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**BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD**

In the Matter of:

NO. 09-018

STIPULATED FACTS,
CONCLUSIONS AND ORDER

Respondent.

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, [REDACTED] 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 [REDACTED] 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 [REDACTED] 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, [REDACTED] response to the allegations, and supplemental information provided by the college.

1 1.3 After a preliminary review, Board staff believes evidence exists to prove that
2 [REDACTED] violated one or more provisions of RCW 42.52, the Ethics in Public Service
3 Act.

4 1.4 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 1.5 [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 1.6 [REDACTED] recognizes that the evidence available to the Board Staff is
15 such that the Board may conclude he violated the Ethics in Public Service Act. Therefore, in
16 the interest of seeking an informal and expeditious resolution of this matter, the parties agree to
17 entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.

18 1.7 [REDACTED] waives the opportunity for a hearing, contingent upon
19 acceptance of this stipulation by the Board, or acceptance of any modification(s) proposed by
20 the Board, 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 1.8 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
3 arising out of the facts contained in the complaint in this matter, subject to payment of the full
4 amount of the civil penalty due and owing, any other costs imposed, and compliance with all
5 other terms and conditions of the agreed order. [REDACTED] in turn agrees to release and
6 discharge the Board, its officers, agents and employees from all claims, damages, and causes of
7 action arising out of this complaint and this Stipulation and Agreed Order.

8 1.9 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
10 Board, the State of Washington, or other third party, which may be filed in the future.

11 1.10 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 1.11 If the Board rejects this Stipulation, or if [REDACTED] does not accept the
14 Board's 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
17 proposed Stipulation, with any applicable modification by the Board, is rejected by [REDACTED]
18 this Stipulation and information obtained during any formal settlement discussions held
19 between the parties shall not be admitted into evidence at a subsequent public hearing, unless
20 otherwise agreed by the parties.

21 **Section 2: Findings of Fact**

22 2.1 At all times material hereto, [REDACTED] was employed by Pierce College
23 as a mail processing manager.

24 2.2 On August 27, 2008 the SAO opened an investigation into a Whistleblower
25 complaint that alleged that [REDACTED] was using his state computer for personal benefit.
26

1 2.3 The SAO investigation revealed that [REDACTED] had used his state
2 computer, over a period of 9 workdays, to store 583 adult content images; to store 827
3 additional non-work-related images; to view pornography; and to send or receive 57 emails
4 over a three day period that were sexual in nature. In addition, over a three year period,
5 [REDACTED] used his state computer to send or receive 473 emails related to his youth
6 baseball team.

7 2.4 In its Report of Whistleblower Investigation dated March 23, 2009, the SAO
8 concluded that reasonable cause existed to believe that [REDACTED] use of state resources
9 resulted in an improper governmental action. The SAO referred the matter to the Board on or
10 about March 24, 2009 for enforcement action.

11 **Section 3: Conclusions of Law**

12 3.1 Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction
13 over [REDACTED] and over the subject matter of this complaint.

14 3.2 Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this
15 matter under the terms contained herein, subject to Board approval.

16 3.3 The Ethics in Public Service Act, chapter 42.52 RCW, prohibits state employees
17 from using state resources for their benefit. RCW 42.52.160(1) states:

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

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

26 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

1 an outside organization or group, including private businesses and nonprofit organizations.
2 [REDACTED] violated WAC 292-110-010 by sending and receiving hundreds of emails related
3 to his youth baseball team.

4 3.5 Based on Findings of Fact 2.1 through 2.4, [REDACTED] used state resources
5 in violation of RCW 42.52.160 and WAC 292-110-010.

6 3.6 The Board is authorized to impose sanctions for violations of the Ethics Act
7 pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for
8 imposing sanctions and consideration of any mitigating or aggravating factors.

9 10 II. AGGRAVATING AND MITIGATING FACTORS

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

18 19 III. AGREED ORDER

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

26

CERTIFICATION

I, [REDACTED] 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.

[REDACTED] 11-9-09
Date

Respondent ✓

Stipulated to and presented by:

Melanie de Leon 11-9-09
MELANIE DE LEON Date
Executive Director

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