

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 2012-25

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 April 11, 2012, the Executive Ethics Board (Board) received a complaint alleging that Withheld Coordinator of Student Support Services (TESC) may have violated the Ethics in Public Service Act by using state resources to promote an outside business that her husband owns. *The Evergreen State College*

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. Raquel Salinas 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, this matter will be scheduled for an administrative hearing in front of the Board and [Withheld] waives any objection to participation by any Board member at any subsequent hearing 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] was employed as the Coordinator of Student Support Services, First Peoples Advising Services (FPAS), TESC, for all times pertinent to this investigation.

2.2. Several years ago, Ms. [Withheld] developed a logo to promote FPAS events and later to promote the department. Ms. [Withheld] indicated to the investigator that she used school

and personal resources to develop the logo. Ms. [Withheld] also indicated that she thought the FPAS logo belonged to her and never thought that it might belong to the college.

2.3. In 2010, FPAS sponsored a writing workshop which led to the creation of a book titled "Intersections of Identity: Reflections on Race, Community and Self," consisting of 40 pieces of writing from staff, faculty and students of TESC on the subject of identity. Ms. [Withheld] and her husband, Jeff Freels, spent many hours of their own time to find ways to provide the book to faculty and staff. At that time, Ms. [Withheld] believed that the book was too large for the college servers to accommodate. Her solution was to have it placed on her husband's on-line sponsored space located within the on-line store, café.com,

2.4. On October 14, 2011, at 11:47 a.m., Ms. [Withheld] sent an email to invite all TESC staff and students involved in the FPAS program to attend the "Intersections of Identity – Exhibit Reception" at 3 p.m. to 5 p.m. in the Unity Lounge (L2147). The exhibit consisted of the book and photographs. The email contained an internet link to www.lulu.com where the book could be purchased at cost, in paperback format, for \$8.10 or downloaded in a PDF format free of charge.

2.5. There was also a link to www.JeffWerx.com/FPAS, where the book and FPAS merchandise with the embossed FPAS logo could be purchased.

2.6. Embedded in the JeffWerx website is a link to CafePress.com. CafePress.com is an on-line store that Ms. [Withheld] husband pays to sponsor a space, to sell his items. The embedded link reads, "Be sure to check out [Withheld] famous FPAS Sun Design on cool shirts, mugs, totes, etc at JeffWerx on Cafe Press!

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. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) 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.

3.4. Based on Findings of Fact 2.1 through 2.6, [Withheld] used state resources to promote an on-line sales site sponsored by her husband in violation of RCW 42.52.160 and WAC 292-110-010.

3.5. 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

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. A mitigating factor is that [Withheld] never intended to make a profit from any of the items offer for sale on her husbands on-line store site, but only to provide access to the items to students, faculty, and staff could not attend the exhibit on October 14, 2011.

Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, [Withheld] will pay a civil penalty in the amount of, five hundred dollars (\$500.00). The Board agrees to suspend (\$250.00) on the condition that [Withheld] complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

5.2 The civil penalty of \$250.00 is payable in full, to the State Executive Ethics Board within 45 days after this stipulation is accepted by the Board, or as otherwise agreed to by the parties.

II. 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]

Respondent

Stipulated to and presented by:

Melanie deLeon 9/4/12

Melanie deLeon

Date

Executive Director

Aug 23, 2012

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

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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 14th day of September, 2012.

 Matthew Williams, III, Chair

 Lisa Marsh, Vice-Chair

 Linnæa Jablonski, Member

 Anna Dudek Ross, Member

 Michael Bahn, Member

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

Withheld Respondent Date