

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2013-019

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 September 13, 2013, the Executive Ethics Board (Board) initiated a complaint received by Board Staff on July 25, 2013, alleging that [REDACTED] Adjunct Faculty Member, The Evergreen State College (TESC) may have violated the Ethics in Public Service Act by using state resources to support the non-profit organization "*The Sacred Harp*". The preliminary investigation revealed evidence to suggest that Marla Elliott had used state resources in support of her outside business. The Board found Reasonable Cause on November 8, 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] 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 employed as an Adjunct Faculty Member for TESC during all time pertinent to this investigation.

2.2. In the spring quarter of 2013, TESC offered the 12-credit course, "Amazing Grace: U.S. Religious Thoughts and Practices, 1780-1850 and 2013". [REDACTED] and Jolie Sandoz were the two TESC faculty members providing instruction and evaluating student performances for this course.

2.3. The Course Description/Syllabus identifies the class schedule as: 6-9:30 p.m. Mon/Wed plus the following weekend classes: Fri, Apr. 12, Georgian music workshop and performance; Sat, Apr. 20, Gregorian Chant and Contemplation Workshop; Sat., May 4, All-Day Singing in Portland; Sat. Jun. 1, Olympia All-Day Singing. Visits to places of worship would also be required.

2.4. *"The Sacred Harp"* has no formal groups or organization, no membership list, and there are no dues for singing Sacred Harp music in Olympia. Pacific Northwest Sacred Harp Singers (PNWSHS) is a non-profit corporation located in the Seattle area. [REDACTED] and her students worked with this group as a community partner to help TESC with the organization and facilitation of the Olympia All-Day Singing, which was a requirement outlined in the course syllabus.

2.5. The All-Day Singing event included a mid-day potluck meal. The students were asked to provide food for the potluck. According to [REDACTED] getting credit for attending the All-Day singing event was contingent on attendance and participation in the event and not on whether a student brought food or the type of food they brought. [REDACTED] did provide written instructions for the students regarding the Portland singing event. In the instructions [REDACTED] wrote in part:

- Put some amount of money in the collection basket; even just a quarter, if that is all you have to spare.
- Bring food for the noon potluck if you are able. Homemade food is the norm; store bought food often goes uneaten.

2.6. [REDACTED] indicated in her response that when her students participate in Sacred Harp singing, she is most concerned with the way they demonstrate their musical skills, but she also wants them to understand and follow the principles of generosity, reciprocity, and shared

leadership on which the practice of Sacred Harp singing is based. She wants them to learn and to demonstrate their learning through action. [REDACTED] went on to say that her students' knowledge and appropriate behavior when away from the campus does reflect on both the college and her abilities, and that they represent their colleges, their teachers, and the whole college community when their activities involve field trips that take them off campus.

2.7. As a result of the investigation into the complaint, the Board investigator obtained evidence from [REDACTED] hard drive. A review of the evidence found on [REDACTED] computer showed that she was using her issued laptop computer to support her outside businesses of providing voice lessons, consulting, and two different musical bands she participated in as a member. Some examples are shown below:

Voice Lessons

- Invoice dated January 13, 2013. Description –“Voice workshop 2hrs approx. 25 participants”, Total - \$200.00

Consulting Work – Partners In Prevention Education (PIPE)

- PIPE bd mtg agenda sht.doc, 1/26/2010
- PIPE bd mtg agenda.doc, 1/26/2010
- PIPE invoice.doc, 2/3/2010, \$400.00

Func Pro Tunc (Band)

- FPT Availability, excel spreadsheet, (7/3/13)
- Members of the Band, Word document,(9/15/10)
- FPT Safeplace Benefit (Poster) .pdf and doc. (7/10/13)
- Tech sheet FPT, pdf and doc. (7/9/2013)

Righteous Mother (Band)

- Expense, excel spreadsheets from 2000 to 2012.
- Email to fans march 2010 rev MBE.doc (3/4/10)
- Rm debt 10-11, excel spreadsheet (2/17/11)
- Harland Clarke, online order confirmation, \$40.06 (11/15/09)
- Licensing language.doc (11/7/08)

- 2011state tax forms (2), (2/28/11and 3/1/11)

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 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 2.7, [REDACTED] used state resources for personal benefit 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. It is a mitigating factor that at the time of the violations [REDACTED] was not aware that her personal use of her state issued laptop in regards to her activities with her outside musical bands was an ethics violation. (e.g., she believed that participating in these^{MS} outside activities were part of professional development as outlined in her Collective Bargaining Agreement, Article 6 and Article 8). It is a mitigating factor that when these violations were

brought to the attention of [REDACTED] she removed them from her state owned computer and that there was no evidence that [REDACTED] opened or worked on the documents on state time.

Section 5: AGREED ORDER

5.1 For violating RCW 42.52.160, [REDACTED] will pay a civil penalty in the amount of, two thousand, five hundred dollars (\$2,500.00). The Board agrees to suspend one thousand, five hundred dollars (\$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 \$1,000.00 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, [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] 2/12/14

Respondent

Stipulated to and presented by:

Melanie deLeon 2/20/14

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 14th 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

 Sumeer Singla
Sumeer Singla, Member

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

 Respondent Date