

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 2010-071

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 DeLEON, 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 September 8, 2010, the Executive Ethics Board received a complaint alleging that Withheld Veteran's Employment Representative for the state Employment Security Department (ESD), may have violated state law when she used state resources to send an email to veterans in Southwest Washington to promote a campaign event for US Senator Patty Murray.

1.2. 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.

1.3. Withheld 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).

1.4. [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. [Withheld] 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, [Withheld] 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, [Withheld] 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 a Local Veteran Employment Representative with the ESD. Ms. [Withheld] started her employment with ESD as a Disabled Veteran Outreach Program representative in April 2008.

2.2. On August 12, 2010, Ms. [Withheld] sent the following email to approximately 300 veterans in the Southwest Washington area:

First I would like to say this is not an endorsement, just a call out to Veterans who may be interested in assisting with a "walk and knock" to remind people to vote. Specifically for Patty Murray. Whether you have voted for her in the past or are thinking of or planning to vote for her, the bottom line is she has done a lot for the Veterans of our community. Take a look at the attachments I have included and if you want to get involved contact

2.3. Pat Williams, Ms. [Withheld] supervisor, received a complaint on August 12, 2010 and four other complaints followed. Mr. Williams directed Ms. [Withheld] to recall her email. Because the email was recalled, it is not known how many veterans actually received the email.

2.4. On August 13, 2009, Ms. [Withheld] signed ESD's required policies list acknowledging she had read, understood and agreed to adhere to the standards set forth in each of the policies and procedures listed. The ESD Employee Conduct Policy 1016 states, in part:

Integrity and Economy in the Use of Resources

Employees are expected to abide by state laws, rules and regulations, and agency policy in the use of telephones, vehicles, internet, mail service, and all state-owned equipment. Department facilities, equipment, materials, supplies, personnel and funds are to be used only for official state business.

2.5. The email was posted in a local blog by an individual with Clark County Washington Conservatives. The Kitsap Business Journal, the Columbian, the News Tribune and *redcounty.com* published stories regarding Ms. [Withheld] email. The media reported on Ms. [Withheld] email and the laws that may be violated. Ms. [Withheld] was identified as an employee of ESD in the articles.

2.6. WorkSource Vancouver has not received any communication from local businesses with whom ESD has an established relationship as a result of Ms. [Withheld] actions.

2.7. On September 29, 2010, [Withheld] was permanently demoted from a WorkSource Specialist 5 to a WorkSource Specialist 4 at the ESD office effective October 16, 2010. Her salary was reduced from \$4114 to \$3918 per month, resulting in an annual loss of salary of \$2,352.

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.

3.3. 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.”

3.4. State employees are prohibited from using state resources for the purpose of assisting a campaign for election. RCW 42.52.180(1) relating to *Use of Public Resources for Political Campaigns* states:

No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

3.5. "Facilities of an agency" include the state owned and operated e-mail system and the agency computers and other equipment upon which the email system operates. RCW 42.52.180(1); WAC 292-110-030(1).

3.6. "WAC 292-110-010(3) allows state officers to make occasional but limited personal use of state resources in certain limited circumstances. WAC 292-110-010(4)(c), however, prohibits even an "occasional and limited" use of state resources if that use is for "any campaign or political" purpose.

3.5. Based on Findings of Fact 2.1 through 2.7, Withheld used state resources in violation of RCW 42.52.180.

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: AGGRAVATING AND MITIGATING FACTORS

4.1 It is a mitigating factor that, as a result of this violation, [Withheld] was permanently demoted from a WorkSource Specialist 5 to a WorkSource Specialist 4 at the ESD office, resulting in an annual loss of salary of \$2,352.

Section 5. AGREED ORDER

5.1. For the violation of RCW 42.52.160, [Withheld] will pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500.00). The Board agrees to suspend five hundred dollars (\$500.00) on the condition that [Withheld] 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.

5.2. The civil penalty of \$1,000.00 is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board, or as otherwise agreed to by the parties.

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]

Date

Respondent

Stipulated to and presented by:

Melanie deLeon 3-1-11

Melanie deLeon 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

 X

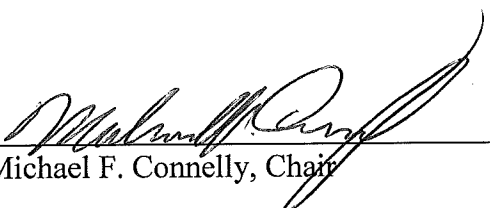
ACCEPTED in its entirety;

REJECTED in its entirety;

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

Respondent approves* the following modification(s):

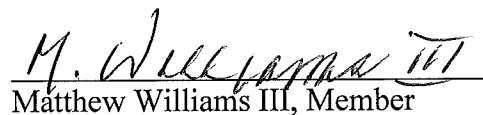
DATED this 11/16 day of March, 2011.



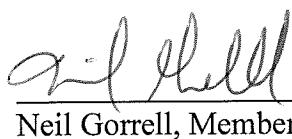
Michael F. Connelly, Chair



Linnaea Jablonski, Member



Matthew Williams III, Member



Neil Gorrell, Member

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

Withheld Respondent _____ Date _____