

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 08-018

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Withheld 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.

Section 1: PROCEDURAL FACTS

1.1. On October 5, 2007, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Withheld an employee of the State of Washington, University of Washington (University), may have violated state law when she used a state computer for personal interests. The Board reviewed this referral and issued a complaint on January 11, 2008.

1.2. On July 11, 2008 the Board found reasonable cause to believe that a violation of RCW 42.52.160 may have occurred and determined that penalty and costs no greater than \$500.00 be assessed for the violations and that the Executive Director of the Board schedule a brief adjudicative proceeding under WAC 292-100-190 on the merits of the complaint.

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. Withheld 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.

1.5. Withheld 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.

1.6. If the Board accepts this stipulation, the Board will release and discharge Withheld 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. Ms. ^{Withheld}_d 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.

1.7. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between ^{Withheld} and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

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

1.9. If the Board rejects this stipulation, or if ^{Withheld} does not accept the Board's proposed modification(s), if any, Ms. ^{Withheld}_d 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, Ms. ^{Withheld}_d understands and agrees that this proposed 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. ^{Withheld} is the Director of the University Office of Student Publications that publishes the student newspaper, *The Daily*. She has worked at the University since July 25, 2005.

2.2. The University reviewed Ms. ^{Withheld} state computer use. The investigation tracked Internet activity from April 26, 2007 through June 5, 2007 and revealed that Ms. ^{Withheld}

accessed websites relating to social networks. She accessed her personal e-mail, blog sites, and an on-line auction site.

2.3. Ms. [Withheld] performed the following personal uses of the state computer between April 26, 2007 and June 5, 2007:

- Accessed her personal blogs, including Yahoo 360;
- Accessed a video site to search for song lyrics which later appeared on her blog;
- Accessed her personal e-mail account consisting of composing, sending, and deleting personal e-mails on her MSN Hotmail account;
- Accessed Internet sites such as Ebay.

2.4. Ms. [Withheld] admits accessing her personal e-mail account and accessing her personal blog.

2.5. The University Administrative Policy Statement 47.2, *Personal Use of University Facilities, Computers, and Equipment by University Employees* requires that internet use be a short duration, infrequent, no cost to the state, not interfere with employee's performance, and not distract from the conduct of state business due to volume or frequency.

2.6. The University concluded in its August 10, 2007 internal audit report that Ms. [Withheld] inappropriately used University computing resources for personal purposes. The University found that Ms. [Withheld] "used her University computer's browser to connect to her personal MSN Hotmail account to compose, send and read personal emails and to access social networking websites where she maintains three personal blogs."

2.7. The University counseled Ms. [Withheld] regarding University policies on personal use of state computers. On August 22, 2007, Ms. [Withheld] attended training on the appropriate use of University computing resources. Prior to this date, Ms. [Withheld] received no training regarding the use of University resources.

2.8. On September 28, 2007, the University issued a letter of reprimand to Ms. [Withheld]

2.9. Ms. [Withheld] received a lower salary increase on September 1, 2007. The average University employee received a 4.5% increase; however, Ms. [Withheld] received a 2% increase.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [Withheld] 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. 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. Based on Findings of Fact 2.1 through 2.9, Ms. [Withheld] used state resources in violation of RCW 42.52.160, WAC 292-110-010 and University policy.

3.7. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360.

II. MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. It is a mitigating factor that Ms. [Withheld] received a letter or reprimand and a lower salary increase.

III. AGREED ORDER

[Withheld] will pay a civil penalty in the amount of five hundred dollars (\$500.00). The Board agrees to suspend two hundred fifty dollars (\$250.00) of the civil penalty on the condition that [Withheld] complies with all terms and conditions of this Stipulation and Order. If [Withheld] fully pays the remaining amount of two hundred fifty dollars (\$250.00) and commits no further violations of chapter 42.52 RCW within two calendar years of the date this

order is accepted by the Board, Ms. [Withheld] will have fully satisfied her civil penalty obligations with regard to this matter and will be released from any obligation to pay the remaining suspended two hundred fifty dollars (\$250.00) of civil penalty.

CERTIFICATION

I, [Withheld] 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 it may be 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 the Stipulation and Agreed Order, I understand that I will receive a signed copy.

[Withheld]
[Redacted Signature]

12/2/08

Date

Respondent
Stipulated to and presented by:

Melanie de Leon 12/4/08

Melanie de Leon 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):

DATED this 9th day of January, 2009.

Neil Gorrell

Neil Gorrell, Chair

Linnæa Jablonski
Linnæa Jablonski Vice-Chair

Judith K. Golberg
Judith K. Golberg, Member

Mike Connelly
Mike Connelly, Member

Martin Biegelman
Martin Biegelman, Member

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

Withheld Respondent Date