth in *State ex rel. Richardson v. Board of Regents*, 70 Nev. 347, 269 P.2d. 265 (1954), "insubordination imports a willful disregard of express or implied directions, or such a defiant attitude as to be equivalent thereto." The NSHE Prohibitions and Penalties for Classified Staff define "Insubordination" as the refusal to comply with an order or instruction from a supervisor.

write their questions and comments and place them on the board. The participants were informed that after the meeting all the comments and questions would be compiled and distributed via email to all participants.

Right before the 10:15-10:30 break Dr. Jensen raised his hand and was called upon by Dean Ellsworth. Dr. Jensen started to make a statement but was stopped by Dean Ellsworth due to time constraints.<sup>35</sup> She informed Dr. Jensen that anything else he wanted to say could go on the Parking Lot. After the break Dr. Jensen returned with copies of his handout and went into the main meeting room and started passing them out and placing them on the tables. Dean Ellsworth did not know what the handout said. She asked Dr. Jensen to please not put his handouts on the tables as she did not want additional handouts distributed during the Math Summit as participants had been provided with a binder and numerous loose-leaf handouts for the Summit and she did not want confusion with the distribution of additional materials. Dr. Jensen ignored her and continued to hand out his papers. Dean Ellsworth again asked Dr. Jensen to not hand out his papers in the middle of the event and informed him he could put the handout on the Parking Lot board and he could put a stack by the door on the table and they would tell everyone to take one on their way out. Dr. Jensen again refused and went back into the main room and continued to pass out his papers, and then went into a break-out room during a work session and handed them out. While Dr. Jensen may have been polite and professional to the participants, Dr. Jensen engaged in insubordination by willfully disregarding Dean Ellsworth's directions and interrupted the Math Summit by intentionally and without authorization distributing his handout during the Summit.

Dr. Jensen was not disciplined because of the content of the handout but rather because of his insubordination at the Summit. While Dr. Jensen's position is that his unsatisfactory evaluation was in retaliation for exercising his right to free speech and academic freedom, the evidence establishes that Dr. Jensen's academic freedom and right to free speech was not censored in any way. Dr. Jensen was permitted to put his handout on the Parking Lot, was told his handout could be placed on the table by the door and they would tell everyone to take one, and his handout was included in the materials distributed on the TMCC listserv after the Summit. The method employed for participants to place comments or questions on the Parking Lot was reasonable and equally applied to all participants.

**2. Issue:** Did Dr. Jensen engage in the conduct alleged in the AY 2019-2020 evaluation regarding the grading criteria in his syllabus, specifically a student's eligibility to take the final exam? If so, did such conduct result in a violation of violated S1a) of the Annual Plan and/or NSHE Code 6.2.1 (d) – Insubordination?

**Finding:** Dr. Jensen's Fall-2018 and Spring 2019 syllabi provided: "To qualify for the final exam your homework average, your test average, and your project average must each be 60%." Dr. Jensen's Fall-2019 syllabus provided: "Your test average, your homework average, and your project average must each be at least 60% on the day

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<sup>35</sup> Even if Dean Ellsworth cut Dr. Jensen off when he was starting to make a statement, Dr. Jensen was provided with an alternative channel of communication to express himself.

before the final or you fail the course." Based upon the preponderance of the evidence, Dr. Jensen complied with Dean Ellsworth's directives to alter his syllabus and therefore Dr. Jensen's conduct did not result in a violation of violated S1a) of the Annual Plan or NSHE Code 6.2.1 (d) – Insubordination.

