

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

NO. 2010-072

STIPULATED FACTS,  
CONCLUSIONS AND ORDER

**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 September 20, 2010, the Executive Ethics Board (Board) received a referral from the State Auditor's Office (SAO) Whistleblower Program on September 20, 2010 alleging that Withheld an employee of Western Washington University (WWU) may have violated the Ethics in Public Service Act, RCW 42.52 when he failed to follow state travel regulations and used his position to secure time off without submitting leave requests to account for his time away from the University. The Board found reasonable cause on July 8, 2011.

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

1.4. Dr. [Withheld] recognizes that the evidence available to the Board Staff is such that the Board may conclude he 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 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 respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or 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.

1.6. If the Board accepts this stipulation, the Board will release and discharge Dr. [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 Dr. Withheld and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. Furthermore, any and all stipulations by Dr. Withheld are for the sole purpose of settling this matter and are not admissible or stipulated to for any other purpose than the ethics board proceedings.

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, Dr. 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 if this proposed Stipulation, with any applicable modification by the Board, is rejected by him, 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. Withheld was the Director of International Programs at all times pertinent to this investigation. His letter of offer from Western Washington University (WWU), dated July 27, 2007, indicated that this position was a "senior administrative appointment" and he would also hold a "concurrent appointment as a tenured professor of Political Science." His salary was \$105,000. His

start date was December 1, 2007. This letter indicated that the university would pay moving expenses for up to 15,000 pounds of personal belongings. There was no mention of paid time to make the move.

2.2. On August 8, 2007, prior to the start of Dr. [Withheld] employment at WWU, University President Karen Morse sent another letter to Dr. [Withheld] stating that he should devote 25 percent of his time to teaching in the Department of Political Science, however, in the 2007-2008 academic year, he should spend his time “working on developing the program and possibly be free of teaching.” On August 21, 2008, Provost Dennis Murphy sent a letter to Dr. [Withheld] removing the expectation that he should devote 25 percent of his time teaching as “incompatible with your extensive administrative duties.”

2.3. Between January 2008 and July 2009, Dr. [Withheld] held a second full-time administrative position without any additional salary as the university’s Interim Executive Director of Extended Education and Summer Programs.

2.4. Usually, staff at WWU fall into one of two basic categories – faculty or professional staff. Each group is governed by a specific set of rules:

**Faculty.** Faculty members are governed by a collective bargaining agreement (CBA) between the University and the United Faculty of Western Washington University. Faculty members do not accrue vacation or sick leave, instead they receive short-term medical and extended medical leave absences. Faculty contracts run from September to June. Faculty desiring to teach during the summer fill a different position for that work. Since faculty contracts end at the beginning of the summer, faculty are expected to take any vacations during this time. During the academic year, faculty are paid to teach their classes, taking any time off during semester breaks and the summer when they are not paid to teach

**Administrative.** Professional staff members come under the dictates of the Professional Staff Organization (PSO) Employee Handbook, effective January 2007. Administrative positions accrue vacation leave at a rate of 16 hours per month; sick leave at a rate of 8 hours/month; one 8-hour personal holiday per calendar year and one 8-hour day for winter break. Non-sick leave must be requested and approved in advance.

2.5. Dr. [Withheld] Personnel Action and Position Control Form for his initial position at WWU, dated October 2, 2007, stated that Dr. [Withheld] was an exempt employee designated as the “Director of

Center for International Studies,” effective December 1, 2007. The comments section also indicates that he held a tenured appointment as a professor of Political Science.

2.6. Dr. [Withheld] employee leave category in the WWU human resources system was upon hiring “Exempt Professional/Acad Admin.” Dr. [Withheld] accrued sick, vacation and personal holiday leave in accordance with the Professional Staff benefit rules. As of November 4, 2008, Dr. [Withheld] had accrued a personal holiday of 8 hours; sick leave of 88 hours and vacation leave of 176 hours.

2.7. Usually, administrative positions are not given paid time to complete research projects or participate in “scholarly” work.

2.8. According to WWU, an employee cannot be covered by the CBA and the PSO Handbook simultaneously. On January 17, 2008, within the first 2 months of his employment with WWU, the University’s Human Resources (HR) Director met with Dr. [Withheld] in a one-on-one session to explain his benefits. Dr. [Withheld] had, on January 8, 2008, attended a new employee orientation and had received a copy of the PSO Handbook. According to the HR Director, it was clear that Dr. [Withheld] was filling an administrative position and thus fell under the rules set forth in the PSO Handbook.

