BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:
JEROME M. LORD,
Respondent.

NO. 09-018
STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the
Respondent, Jerome M. Lord, and Board Staff of the Washington State Executive Ethics Board
(Board) through Melanie de Leon, Executive Director. The following stipulated facts,
conclusions, and agreed order will be binding upon the parties if fully executed, and if
accepted by the Board without modification(s), and will not be binding if rejected by the
Board, or if the Respondent does not accept the Board’s proposed modification(s), if any, to
the stipulation. The agreed order imposes a civil penalty of six thousand five hundred dollars
($6,500). The Board agrees to suspend one thousand five hundred dollars ($1,500) on the
condition that Jerome M. Lord complies with all terms and conditions of this Stipulation and
Order and commits no further violations of chapter 42.52 RCW for a period of two years from
the date this agreement is executed.

Section 1: Procedural Facts

1.1 On March 23, 2009, the Board received a Report of Whistleblower
Investigation from the State Auditor’s Office (SAO). The report contains a finding of
reasonable cause to believe that Jerome M. Lord may have violated the Ethics in Public
Service Act by using state resources for personal benefit, in violation of RCW 42.52.160, Use
of persons, money, or property for private gain.

1.2 Board staff reviewed the SAO working papers, Mr. Lord’s response to the
allegations, and supplemental information provided by the college.
1.3 After a preliminary review, Board staff believes evidence exists to prove that Jerome M. Lord violated one or more provisions of RCW 42.52, the Ethics in Public Service Act.

1.4 The Board is authorized under RCW 34.05.060 to establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

1.5 Jerome M. Lord understands that if Board Staff proves any or all of the alleged violations at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to $5,000 for each violation found, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

1.6 Jerome M. Lord recognizes that the evidence available to the Board Staff is such that the Board may conclude he violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.

1.7 Jerome M. Lord waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board’s proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.
1.8 If the Board accepts this stipulation, the Board will release and discharge Jerome M. Lord from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the agreed order. Jerome M. Lord in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this Stipulation and Agreed Order.

1.9 If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Jerome M. Lord and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

1.10 If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.11 If the Board rejects this Stipulation, or if Jerome M. Lord does not accept the Board’s proposed modification(s), if any, Mr. Lord waives any objection to participation at any subsequent hearing by any Board member to whom this Stipulation was presented for approval under WAC 292-100-090(2). Further, Jerome M. Lord understands and agrees that if this proposed Stipulation, with any applicable modification by the Board, is rejected by Mr. Lord, this Stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

Section 2: Findings of Fact

2.1 At all times material hereto, Jerome M. Lord was employed by Pierce College as a mail processing manager.

2.2 On August 27, 2008 the SAO opened an investigation into a Whistleblower complaint that alleged that Jerome M. Lord was using his state computer for personal benefit.
2.3 The SAO investigation revealed that Jerome M. Lord had used his state computer, over a period of 9 workdays, to store 583 adult content images; to store 827 additional non-work-related images; to view pornography; and to send or receive 57 emails over a three day period that were sexual in nature. In addition, over a three year period, Jerome M. Lord used his state computer to send or receive 473 emails related to his youth baseball team.

2.4 In its Report of Whistleblower Investigation dated March 23, 2009, the SAO concluded that reasonable cause existed to believe that Jerome M. Lord’s use of state resources resulted in an improper governmental action. The SAO referred the matter to the Board on or about March 24, 2009 for enforcement action.

Section 3: Conclusions of Law

3.1 Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Jerome M. Lord and over the subject matter of this complaint.

3.2 Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

3.3 The Ethics in Public Service Act, chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) states:

No state officer or state employee may employ or use any person, money, or property under the officer’s or employee’s official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

Jerome M. Lord violated RCW 42.52.160(1), Use of persons, money or property for private gain, when he used the facilities of Pierce College to access adult websites, to engage in adult-content personal email exchanges, and to send and receive a large volume of emails concerning non-work-related subjects.

3.4 WAC 292-110-010 allows limited personal use of state resources under certain conditions. Specifically excluded from that allowance is the use of state resources to support
an outside organization or group, including private businesses and nonprofit organizations. Jerome Lord violated WAC 292-110-010 by sending and receiving hundreds of emails related to his youth baseball team.

3.5 Based on Findings of Fact 2.1 through 2.4, Jerome M. Lord used state resources in violation of RCW 42.52.160 and WAC 292-110-010.

3.6 The Board is authorized to impose sanctions for violations of the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

II. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. Mitigating factors include that Jerome M. Lord was disciplined by the college and suspended for three days (resulting in a loss of $438.15 in wages); and that he had not attended ethics training over the course of his 2 ½ years of employment with Pierce College. Pierce College does not require employees to attend ethics training, however, accessing pornography via a state computer should be obviously unacceptable to even the untrained state employee.

III. AGREED ORDER

Jerome M. Lord will pay a civil penalty in the amount of six thousand five hundred dollars ($6,500.00). The Board agrees to suspend one thousand five hundred dollars ($1,500) on the condition that Jerome M. Lord complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW for a period of two years from the date this agreement is executed. Payment is due in full 45 days after this stipulation is accepted by the Board, or as otherwise agreed to by the parties.
CERTIFICATION

I, Jerome M. Lord, hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that this Stipulation maybe presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter; and if the Board accepts this Stipulation and Agreed Order, I understand that I will receive a signed copy.

\[Signature\]

JEROME M. LORD
Respondent

Date 11-9-09

Stipulated to and presented by:

\[Signature\]

MELANIE DE LEON
Executive Director

Date 11-9-09
II. ORDER

Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is:

✓ ACCEPTED in its entirety;

REJECTED in its entirety;

MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):


DATED this 13th day of December, 2009.

Neil Gorrell, Chair

Michael F. Connelly, Member

Liandra Jablonski, Vice-Chair

Martin Biegelman, Member

* I, Jerome M. Lord, accept/do not accept (circle one) the proposed modification(s).

Jerome M. Lord, Respondent Date