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October 29, 2013

Gail S. Cooper, General Counsel
Office of General Counsel – C215
PASADENA CITY COLLEGE
1570 E. Colorado Blvd.
Pasadena, CA 91106

RE: Pasadena City College Faculty Association

Dear Ms. Cooper:

I am the attorney for the Pasadena City College Faculty Association. The purpose of this letter is to respond to your letter of October 23, 2013 to Eduardo Cairó, as well as other related actions by the District. The letter was sent to Mr. Cairó in his capacity as Academic Senate President. I do not represent the Academic Senate. However, the Faculty Association has asked me to respond to your letter because it is a blatant example of the District's misguided attempts to intimidate faculty members.

Your letter claims that the Academic Senate proposal to form an Ad Hoc Committee to evaluate the College President violates Board policy and state law. This claim is simply wrong.

ROLE OF THE ACADEMIC SENATE

Your letter seems to assume that the Academic Senate cannot operate independently from the District in any way. That is simply incorrect, as a matter of law. For example, in *Irvine Valley College Academic Senate v. Board of Trustees of South Orange County Community College District*, 129 Cal. App. 4th 1482 (2005), the Court of Appeal ruled that the Academic Senate had standing to sue the community college district on the grounds that the District revised faculty hiring policies without obtaining agreement from the Academic Senate. In its ruling, the Court made it clear that academic senates are elected independently by faculty, rather than being appointed by the District. The Court explicitly found that academic senates have more than an advisory role to play in the life of the college.

As you know, academic senates are given specific powers under Education Code Sections 87359, 87360, and 87458, among others. Perhaps the District needs to be reminded that Title 5, Section 53203(a) of the California Code of regulations states the following:

"The governing board of a community college district shall adopt policies for appropriate delegation of authority and responsibility to its college and/or district academic senate. Among other matters,

Gail S. Cooper, General Counsel
PAGE TWO

October 29, 2013

said policies, at a minimum, shall provide that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters. This requirement shall not limit other rights and responsibilities of the academic senate which are specifically provided in statute or other Board of Governors regulations."

It is impossible for the Academic Senate to perform its functions without forming opinions about academic and professional life on campus, including how well the College President is performing in his job.

EVALUATION OF THE PRESIDENT

Your letter claims that the Academic Senate cannot evaluate the College President. Obviously, it is the Board of Trustees that hires and fires the College President, as well as conducting formal evaluations of his work. But, you cannot seriously contend that other members of the campus community and the community at large cannot express opinions about the President's performance. In Tinker v. Des Moines, 393 US 503 (1969), the United States Supreme Court stated that students do not give up their constitutional rights at the schoolhouse door. This principle applies even more strongly to faculty of California community colleges. By law, faculty must be active participants in policy making.

The formal body for expression of faculty views is the Academic Senate. The Academic Senate has every right to offer faculty a vehicle to express their opinions about whether they approve of the College President's implementation of academic and professional policies.

In support of your attempt to silence the faculty, you cite Versaci v. Superior Court, 127 Cal. App. 4th 805 (2005). This case has virtually nothing to do with whether the Academic Senate can express opinions about the College President. The Versaci case is a Public Records Act case in which the Court denied an attempt to obtain the internal performance goals which the Board of Trustees of Palomar College set for the College President.

The Academic Senate is not attempting to obtain confidential information about the President. The Academic Senate is also not attempting to expose private personnel information. Instead, the Academic Senate is going to provide a vehicle for faculty to express their opinions about very public conduct by the President. No confidential information will be necessary to accomplish that and there will be no invasion of the President's privacy.

DEFAMATION

At the end of your letter, you raise threat of lawsuits for defamation. Frankly, I am shocked that you would threaten faculty of the college. Who do you represent? As General Counsel of the District you represent the interests of the District. You are not the College President's personal attorney. It is not your job to protect the President's personal feelings.

Gail S. Cooper, General Counsel
PAGE THREE

October 29, 2013

On the other hand, if officers of the Academic Senate were for some reason sued because of their participation in the Academic Senate, the District would be obligated to represent them and indemnify them, pursuant to Government Code Section 825. I am confident that the District already has a full range of legal actions to defend without you threatening to initiate lawsuits against faculty who might in the future express opinions with which the College President disagrees. That brings me to the issue of defamation. First, as you know, TRUTH IS AN ABSOLUTE DEFENSE in defamation actions. Also, defamation requires a false statement of fact. Expressions of opinion are not defamatory especially when they are part of an ongoing political controversy. Gregory v. McDonnell Douglas, 17 Cal. 3d 596 (1976)

In addition, the College President is a public figure. If he actually were silly enough to sue faculty members for expressing their opinions, he would have to prove they maliciously and recklessly disregarded the truth. That is a legal standard he will never be able to meet.

Finally, given the statutory and constitutional protections for free expression of ideas on a college campus, and especially through the Academic Senate, the kind of lawsuit you threaten would be subject to an anti-SLAPP motion which would dismiss the case. See, e.g., Chaker v. Mateo, 209 Cal. App. 4th 1138 (2012) The District or the President, or whoever would be silly enough to file such a lawsuit, would then be subject to the imposition of an award of attorneys fees.

Your threats are pointless. In plain English, please stop.

THE BROWN ACT

In addition to the letter I have discussed above, you also sent a letter on October 17, 2013 to Professor Melissa Michelson discouraging the idea of Town Halls conducted by the Academic Senate. In your letter, you imply that these Town Halls would violate the Brown Act. This is another attempt to bully the Academic Senate into silence. A violation of the Brown Act requires the following:

1. A violation of part of the Brown Act by a legislative body.
2. An action taken by the legislative body in connection with the violation; and
3. A timely demand by a plaintiff to cure or correct the action.

See, Page v. MiraCosta Community College District, 180 Cal. App. 4th 471 (2010)

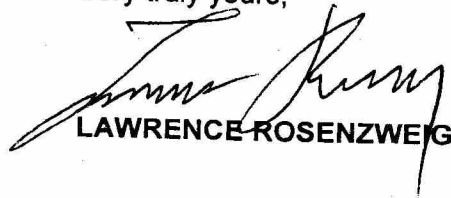
Conducting Town Halls is not legislative action nor a violation of the Brown Act.

Gail S. Cooper. General Counsel
PAGE FOUR

October 29, 2013

As I indicated previously, the Academic Senate is authorized to act independently of the Board of Trustees. There is no basis to conclude that, because Board meeting could be considered Town Hall Meetings, the Academic Senate cannot conduct Town Hall meetings of their own.

Very truly yours,



LAWRENCE ROSENZWEIG

LR:mc

cc: Dr. Marc Rocha
Board of Trustees
Roger Marheine
Eduardo Cairó