

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2012-053

STIPULATED FACTS,
CONCLUSIONS AND ORDER

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 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 August 31, 2012, the Executive Ethics Board (Board) received an agency referral from the South Puget Sound Community College (SPSCC) alleging that former Welding Professor [REDACTED] may have violated the Ethics in Public Service Act by allowing a select group of students and employees to use state resources for their personal projects for personal financial gain and that he provided this select group the special privilege of using the SPSCC welding shop after hours and on weekends to complete their personal projects. The Board found Reasonable Cause on January 11, 2013.

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. [REDACTED] 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. [REDACTED] 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. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his 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 [REDACTED] 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. [REDACTED] 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 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, [REDACTED] 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. [REDACTED] was a Welding Professor at South Puget Sound Community College, (SPSCC) located in Olympia for all times pertinent to this investigation.

2.2. [REDACTED] taught the morning class and was responsible for maintaining the welding program's budget, providing supervision and guidance to two welding instructors and lab techs, maintaining security of the welding facility, equipment and supplies used to instruct the welding course, e.g. steel and copper sheets, welding rods, etc.

2.3. [REDACTED] met Danielle Rutyne when she was a welding student in his 2008 welding class. [REDACTED] told investigators that during that time Ms. Rutyne was having personal problems at home. [REDACTED] invited her to stay at his home until she could work out some of her problems. Ms. Rutyne lived with [REDACTED] and his family for four or five weeks.

2.4. [REDACTED] told investigators that Ms. Rutyne was becoming a very good welder. On May 15, 2008, [REDACTED] hired Ms. Rutyne as his lab tech. He stated that there was no hiring process at that time.

2.5. As a lab tech, Ms. Rutyne would assist [REDACTED] in his class with the ordering of supplies, some one-on-one instruction, clean up and minor repair of some equipment and other duties as required.

2.6. Ms. Rutyne became proficient in the use and operation of the new Torchmate Computer Controlled Plasma Table, a computerized cutting machine (CNC). This new piece of welding equipment was not yet part of the welding curriculum. Ms. Rutyne would provide some instruction on its use to those students who showed an interest to learn the operation of the CNC. As a part of her instruction, the students would cut out names and make patterns in pieces of 16-gauge steel. The students were allowed to keep what they made

2.7. The proper process at the time pertinent to this investigation was, if a student wanted to make a project or use materials, e.g. steel, copper, outside of their certification, they were to fill out a work order, pay the cashier, bring the receipt to the instructor and then get the materials they paid for.

2.8. [REDACTED] would allow the students he believed had taken the initiative to learn on the CNC machine to use the steel to make their personal projects, and take the finished project

home without paying for the material used. [REDACTED] stated that he felt getting hands-on experience with the CNC machine was good experience for those students who wanted to learn.

2.9. As a lab tech, Ms. Rutyne could only work 69 hours per month. [REDACTED] told investigators that he would allow Ms. Rutyne to work many more hours than her allotted 69 hours. [REDACTED] told investigators that she would volunteer her time to help provide information about the welding program to local high schools and Ms. Rutyne would always be available to come in on the evenings and on Saturdays to assist students needing the extra help.

2.10. Samantha Barcelona told investigators that her husband was a student in [REDACTED] morning welding class and that he saw Ms. Rutyne make a lot of copper roses during the class period.

2.11. [REDACTED] would occasionally allow Ms. Rutyne to use the welding shop to make the roses and work on other personal projects in his class. [REDACTED] allowed Ms. Rutyne to use the shop on evenings and weekends when there were no classes in session. [REDACTED] claims that the purpose of allowing Ms. Rutyne to use the shop at these times was to perform demonstrations for students. The demonstrations were for things that involved welding, but fell outside of the curriculum. She also used the CNC machine and other equipment and supplies needed for her projects, e.g. copper roses, nameplates and logos.

2.12. Samantha Barcelona and Lorraine Edwards had seen Ms. Rutyne working in the welding shop on most Fridays when there were no classes in session. Ms. Barcelona indicated she knew that some of the people that would be there with Ms. Rutyne were not students; she recognized one person as Ms. Rutyne's boyfriend.

2.13. [REDACTED] told investigators that he allowed Ms. Rutyne and two or three other students to use the welding shop on Fridays and some Saturdays to practice their welding skills

required to obtain certification and to learn welding skills outside of the curriculum. For the last year and a half, [REDACTED] allowed Ms. Rutyne to be there alone with the students, although most of the time he was also present.

2.14. Using the CNC and making cooper roses was not part of any certification required for the course.

2.15. Michael Fredette, a former student of [REDACTED] and current welding instructor, told investigators that he saw Ms. Rutyne making the copper roses in [REDACTED] class instead of assisting students as the lab tech.