2.9. On January 27, 2010, the University processed another Personnel Action and Position Control Form to indicate that effective September 15, 2010, Dr. [Withheld] had “stepped down as Executive Director” of the Center for International Studies and would be in a 9-month full-time faculty position. The form stated to process his leave payouts and move him to faculty “eclass.” Another Personnel Action and Position Control Form indicated the change from “exempt” classification to “TN Faculty,” changes his job title to “Professor” and reduces his salary 22 percent.

2.10. WWU has no record of Dr. [Withheld] ever paying any union dues. WWU verified that Dr. [Withheld] name was never identified to the union as part of the bargaining unit as required by the CBA, section 6.1.

2.11. The teaching schedule for Dr. [Withheld] indicates that he had one class scheduled for Fall 2008 entitled "Global Distinguished Scholar," but there was no record in WWU's system to indicate a room assignment for this class and Dr. [Withheld] own Outlook Calendar indicated no entries for this class, although Dr. [Withheld] indicated that 15 students participated in this course. During the Winter 2009 quarter, Dr. [Withheld] taught an independent study with one student with no set meeting times. The Spring 2009 schedule indicated one class on Tuesday nights for a senior seminar, with an enrollment of 17 students; Fall 2009 schedule indicated one class Tuesday afternoons entitled, "Global Distinguished Scholar," with an enrollment of 14 students. The Winter 2010 schedule indicated one class that met three mornings per week entitled "Arabic Studies in Middle East."

2.12. Prior to coming to WWU, Dr. [Withheld] was an active part of the Association of Canadian Studies in the United States (ACSUS), a private, non-profit organization committed to raising awareness and understanding of Canada and its relationship with the United States. Dr. [Withheld] had been selected as the group's vice-president (VP) prior to his employment at WWU. After two years as VP, he would serve as President for a year, with his term ending in November 2011.

2.13. Part of his position as VP required him to plan the group's biennial conference being held in San Diego in November 2009. The hotel for this conference had been booked in December 2005. According to a prior ACSUS Officer who had planned a previous conference, planning for this conference should entail one site visit, with the rest of the preparations being made via phone calls and e-mails.

2.14. Between December 1, 2007 and September 30, 2010, while he was acting in his role as the Director of the CIS, Dr. [Withheld] spent 41 business days (53 calendar days) travelling to, planning for or attending ACSUS meetings. No evidence indicated that Dr. [Withheld] had requested or taken any annual/vacation leave for any of this time.

2.15. Dr. [Withheld] employment with WWU was effective on December 1, 2007. His employment with Wright State University ended effective January 1, 2008. Dr. [Withheld] worked simultaneously for both institutions for a 1-month period.

2.16. Administrative positions at WWU are not routinely given paid time to perform research or “scholarly” work. They may request paid professional leave after working at WWU for six years. Bona fide faculty positions perform their research during non-teaching times, usually during the summer, and are not paid travel, per diem or their salary to complete the research. To be paid for research, a faculty member must request “professional leave” as outlined in the CBA, Section 10, and then only after they have worked at WWU for six years.

2.17. According to WWU travel documents, WWU paid travel expenses and/or per diem, in addition to Dr. [Withheld] salary, for several trips that he made to present research papers or to attend professional activities, many in his capacity as an ACSUS officer.

2.18. In 2008, Dr. [Withheld] was “off-campus” or “out-of-town” performing research for 33 days. He was not in any travel status, nor had he requested or taken any annual leave for this time. He was collecting his salary as if he were present for work during this time.

2.19. In 2009, Dr. [Withheld] was away from the campus for research or moving for 10 business days and took no annual leave for these absences.

### 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. [Withheld] stipulations to the following conclusions of law are for the sole purpose of reaching settlement in this matter and are limited to these proceedings. These stipulations and conclusions are not admissible for any other purpose or proceedings.

