

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 04-022

STIPULATED FACTS,  
CONCLUSIONS AND ORDER

**I. STIPULATION**

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, ██████████ and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through SUSAN HARRIS, 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.

**Section 1: PROCEDURAL FACTS**

1.1. On April 13, 2004, the Executive Ethics Board (Board) received an anonymous complaint alleging that ██████████ an employee with the Department of Social and Health Services (DSHS), may have violated the Ethics in Public Service Act. On June 28, 2004, the Board received another complaint and on April 26, 2005, the Board received a referral from the State Auditor's Office (SAO) alleging ethics violations by ██████████. The complaints contained the following allegations:

- ██████████ directed two subordinates to assist her in teaching classes at St. Martin's College.
- ██████████ directed a subordinate to use state time and equipment to research the process for becoming an ordained minister in order to perform ██████████ marriage.

- [REDACTED] directed subordinates to assist her with wedding planning using state time and state equipment.
- [REDACTED] was appointed to the Office Chief of Staff Development and Training position based on a friendship with her supervisor.
- [REDACTED] hired close personal friends.
- [REDACTED] used her state computer to pursue personal interests.

1.3. 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.

1.4. [REDACTED] 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, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

1.5. [REDACTED] recognizes that the evidence available to the Board staff is such that the Board may conclude she 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.

1.6. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this Stipulation by the Board, or her 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 the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing.

1.7. If the Board accepts this Stipulation, the Board will release and discharge [REDACTED] 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. [REDACTED] 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.

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

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

1.10. If the Board rejects this Stipulation, or if [REDACTED] does not accept the Board's proposed modification(s), if any, [REDACTED] 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, [REDACTED] understands and agrees that, if this proposed Stipulation is rejected by [REDACTED] with any applicable modification by the Board, 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. When the complaint in this matter was filed, and at all times material hereto, [REDACTED] was employed by the State of Washington, DSHS. [REDACTED] was the Office Chief for the Staff Development and Training Section of Children's Services (Academy). She has a Masters degree and experience in teaching adults. The Office Chief for the Academy reports directly to Ross Dawson. The Academy is responsible for:

- Beginning training for new social workers
- Mentoring for new social workers
- Ongoing mandatory training for social workers and all other staff
- Developing competencies and training for supervisors/program managers
- Succession Planning
- Conferences for all staff in the Children's Administration
- Providing a monthly training calendar for all staff
- Registering and tracking training within Children's Administration.

2.2. DSHS investigated the allegations contained in the complaints. The DSHS investigation was completed on February 22, 2005. DSHS had received a number of complaints from former staff regarding favoritism in hiring as well as a hostile work environment, along with allegations of ethics violations. DSHS investigated the allegations and concluded that the evidence did not support the allegations of a hostile work environment; however, based on the findings of the **perception** of favoritism in the hiring process, the Assistant Secretary for the Children's Administration determined the interview process with the administration needed to be more transparent. **The DSHS investigation did not determine that any of the individuals hired were not qualified for the position in which they were hired.**

2.3. The SAO reviewed [REDACTED] computer, e-mail, Internet use and college teaching schedule. The SAO found 10 e-mails relating to her outside employment as an adjunct faculty member for a college from December 2001 through September 2003. The e-mails were from students submitting final exams, advising [REDACTED] that they would be absent from class, requesting status of grades or concerning other class issues.

2.4. [REDACTED] had her state e-mail address on her college syllabus but deleted it after the SAO advised her she could not have it on the syllabus.

2.5. The SAO found two syllabi for classes in 2002 and 2003 on her state computer. [REDACTED] asserts that she was using the syllabi to develop training for the Staff Training and Development Center. [REDACTED] further indicated to the SAO that she uses some of the information from her outside employment for agency training.

2.6. The SAO investigation asserted the following: [REDACTED] called the Olympia Program Manager in the spring of 2003 and requested the Olympia Manager teach her college class; when the Olympia Manager stated she could not teach the class, [REDACTED] asked her to contact the Seattle Program Manager; the Olympia Manager contacted the Seattle Manager who then taught the class that evening; the Seattle Manager's work schedule is 7:30 a.m. to 4:00 p.m. Monday through Friday; and the Seattle Manager left to teach the class after her work day was completed. [REDACTED] does not recall this conversation. She does recall having one of the managers proctor a test once.

2.7. The Olympia and Seattle managers stated that they have assisted [REDACTED] with her 5:00 p.m. class on the Ft. Lewis campus on a couple of occasions. Both managers stated they were helping out a friend. [REDACTED] is the supervisor of the Seattle Manager but not the Olympia Manager.

2.8. The SAO investigation revealed that [REDACTED] filled out a Report of Outside Employment form with DSHS for the years 1999, and 2003. She did not file outside employment forms with DSHS in 2000, 2001, 2002, and 2004 as required by DSHS policy. [REDACTED] indicates that she has updated her outside employment form with DSHS.

