BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

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| In the Matter of:<br>[redacted]<br>Respondent. | No. 2012-065<br>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 November 9, 2012, the Executive Ethics Board (Board) initiated a complaint alleging that [redacted] Program Manager, Clark College may have violated the Ethics in Public Service Act when she used state resources to conduct an outside business. The Board found Reasonable Cause on May 10, 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 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. [redacted] 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 [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] n 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 the Assessment Center Manager at Clark College and was serving in that capacity for all times pertinent to this investigation.

2.2. The Clark College Assessment Center provides placement testing, General Educational Development (GED) examinations, and distance learning proctoring services to current and prospective students as well as to the community. The Assessment Center is open Monday through Friday and is closed after normal business hours.

2.3. On March 4, 2009, Edie Blakley, Director of Career and Employment, forwarded an email from the National Institute for Certification in Engineering Technologies (NICET) to [redacted] The email was a request from NICET for a test site supervisor and classroom to administer their certification exams.

2.4. On March 6, 2009, [redacted] sent an email using her college email account to Regina Stevenson at NICET. [redacted] was asking for information regarding how often, how much she would be paid and if NICET would be able to pay a facility usage fee.

2.5. On March 12, 2009, [redacted] sent an email to Ms. Stevenson, NICET indicating that if they kept the class size down to 40 students, there would be no need to use other locations on the campus, which would eliminate any room usages fees charged to NICET. [redacted] went on to say that 40 students would require two separate rooms adjacent to each other.

2.6. Ms. Stevenson replied that if she used two rooms, she would be entitled to have an assistant remain in the other room during testing.

2.7. NICET paid $300 each day for proctoring the exams. The $300 was paid directly to [redacted] for her services. The exams were held at Clark College in the Assessment Center on Saturdays. Six exams were held in 2009, five in 2010, and six in 2011. The contract was not renewed after 2011.

2.8. The college did have a room rental schedule in place at the times pertinent to this investigation. However, the Assessment Center itself was not on the list of available rooms that could be rented. According the rental schedules, the room used to proctor the exams should have cost $10 to $20 per hour. Each exam could last up to seven hours, depending on the type of exam. The College lost an estimated $1,190 to $2,380 in rental revenue between 2009 and 2011.

2.9. In the College's response to the allegations against [redacted] they indicated that the Assessment Center was not included on the College's list of facilities available for rent and had not previously been rented to a third party for testing, therefore, there was no precedent for [redacted] o draw from.

2.10. A review of [redacted] emails revealed that she had sent/received 89 emails pertaining to NICET exams from March 2009 to May 2012.

2.11. [redacted] told the Clark College internal investigator that she believed that she was acting in the best interest of the college because the request to offer NICET exams came from a director at the request of the Dean and the exams were conducted on Saturdays.

**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, 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.

3.4. Based on Findings of Fact 2.1 through 2.10, [redacted] provided a special privilege to NICET when she allowed them to use the Clark College Assessment Center facility without paying a fee in violation of RCW 42.52.070.

3.5. 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.

3.6. Based on Findings of Fact 2.1 through 2.12, [redacted] used state resources for her personal benefit in support of an outside business (NICET) in violation of RCW 42.52.160 and WAC 292-110-010.

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

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. It is a mitigating factor that [redacted] violations of the Ethics Act were unintentional and at the time she felt that she was supporting Clark College; when [redacted] was made aware of the violations she immediately stopped using the state email system to communicate regarding NICET and using the assessment center to conduct NICET testing.

## Section 5: AGREED ORDER

5.1 For the violating RCW 42.52.070 and 42.52.160, [redacted] will pay a civil penalty in the amount of, four thousand dollars ($4,000.00). The Board agrees to suspend ($1,500.00) on the condition that [redacted] 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 $2,500 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.

[redacted] 7/16/13

Respondent

Stipulated to and presented by:

Melanie deLeon 8/7/13

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 13th day of September 2013

Lisa Marsh

Lisa Marsh, Chair

Anna Dudek Ross, Vice-Chair

Matthew Williams III, Member

Samantha Simmons, Member

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

[redacted] Respondent Date