During the fall of the 2018-2019 academic year discussions ensued between Dean Ellsworth and Dr. Jensen regarding his syllabus and criteria needed to qualify for the final exam. Dean Ellsworth did not believe there was any academic justification for not permitting a Student to take the final exam unless the Student had achieved 60% averages in 3 categories (homework, tests and projects). Dean Ellsworth and Dr. Jensen disagreed about the final exam requirement. Discussions continued into the early spring of 2019 and Dean Ellsworth asked Dr. Jensen to amend his Fall-2019 syllabus to allow students to take the final exam and Dr. Jensen agreed to do so. Dr. Jensen's changes to his Fall-2019 syllabus permitted students to take the final exam regardless of what they achieved in other areas during the year, even though the final may have no bearing on the final grade. The changes Dr. Jensen made to his syllabus were consistent with other math professor practices. On September 24, 2020 Dean Ellsworth informed Dr. Jensen that if he believed his changes to his Fall-2019 syllabus were compliant with her request to allow students to take the final exam then she would dismiss it as a second instance of insubordination on the evaluation. Dr. Jensen informed her he believed he had been compliant.

#### **Unsatisfactory Evaluation for AY 2020-2021:**

- 1. Issue:** Did Dr. Jensen engage in the conduct alleged in the AY 2020-2021 evaluation that he did not follow through in a timely manner on the Dean's request for revisions to the Annual Plan? If so, did such conduct violate requirement S3b) of the Dr. Jensen's Annual Plan, specifically responding to the Dean's requests in a timely manner and/or violate NSHE Code 6.2.1 (d) – Insubordination?
- 2. Issue:** Did Dr. Jensen engage in the conduct alleged in the AY 2020-2021 evaluation that he failed to submit his Annual Plan per the Faculty Senate Guidelines or as requested by the Dean via email and at the Division meeting in August, 2020? If so, did such conduct violate requirement S3b) of the Dr. Jensen's Annual Plan, specifically responding to the Dean's requests in a timely manner and/or violate NSHE Code 6.2.1 (d) – Insubordination?

**These two issues have been consolidated as they pertain to the process of the Annual Plan.**

**Finding:** While Dr. Jensen did make some corrections to his Annual Plan as requested by Dean Flesher, the preponderance of the evidence establishes that Dr. Jensen failed, without justification, to submit his Annual Plan per the Faculty Senate Guidelines or as requested by the Dean via email and at the Division Meeting in August, 2020. At the Division meeting the faculty, including Dr. Jensen, were instructed to not duplicate an item and count it as two activities, and that other activities as agreed upon

by the Dean must be done through a conversation/email with the Dean prior to submitting the annual plan, which included the use of multipliers which had to be agreed upon by the Dean in advance. Under the Faculty Senate Approved Guidelines, whether or not an activity may be multiplied is determined through agreement with the chair/dean/director who will base the decision on whether the activity meets certain criteria.<sup>36</sup>

Dr. Jensen submitted his first Annual Plan on October 6, 2020. He submitted his second Annual Plan on November 24, 2020. Dr. Jensen duplicated an activity, used multipliers for activities that were not agreed upon in advance, and did not timely make corrections to the multipliers as requested by Dean Flesher. Through the period November 24, 2020 to January 8, 2021 Dean Flesher informed Dr. Jensen, *inter alia*, that he was improperly using multipliers in his Annual Plan which were not agreed to by Dean Flesher and that he was still putting COVID training in the wrong category after being requested to move it to another category. Dean Flesher had to request revisions to Dr. Jensen's Annual Plan several times. In the end the Annual Plan still did not contain the revisions she requested as it contained an overinflated use of multipliers. Therefore, such conduct violated requirement S3b) of the Dr. Jensen's Annual Plan - responding to the Dean's requests in a timely manner.

With regards to insubordination, Dean Flesher's directives made during the division meeting, and the Faculty Senate Guidelines, were clear that the use of multipliers is the decision of the Dean and must be agreed upon in advance of submitting the Annual Plan. The emails show that Dr. Jensen willfully disregarded directives from Dean Flesher regarding the requirement to obtain advance approval of the use of multipliers and disregarded directives regarding his specific use of multipliers. In addition, Dr. Jensen refused to properly categorize COVID training after being directed to place it in a different category, S7/b which was consistent across the division on all annual plans. Therefore, such conduct is in violation of NSHE Code 6.2.1 (d) – Insubordination.

