



san josé·evergreen  
COMMUNITY COLLEGE DISTRICT

HUMAN RESOURCES SERVICES GROUP

• 40 South Market Street, San Jose, CA 95113-2367

408-270-6406 • 408-239-8825 (fax)

September 11, 2019

VIA EMAIL AND U.S. MAIL

Mr. Keith Aytch  
c/o Gregory Rolen, Esq.  
Haight Brown & Bonesteel  
3 Embarcadero Center  
San Francisco, CA 94111  
grolen@HBBlaw.com

**RE: NOTICE OF INTENT TO TERMINATE PRESIDENT EMPLOYMENT  
AGREEMENT FOR CAUSE**

Dear Mr. Aytch:

On behalf of the Board of Trustees of the San-José-Evergreen Community College District (“District”), I have been authorized and instructed to inform you that the Board of Trustees intends to terminate your employment as President of Evergreen Valley College, for cause, effective November 11, 2019, consistent with the terms and termination procedures set forth in your President Employment Agreement (“Agreement”). This letter details the grounds and evidence relied upon in reaching this decision, and explains your opportunity to respond before the Board of Trustees takes final action to effectuate the intended termination.

#### **I. CAUSE FOR TERMINATION**

Pursuant to Article 5(b) of the Agreement, the Board of Trustees may terminate the Agreement for cause, based upon either: a) gross misconduct or b) a material breach of the Agreement, after the President has been given notice and the opportunity to correct the breach. As set forth below, you have engaged in gross misconduct warranting termination of this Agreement. Further, you have materially breached the terms of the Agreement in a manner that cannot

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reasonably be corrected. On this basis also, the Board has determined to terminate the Agreement.

#### A. Gross Misconduct Warranting Termination

##### 1. Failure to Disclose Material Information that you Knew, or Should Have Known, Would Have Disqualified You from Consideration for Appointment to President of EVC

From 2014 until the spring of 2019, you engaged in a sexual relationship with [REDACTED] employed at Evergreen Valley College. You began this sexual relationship when you were employed as the College's Vice President of Academic Affairs.

In July of 2017, you accepted the position of Interim President of Evergreen Valley College, despite the fact that you fully intended to continue the relationship (as subsequent events demonstrate). Moreover, you failed to disclose this material information to the District when you were under consideration for the position. Had you disclosed your intention to continue this relationship while serving as Interim President, the District would never have offered you this position.

In July of 2018, you applied for the permanent position of College President. You failed to disclose that, for the last year, you had been engaged in a sexual relationship with someone who was now in your direct line of supervision. You also failed to disclose that you fully intended to continue the relationship as President. Had you disclosed this information, the District would never have offered you the position.

Further, you knew, or should have known, that your sexual relationship with [REDACTED] constituted a material fact that would have eliminated you from consideration for the positions of Interim President and President of the College. You failed to disclose the relationship, even though you had no intention of breaking it off, because you knew that if the District learned of the relationship, your position as Interim President (and later, President) would be jeopardized. Accordingly, you were dishonest when you held yourself out as fully qualified for the positions of interim President and President, and failed to disclose this relationship to the District.

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## 2. Your Violation of Board Policy 3436 Constitutes Gross Misconduct

Board Policy 3436 prohibits District employees from engaging in sexual relationships with individuals employed by the District over whom they have a direct line of supervisorial relationship. Further, the Policy expressly warns employees that, "Because of the differential in the level of authority, such relationships could lead to charges of coerced submission or sexual harassment, even if there was apparent consent." Adherence to this Policy is integral to the safety and wellbeing of our employees; the reputation and stability of the District; and furthering the core values of the District, as expressed in its Institutional Code of Ethics that, "each employee and student has the right to dignity and respect." (AP 3050).

You violated Board Policy 3436 when you engaged in a sexual relationship with [REDACTED] [REDACTED] at Evergreen Valley College, after you became the Interim President (July 2017) and then President (July 2018). As the President of Evergreen Valley College, you are in the direct line of supervision over all employees at the College. As an

[REDACTED]  
[REDACTED]  
[REDACTED] reports to the President.

You have also demonstrated a troubling failure to recognize the seriousness of your misconduct. Rather, you asserted to the independent investigator that your conduct was not serious because your sexual relationship with [REDACTED] never affected your professional role or duties, and that [REDACTED] never sought or received professional favor because of the relationship. However, this characterization of your conduct fails to recognize that the policy prohibiting sexual relationships in the direct line of supervision is preventive in nature, and does not concern itself with whether either party actually abuses the relationship. The District prohibits sexual relationships in the direct line of supervision because there is an inherent power imbalance in the relationship. Indeed, as noted above, the Policy itself expressly warns employees that the power differential can lead to charges of coercion even where there was apparent consent. You disregarded this warning, and the critical institutional values underlying BP 3436, when you engaged in a sexual relationship with your subordinate.