2.9. DSHS Personnel Policy 531 *Employees Holding Outside Employment* requires an employee to request approval of outside employment from the approving authority through the chain of command. The policy further states that "[t]he employee wishing to continue working in previously authorized employment must request authorization **annually and in writing.**" The policy further states that "[t]he employee must not use department time, material, facilities, equipment, supplies or telephones in connection with employment outside the department."

2.10. The agency indicates that [REDACTED] has removed all references to her work telephone and e-mail address from her college syllabus. She has re-read Personnel Policy No. 531 and has provided written confirmation to that effect. The agency indicates that

██████████ is now in compliance with Policy 531 and has completed the required outside employment form.

2.11. ██████████ successfully completed the Executive Ethics Board on-line ethics course in January 2005 and attended the Ethical Leadership and Decision Making course in May 2006.

2.12. The complaint alleges that ██████████ directed staff to work on her wedding and directed another DSHS employee to obtain a minister certificate using state resources. ██████████ denies this allegation.

2.13. The SAO investigation revealed non-work related documents such as inspirational sayings, personal budget spreadsheets, and personal e-mails on ██████████ computer. The investigation found from 2002 through 2004, at least 182 personal, non-work related e-mails. The SAO also found the following Internet sites were accessed: baby center, natural baby, a weight loss program, a retail store, a personal e-mail account, a bookstore, and several other sites. ██████████ also used her state computer for personal banking transactions.

2.14. DSHS Administrative Policy No. 15.15 *Use of Electronic Messaging Systems and the Internet*, establishes the department's policy regarding the use of DSHS electronic messaging systems and the internet. The policy at section B.2 allows for a de minimis use of electronic e-mails systems when there is a) little or no cost to the state; b) the use of state resources does not interfere with the performance of the employee's official duties; c) the use is occasional and brief in duration; and d) the use does not compromise the security or integrity of state information or software, However, the policy forbids other uses. The policy states, in part:

3. ...
- b. Employees shall not access the Internet for personal business, personal interest (e.g. "surfing") or any other non-DSHS business use. ...
- d. Employees shall not use e-mail products, other than those provided and supported by the department. ... Checking personal e-mail using department networks and communication lines is also prohibited because of the risk of compromising the security and integrity of state information and software.

- e. Employees shall not create, forward or store electronic messages that do not pertain to the state's business except as allowed in B.2.

...

2.15. After the SAO investigation, the agency indicated that [REDACTED] re-read Administrative Policy No. 15.15.

### Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] 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.

3.4. The Executive Ethics Board does not have jurisdiction over the "appearance of favoritism" in hiring practices. It appears all chosen job applicants were qualified for the subject position.

3.5. A state officer or employee is prohibited under RCW 42.52.160 from using state 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."

3.5. The Ethics in Public Service Act allows for *de minimis* personal use of state resources. WAC 292-110-010 states that employees may make occasional but limited personal use of state resources such as electronic messaging systems and the Internet if the use conforms with ethical standards. Those standards include that the use is of little or no cost to the state, brief in duration and frequency, does not disrupt other state employees and does not obligate them to make a personal use of state resources. [REDACTED] use of state resources was beyond the *de minimis* standard.

3.6. Based on Finding of Fact 2.2, the Board does not have jurisdiction over personnel issues.

3.7. Based on Findings of Fact 2.3 through 2.10 and 2.12 through 2.15, [REDACTED] used state resources in violation of RCW 42.52.160, WAC 292-110-010 and violated agency policy.

3.7. The Board is authorized to impose sanctions for violations to 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.

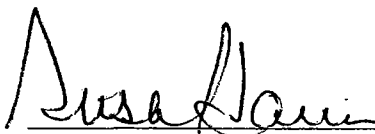
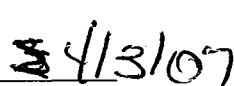
#### **Section 4: AGREED ORDER**

4.1. [REDACTED] will pay a civil penalty in the amount of seven hundred fifty dollars (\$750.00). The civil penalty of \$750.00 is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

#### **CERTIFICATION**

I, [REDACTED] hereby certify that I have read this Stipulation and Agreed Order in its entirety. I knowingly and voluntarily waive my right to a hearing in this matter; and I fully understand and voluntarily agree to this Stipulation.

Stipulated to and presented by:

   
Susan Harris Date  
Executive Director



**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):

Penalty amount of \$1000.00.

DATED this 13 day of April, 2007.

Evelyn P. Yenson  
Evelyn P. Yenson, Chair

Judith K. Golberg  
Judith K. Golberg, Vice-Chair

Trish Akana  
Trish Akana, Member

Neil Gorrell  
Neil Gorrell, Member

Kyle B. Usrey  
Kyle B. Usrey, Member

\* I, [REDACTED] accept/do not accept (circle one) the proposed modification(s).

[REDACTED]