**3. Issue:** Did Dr. Jensen fail to follow through in a timely manner on the Dean's directive to complete his Canvas I-III trainings, prior to teaching online, and if so, did such conduct violate requirement S3b) of the Dr. Jensen's Annual Plan, specifically responding to the Dean's requests in a timely manner and/or violate NSHE Code 6.2.1 (d) – Insubordination?

**Finding:** The preponderance of the evidence shows that Dr. Jensen did not follow through in a timely manner to the Dean's directives to complete his Canvas I-III trainings, prior to teaching online in violation of the requirement in S3b) of his Annual Plan and in violation of NSHE Code 6.2.1 (d) – Insubordination.

All Math department faculty, including Dr. Jensen, were notified by Dean Flesher on July 24, 2020 that his Fall 2020 online classes would need to adhere to the TMCC Faculty Instructions and he would need to complete the basic Canvas I, II, and III trainings. On August 1, 2020, Dean Flesher notified faculty, including Dr. Jensen, that if a faculty member felt that through ongoing experience using Canvas as an assist they had

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<sup>36</sup> The Chair was not involved in decisions on the use of multipliers.

mastered the content of Canvas I, II, and III and have instead completed a more extensive Canvas training to prepare for teaching online to please contact her. Dr. Jensen did not contact Dean Flesher and stated in a grievance that he had never used Canvas for teaching before the 2020-2021 academic year. Dean Flesher sent another email to department faculty on August 11, 2020 referencing the required Canvas training. Information on Canvas training was also provided to faculty thought the VPAA and WebCollege. The Fall 2020 Academic Contract began on August 13, 2020, and classes started on August 24, 2020. On October 10, 2020, Dr. Jensen received a Letter of Instruction from Dean Flesher informing him he was not meeting his satisfactory requirements he had checked on his Annual Plan as he had not completed the Canvas trainings. Dr. Jensen did not take the Canvas training until his Faculty Support Committee recommended he take it, which he did on October 16. Although Dr. Jensen was teaching for the first time using Canvas, he did not take the training until almost 2 months after the Fall semester began. The entire Math division faculty had completed the Canvas 1, II, and III Canvas trainings before the beginning of the semester.<sup>37</sup>

It is not relevant that Dr. Jensen had technology experience or that faculty outside of the Math department had not taken Canvas I, II and III training, or that the directives came at a time when Dr. Jensen was not on contract. Dean Flesher issued a specific directive to all Math department faculty and Dr. Jensen engaged in insubordination by willfully disregarding Dean Ellsworth's directives, in violation of NSHE Code 6.2.1 (d) – Insubordination. In addition, Dr. Jensen violated S3b) of his Annual Plan by not responding to the Dean's requests in a timely manner.

**4. Issue:** Did Dr. Jensen engage in the conduct alleged in the AY 2020-2021 evaluation that he failed to follow through on a request to clearly state the course approved student objective on all of his syllabi? If so, did such conduct violate requirement S3b) of the Dr. Jensen's Annual Plan, specifically responding to the Dean's requests in a timely manner and/or violate NSHE Code 6.2.1 (d) – Insubordination?

**Finding:** The preponderance of the evidence does not establish that Dr. Jensen failed to follow through on a request by the Dean to clearly state the course approved student objectives on his syllabi. On October 10, 2020 Dean Flesher informed Dr. Jensen that he was not meeting the satisfactory requirements he had checked on his Annual Plan and had not met Standard 2.6 of the Faculty Guidelines in that course objectives were not stated on his syllabi. However, Dean Flesher gave Dr. Jensen until December 1, 2020 to include course objectives on his syllabi. There was no evidence that Dr. Jensen did not do so. While Dr. Jensen may have violated Faculty Standard 2.6 by not including objectives in his syllabi, the termination was not based on a violation of Faculty Standard

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<sup>37</sup> Although Dean Flesher gave Dr. Jensen until December 1 to do the training, this does not negate the insubordinate conduct prior to the October 10<sup>th</sup> Letter of Instruction or absolve Dr. Jensen of his conduct.

