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**BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD**

7 In the Matter of:
8 [REDACTED]

NO. 09-009

STIPULATED FACTS,
CONCLUSIONS AND ORDER

9
10 Respondent.

11 **I. STIPULATION**

12 THIS STIPULATION is entered into under WAC 292-100-090(1) between the
13 Respondent, [REDACTED] and Board Staff of the Washington State Executive Ethics Board
14 (Board) through Melanie de Leon, Executive Director. The following stipulated facts,
15 conclusions, and agreed order will be binding upon the parties if fully executed, and if
16 accepted by the Board without modification(s), and will not be binding if rejected by the
17 Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to
18 the stipulation. The agreed order imposes a civil penalty of ten thousand dollars (\$10,000.00).

19 **Section 1: Procedural Facts**

20 1.1. The Executive Ethics Board (Board) initiated a complaint based on allegations
21 that [REDACTED] an employee of Bates Technical College, violated the Ethics in Public Service
22 Act when he used his position of power and influence over students in an inappropriate manner
23 and by using state resources for non-work related purposes including storing photographic
24 images of a personal nature and approximately 25,000 sexually explicit images on his college
25 computer.
26

1 1.2. On May 14, 2010, the Board found reasonable cause to believe that a violation
2 of the Ethics in Public Service Act may have occurred and determined that the assessed penalty
3 may be more than \$500.00.

4 1.3. The Board is authorized under RCW 34.05.060 to establish procedures for
5 attempting and executing informal settlement of matters in lieu of more formal proceedings
6 under the Administrative Procedures Act, including adjudicative hearings. The Board has
7 established such procedures under WAC 292-100-090.

8 1.4. [REDACTED] understands that if Board Staff proves any or all of the alleged
9 violations at a hearing, the Board may impose sanctions, including a civil penalty under
10 RCW 42.52.480(1)(b) of up to \$5,000 for each violation found, or the greater of three times the
11 economic value of anything received or sought in violation of chapter 42.52 RCW. The Board
12 may also order the payment of costs, including reasonable investigative costs, under
13 RCW 42.52.480(1)(c).

14 1.5. [REDACTED] recognizes that the evidence available to the Board Staff is such that
15 the Board may conclude he violated the Ethics in Public Service Act. Therefore, in the interest
16 of seeking an informal and expeditious resolution of this matter, the parties agree to entry of
17 the stipulated findings of fact, conclusions of law and agreed order set forth below.

18 1.6. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of
19 this stipulation by the Board, or acceptance of any modification(s) proposed by the Board,
20 pursuant to the provisions of WAC 292-100-090(2) which provides in part:

21 The board has the option of accepting, rejecting, or modifying the
22 proposed stipulation or asking for additional facts to be presented. If
23 the board accepts the stipulation or modifies the stipulation with the
24 agreement of respondent, the board shall enter an order in conformity
25 with the terms of the stipulation. If the board rejects the stipulation or
26 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 1.7. If the Board accepts this stipulation, the Board will release and discharge
2 [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for matters arising out
3 of the facts contained in the complaint in this matter, subject to payment of the full amount of
4 the civil penalty due and owing, any other costs imposed, and compliance with all other terms
5 and conditions of the agreed order. [REDACTED] in turn agrees to release and discharge the
6 Board, its officers, agents and employees from all claims, damages, and causes of action
7 arising out of this complaint and this Stipulation and Agreed Order.

8 1.8. If this Stipulation is accepted, this Stipulation and Order does not purport to
9 settle any other claims between [REDACTED] and the Washington State Executive Ethics Board,
10 the State of Washington, or other third party, which may be filed in the future.

11 1.9. If this Stipulation is accepted, this Stipulation and Order is enforceable under
12 RCW 34.05.578 and any other applicable statutes or rules.

13 1.10. If the Board rejects this Stipulation, or if [REDACTED] does not accept the Board's
14 proposed modification(s), if any, [REDACTED] waives any objection to participation at any
15 subsequent hearing by any Board member to whom this Stipulation was presented for approval
16 under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that if this proposed
17 Stipulation, with any applicable modification by the Board, is rejected by [REDACTED] this
18 Stipulation and information obtained during any formal settlement discussions held between
19 the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise
20 agreed by the parties.