3.4. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using their position to provide a special privilege to themselves or other persons. RCW 42.52.070, Special privileges, states:

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

Western Washington University hired Dr. [Withheld] in an administrative position. Administrative positions accrue annual and sick leave. Administrative positions are not able to take paid time to complete “research,” pursue “scholarly” work or attend professional activities that are not required by their position without taking annual leave or requesting paid time according to the employee handbook. While filling an administrative position, Dr. [Withheld] pursued activities while acting as an officer for ACSUS, a private non-profit organization, participated in other activities for other non-state organizations and spent time away doing “research” without requesting or taking annual leave or any kind of a leave of absence.

3.5. RCW 42.52.160(1), Use of persons, money, or property for private gain, states:

No state officer or state employee may employ or use any person, money, or 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.

Dr. [Withheld] was away from his official duties for an extensive period of time between December 1, 2007 and September 30, 2010, when he was re-assigned as a full-time faculty member. In the first month of his employment with WWU, Dr. Nord was absent 16 of 20 business days. Records show that Dr. [Withheld] was employed simultaneously by WWU and Wright State University during December 2007 and that WWU paid for Dr. [Withheld] trip to Umea, Sweden during December 2007 as well as his salary for that month.



3.6. According to travel records and Dr. [Withheld] Outlook calendars, Dr. [Withheld] used much of his time away from WWU to complete research projects, attend professional activities or as indicated on his calendars, he was simply “gone.” Much of the travel expenses were paid for by WWU; Dr. Nord did not take annual leave for any of this time.

3.7. In 2008, Dr. [Withheld] was away from WWU for 111 business days out of a possible 255 days. He was on leave for 13 of these days. The remainder of the time he was traveling or “gone.” His non-leave absences equated to 38 percent of his work time.

3.8. In 2009, Dr. [Withheld] was absent 98 business days out of 250 available work days. Twenty-eight of these days were taken as annual leave; 60 were due to travel and 10 were listed as simply “gone.” The non-leave absences equated to 28 percent of his time.

3.9. Between January 1 and September 30, 2010, Dr. [Withheld] had 191 workdays available in his capacity as the Director of the Center for International Studies. During this period, Dr. [Withheld] was absent 47 days: 16 days were taken as annual leave; 29 for travel and 2 were designated as “gone.” The non-leave absences equated to 16 percent of his time. Dr. [Withheld] employee status did not entitle him to use state time for professional activities or to perform research.

3.10. Based on Findings of Fact 2.1 through 2.19, Douglas [Withheld] violated RCW 42.52.070 and .160.

3.11. The Board is authorized to impose sanctions for violations of 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.

## **II. AGGRAVATING AND MITIGATING FACTORS**

In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. Aggravating factors include: the violations were continuing in nature; the violations

involved personal gain; and the violations provided special privilege to [Withheld] It is also an aggravating factor that Dr. [Withheld] had significant official, management, or supervisory responsibility.

### III. AGREED ORDER

Dr. [Withheld] will pay a civil penalty in the amount of five thousand dollars (\$5,000.00) and restitution to WWU in the amount of twenty thousand dollars (\$20,000.00) within forty-five (45) days after this stipulation is accepted by the Board or as 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 this Stipulation 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 this Stipulation and Agreed Order, I understand that I will receive a signed copy.

[Withheld]

10-10-12

Respondent

Stipulated to and presented by:

 10.16.12

Melanie de Leon Date  
Executive Director


**IV. 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:

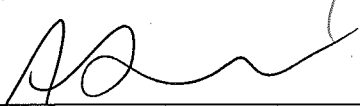
      ✓       ACCEPTED in its entirety;  
           REJECTED in its entirety;  
           MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves\* the following modification(s):

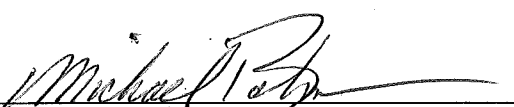
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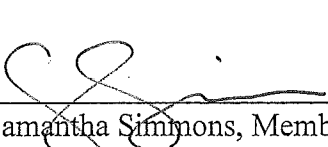
DATED this 9<sup>th</sup> day of November, 2012.

  
\_\_\_\_\_  
Matthew Williams, III, Chair

  
\_\_\_\_\_  
Lisa Marsh, Vice-Chair

  
\_\_\_\_\_  
Anna Dudek Ross, Member

  
\_\_\_\_\_  
Michael Bahn, Member

  
\_\_\_\_\_  
Samantha Simmons, Member

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

Withheld Respondent Date