2.6, but rather the failure to timely respond to the Dean's requests in a timely manner (S3b)).<sup>38</sup>

**5. Issue:** Did Dr. Jensen engage in the conduct alleged in the AY 2020-2021 evaluation in that he failed to have a comprehensive syllabus, and that the syllabus did not contain the TMCC Gateway Policy that is a required statement for Gateway courses? If so, did such conduct violate requirement S3b) of the Dr. Jensen's Annual Plan, specifically responding to the Dean's requests in a timely manner and/or violate NSHE Code 6.2.1 (d) – Insubordination?

**Finding:** The preponderance of the evidence does not establish that Dr. Jensen failed to have a comprehensive syllabus. Dean Flesher's evaluation did not reference with specificity how Dr. Jensen's syllabus was not comprehensive. In addition, while the Gateway Policy was not on Dr. Jensen's syllabus there was insufficient evidence that this omission violated requirement S3b) of the Annual Plan or constituted insubordination under NSHE Code 6.2.1(d).

**6. Issue:** Did Dr. Jensen engage in the conduct alleged in the AY 2020-2021 evaluation in that he failed to comply, in a timely manner, with the Dean's request that all faculty submit their furlough days in Workday for tracking and, if so, did such conduct violate requirement S3b) of the Dr. Jensen's Annual Plan, specifically responding to the Dean's requests in a timely manner and/or violate NSHE Code 6.2.1 (d) – Insubordination?

**Finding:** The preponderance of the evidence establishes that Dr. Jensen failed to comply, in a timely manner, with the Dean's request that all faculty submit their furlough days in Workday for tracking. On December 8, 2020 Dean Flesher sent an email to all department faculty, including Dr. Jensen, informing them that they would need to submit their furlough days into Workday and provided them with information on furlough days and using Workday, including that faculty could submit furlough requests for the start of the contract days in January, before the January 19, 2021 kickoff. While there was no deadline stated, all department faculty had submitted their furlough days into Workday at the time she gave Dr. Jensen his annual evaluation on May 17, 2021. It was only after he received his unsatisfactory evaluation that Dr. Jensen attempted to submit furlough days into Workday. Accordingly, Dr. Jensen did not respond to the request in a timely manner in violation of requirement S3b) of Dr. Jensen's Annual Plan. However, the preponderance of the evidence does not establish that Dr. Jensen's conduct was in willful disregard of the Dean's directive and therefore Dr. Jensen did not violate NSHE Code 6.2.1 (d) – Insubordination.

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<sup>38</sup> In addition, in Dean Flesher's explanation of the unsatisfactory evaluation she does not base it on the issue with Dr. Jensen regarding Faculty Standard 2.3, the requirement to have a substantive assignment due the first week of class.

## E. CONCLUSION

With regards to the AY 2019-2020 unsatisfactory evaluation, the preponderance of the evidence establishes that Dr. Jensen violated S1a) of his Annual Plan and NSHE Code 6.2.1 (d) – Insubordination, and (n) the intentional disruption or unauthorized interruption of functions of the system, regarding his conduct at the January 21, 2021 Math Summit.

With regards to the AY 2020-2021 unsatisfactory evaluation, the preponderance of the evidence establishes that on three occasions Dr. Jensen violated S3b) of his Annual Plan regarding the preparation of his Annual Plan, the Canvas training, and the submission of furlough days into Workday. The preponderance of the evidence establishes that Dr. Jensen had two incidents of Insubordination in violation of NSHE Code 6.2.1 (d) pertaining to the process of preparing his Annual Plan and the Canvas training.

Respectfully submitted this 12<sup>th</sup> day of November, 2021.



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