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Further, as you acknowledged to the outside investigator, you have attended numerous harassment prevention trainings, and understand the inherent power imbalances in a sexual relationship between a College administrator and [REDACTED]. Nevertheless, you asserted that you did not see any problems with maintaining your relationship with [REDACTED] as you reached the highest level of responsibility and authority at Evergreen Valley College, because you did not foresee problems that would prevent you from being an effective administrator.

However, your claim that you did not foresee the problems that could arise from this relationship strains credulity. Either you were aware of the risks to yourself and the District and did not care, or you were engaged in willful ignorance. As College President, you were involved not only in a sexual relationship with a subordinate, but one that relied on secrecy and deception. Throughout your relationship with [REDACTED], you regularly met to engage in sexual relations in hotel rooms that you paid for, you exchanged text messages and gifts, and met for meals together. More recently, [REDACTED] came to believe that [REDACTED]

[REDACTED]

In short, you chose to engage in conduct that had the potential to [REDACTED] generate the sort of salacious details that can damage the reputation of the College and District.

Simply put, by July of 2017, you were required to choose between the personal satisfaction you received from your relationship with [REDACTED] and your professional obligations as Interim President and then President of the College, and you refused to make this

required choice. By engaging in a sexual relationship with a subordinate employee, you placed the College, the District, and yourself at risk of public exposure and the potential for costly litigation. [REDACTED]

## B. You Breached Your Employment Agreement Beyond Repair

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As set forth in paragraph 3 of the President Employment Agreement, your duties and responsibilities include, that you “shall comply with, and shall perform the duties of the position as prescribed by all applicable federal, state, and District laws, rules, and regulations, and . . . all District policies in performing duties during the term of this Agreement.” You committed a material breach of this term of the Agreement by failing to adhere to Board Policy 3436, a policy that is central to upholding the values of the District, protecting the well-being of our employees, and maintaining the stability and good name of Evergreen Valley College and the District.

As also set forth in Paragraph 3, you are responsible for effectively and positively representing the College in all District, community, and civic activities. Your conduct has irreparably undermined your ability to carry out this contractual obligation.

As also set forth in Paragraph 3, you are expected to engage in activities to maintain and improve staff morale and cohesiveness. Your conduct has irreparably undermined your ability to do so. Indeed, just your continued presence as President would undercut staff morale, as it would indicate that the District does not hold its administrators to the same standards and expectations as faculty and staff. In particular, Board Policy 3436 also prohibits faculty from engaging in sexual relationships with their students. If we do not enforce Policy 3436 with administrators, we are inevitably impeded in our ability to enforce it with faculty.

Further, this material breach of the Agreement is a bell that cannot be un-rung. There is no way to correct the breach because it stems from your clandestine course of conduct over a period of years. You suggested in your interview with the independent investigator that you ultimately corrected the violation by cutting off communication with [REDACTED]. However, you only did so at the District’s direction. More importantly, this step, while necessary, does not correct the breach. It has not undone the damage that [REDACTED] attributes to the relationship. Nor has it resulted in erasing the underlying conduct that—if it goes unpunished—exposes the District to further liability and reputational damage.

## II. YOUR PRE-DISCIPLINARY RIGHTS UNDER THE AGREEMENT

You are entitled to an opportunity to respond to this proposed action prior to the effective date of the termination by appearing before the Board of Trustees in

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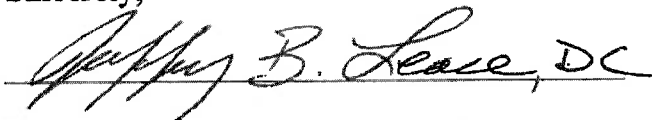
closed session. You have the right to appear with or without legal counsel at your own expense. The Board will not take final action to effectuate the termination until you have been afforded this opportunity to be heard. Please note your appearance before the Board, should you choose to exercise this right, is not an evidentiary hearing.

The Board of Trustees is scheduled to meet at 5:00 p.m. at the District Office (40 S. Market Street, San Jose, CA 95113) on September 10, 2019 and October 8, 2019. If you wish to appear in closed session to address the Board at the September 10, 2019 meeting, you must notify Dr. Byron Breland in writing by 5:00 p.m. on Friday, September 6, 2019. If you wish to appear in closed session at the October 8, 2019 meeting, you must notify Dr. Breland by 5:00 p.m. on Friday, October 4, 2019.

### III. WARNING AGAINST RETALIATION

I remind you that you are prohibited from retaliating against any person who has participated in providing information regarding the above-described allegations, and that you are still prohibited from contacting [REDACTED] in any manner.

Sincerely,



Dr. Jeffrey Lease  
President, Board of Trustees  
San José-Evergreen Community College District

Attachments:

Board Policy 3436  
President Employment Agreement

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