21 **Section 2: Findings of Fact**

22 2.1. [REDACTED] held a tenured full-time faculty position in Bates Technical
23 College's (Bates) Television Broadcast Program. As of April 2007, [REDACTED] had taught at
24 Bates for approximately twelve years. He was granted tenure in 1998.
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26

1 2.2. On or about April 18, 2007, Bates suspended [REDACTED] with pay pending
2 Bates' investigation of student complaints that [REDACTED] was showing excessive and
3 inappropriate interest in their personal photographs. Bates formally reprimanded [REDACTED]
4 in May 2007 and suspended him for two weeks without pay for using his state laptop computer
5 to access pornographic materials. [REDACTED] thereafter remained on suspension with pay
6 pending resolution of the student complaints and proceedings before the Board of Trustees.
7

8 2.3. At the time of the prior discipline, Bates found approximately 1,000
9 photographic images of a personal nature (family photographs) and only one sexually explicit
10 image. Bates then retained a computer forensics expert who recovered roughly 4,300 images
11 of a personal nature and approximately 25,000 pornographic images. These images were
12 found sometime during or after July 2007, some months after [REDACTED] had served his
13 disciplinary suspension. [REDACTED] asserts that a portion of these pornographic images are
14 duplicative.
15

16 2.4. [REDACTED] admitted when he surrendered his laptop to Bates that he had been
17 using it for some time to download pornographic images from adult websites. When he
18 returned the laptop to John Howard, Dean of Instruction, he explained to him what he was
19 going to find.
20

21 2.5. [REDACTED] requested that students give him their personal cell phones; he then
22 looked at the pictures the students had on their cell phones. He then downloaded the student's
23 photographs from their personal cell phones onto his state computer.
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1 2.6. On November 19, 2008, the Board of Trustees of Bates Technical College
2 affirmed the recommendation of the Dismissal Review Committee that dismissed [REDACTED]
3 for cause.
4

5 **Section 3: Conclusions of Law**

6 3.1 Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction
7 over [REDACTED] and over the subject matter of this complaint.

8 3.2 Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this
9 matter under the terms contained herein, subject to Board approval.

10 3.3 The Ethics in Public Service Act, chapter 42.52 RCW, prohibits state employees
11 from using state resources for their benefit. RCW 42.52.160(1) states:

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

15 3.4 A state employee is prohibited under RCW 42.52.070 from using his or her
16 position to secure special privileges for himself or others. RCW 42.52.070 states:

17 Except as required to perform duties within the scope of employment,
18 no state officer or state employee may use his or her position to secure
19 special privileges or exemptions for himself or herself, or his or her
spouse, child, parents, or other persons.

20 3.5 Based on Findings of Fact 2.1 through 2.6, [REDACTED] violated RCW 42.52.160
21 and RCW 42.52.070.

22 3.6 The Board is authorized to impose sanctions for violations of the Ethics Act
23 pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for
24 imposing sanctions and consideration of any mitigating or aggravating factors. It is a
25 mitigating factor that Bates dismissed [REDACTED] after a hearing before the Board of Trustees.
26

1 **II. AGREED ORDER**

2 [REDACTED] will pay a civil penalty in the amount of six thousand five hundred dollars
3 (\$6,500.00). Payment is due in full 45 days after this stipulation is accepted by the Board, or
4 as otherwise agreed to by the parties.

5 **CERTIFICATION**

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

12 [REDACTED]
13 _____ *8/24/2010*
14 Date
15 Respondent

16 Stipulated to and presented by:

17 *Melanie de Leon* *8/30/10*
18 _____
19 MELANIE DE LEON Date
20 Executive Director
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2 **II. ORDER**

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

5 Stipulation is:

6 ACCEPTED in its entirety;

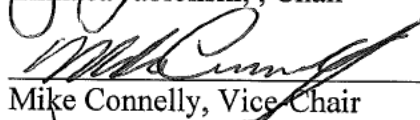
7 REJECTED in its entirety;

8 MODIFIED. This Stipulation will become the Order of the Board if the

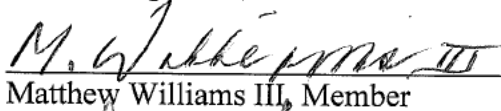
9 Respondent approves* the following modification(s):
10 _____
11 _____

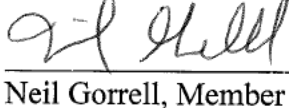
12 DATED this 17th day of September, 2010.

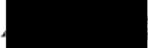
13 
Linnæa Jablonski, Chair

14 
Mike Connelly, Vice Chair

15 
Martin Biegelman, Member

16 
Matthew Williams III, Member

17 
Neil Gorrell, Member

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22
23 * I,  accept/do not accept (circle one) the proposed modification(s).

24 
25 _____
26 Date 9/24/2010