2.16. Mr. Fredette told investigators that on May 2, 2012, Ms. Rutyne had a box full of copper parts to make roses. Mr. Fredette asked Ms. Rutyne about the box of copper parts, she told him that she had to make 43 copper roses for Arts Walk, and she was going to sell them for \$45 each.

2.17. Ms. Rutyne told investigators that [REDACTED] bought her a sheet of copper for her birthday and she purchased a sheet of copper and a sheet of steel at the end of her employment with the college. Ms. Rutyne's birthday is November 12th.

2.18. Mr. Fredette told investigators that Ms. Rutyne told him [REDACTED] purchased a sheet of copper for her birthday.

2.19. [REDACTED] stated that Ms. Rutyne mentioned to him that she was going to Seattle on personal business and she mentioned to him that she needed some cooper. He stated that since it was near her birthday (November 12th) he gave her some money and she purchased some partial sheets from the ends and pieces bin at a place the college bought copper.

2.20. [REDACTED] indicated to investigators that he could not recall Ms. Rutyne purchasing a piece of copper at the end of her employment, but he did remember her purchasing

some steel from the college supplier. The steel was delivered on the supplier's truck with the regular college steel purchase.

2.21. Larry Norris, SPSCC, Auto Shop Professor, handles the processing of all work orders and purchases made for the welding department. He produced a Purchasing Card (P-Card) transaction log for October 2011. The P-Card log showed that on October 7, 2011, Ms. Rutyne used the P-Card to purchase three sheets of copper from the Alaskan Copper and Brass Company. Total cost was \$807.50 before taxes.

2.22. During the 2011 Christmas break, [REDACTED] allowed Toni Bylsma, a student, to use the welding shop equipment to make Christmas gifts for her family. [REDACTED] considered this to be a reward for Ms. Bylsma, as well as six other students, based on their having volunteered 6 or 7 days of work to help [REDACTED] clean and repair the equipment in the shop. Each student was told at the end of the cleaning and repairing effort that if they had a personal project that they wanted to work on, they could use the shop for the day. Ms. Bylsma and the other students were required to use either their own materials or scrap for their projects.

2.23. Norm Chapman, Auto Repair Instructor at SPSCC, stated he would routinely see Ms. Rutyne and others in the welding area on Fridays and Saturdays without an instructor present. He went on to say that he believed that Ms. Rutyne was there working with [REDACTED] permission.

2.24. Ryan Fowler, the afternoon welding instructor told investigators that Ms. Rutyne would come into his afternoon class and use the shop's equipment to make copper roses. At some point he put a stop to it, stating, [REDACTED] was not happy that I wouldn't allow it in my class."

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] 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 conducting activities incompatible with their public duty (Conflict of Interest). RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

3.4. Based on Findings of Fact 2.1 through 2.24, [REDACTED] conducted activities incompatible with his public duty in violation of RCW 42.52.020.

3.5. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from providing or receiving Special Privileges. RCW 42.52.070 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.

3.6. Based on Findings of Fact 2.1 through 2.24, [REDACTED] provided a special privilege to others in violation of RCW 42.52.070.

3.7. 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.

3.8. Based on Findings of Fact 2.1 through 2.24, [REDACTED] allowed the use of state resources for the personal benefit of others.

3.9. 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. Aggravating factors are that, [REDACTED] was in a supervisory position over Ms. Rutyne and the other students, these types of violations significantly reduce the public respect and confidence in state government employees, and these violations had been occurring for several years. It is a mitigating factor that [REDACTED] is no longer employed by SPSCC.

Section 5: AGREED ORDER

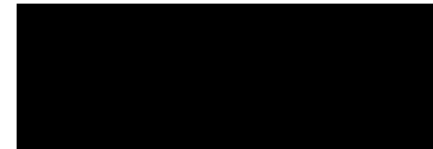
5.1. For the violations RCW's 42.52 mentioned above, [REDACTED] will pay a civil penalty in the amount of three thousand dollars (\$3,000.00).

5.2. The civil penalty of \$3,000 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, [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 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.



2-5-2014
Date

Respondent

Stipulated to and presented by:

Melanie deLeon 2/11/14

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

✓ 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 14 day of March, 2014

Lisa Marsh

Lisa Marsh, Chair

Anna Dudek Ross

Anna Dudek Ross, Vice-Chair

Matthew Williams III

Matthew Williams, III, Member

Samantha Simmons

Samantha Simmons, Member

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Sumeer Singla, Member

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

[REDACTED] _____
Respondent Date