

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2013-022

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 alleging that [REDACTED] may have violated the Ethics in Public Service Act by conducting activities that were incompatible with her public duty as the FCA program coordinator and that she may have provided a special privilege to her spouse when she hired him as a part-time instructor for the FCA program at Pierce College. The Board found Reasonable Cause on September 13, 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 hired by Pierce College as a part time program coordinator for the Fire Command & Administration (FCA) joint program between Pierce College and Bates Technical Institute (Bates) in November 2007.

2.2. [REDACTED] responsibilities included curriculum development and to be the point of contact for new students entering into the FCA program.

2.3. [REDACTED] was hired by Mr. Caldwell (her husband) to teach three FCA course for Bates from June 2008 to April 2009. As the Dean of Fire Services, Mr. Caldwell was responsible for hiring instructors to instruct Fire Services and FCA courses. Vice President of Instruction for Bates, Sunny Burns approved the hiring of [REDACTED]

2.4. In June of 2008, Sunny Burns resigned her position as Vice President of Instructions at Bates. Cheri Loiland was appointed to the permanent position of Vice President of Instruction.

2.5. [REDACTED] had been hired at Bates with the former VP of Instruction's approval. Because of this prior approval, Ms. Loiland did not take disciplinary action against Mr. Caldwell. She allowed both Mr. and [REDACTED] to teach their fall classes but, made it very clear to everyone, including the Pierce Administration, that it would not continue after the fall quarter and that Mr. Caldwell would have to hire a different adjunct faculty member for the FCA program.

2.6. In February 2009, Mr. Caldwell filed an application at Pierce College to become a Distance Learning Instructor for the FCA program and was hired on March 10, 2009 as a Distance Learning instructor for the FCA program.

2.7. [REDACTED] hired Wayne Caldwell to instruct the FCA course, "Negotiations", for the winter quarter of 2010. "Negotiations" was a three-credit class for which Mr. Caldwell was paid \$2,077.20 by Pierce College.

2.8. Starting in January of 2010, [REDACTED] and Wayne [REDACTED] began moving FCA courses that should have been taught at Bates to Pierce College. By the end of 2012, Pierce was teaching the entire FCA technical course and Wayne and [REDACTED] were instructing all of the classes.

2.9. From January 2010 through September 2012, [REDACTED] hired her husband, Wayne Caldwell eight times to instruct FCA Courses.

2.10. [REDACTED] supervisor said, "Looking back it does not appear that Mrs. [REDACTED] made much of an effort to find anyone else to teach the FCA courses. When Mrs. [REDACTED] resigned, beginning Winter 2013, he was able to find two very qualified firefighters who had worked in upper management and had experience teaching online courses to step in and takeover the program."

2.11. In the Spring of 2011, Pierce College decided to place the FCA program in a self-support model. This meant that the program had to pay for itself through money collected through tuition. This also meant that the state would stop providing FTE money back to the colleges.

2.12. This transfer of FCA courses resulted in [REDACTED] and Wayne [REDACTED] receiving a financial gain. As a result, Pierce College paid for instructional cost that should have been borne by Bates. Bates lost all financial gain by not having Bates instructors teach the courses, and the students lost by not have a diverse group of experienced instructors.

2.13. In late 2012, some of the students in the FCA program started to complain to the Pierce College's administration about poor instruction and the lack of a more diverse instructor group. Because of these student complaints, the Pierce College administration discovered that Wayne and [REDACTED] were the only two instructors.

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 2.2, [REDACTED] conducted activities incompatible with his public duty in violation of RCW42.52.020.

3.5. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from having a financial interests in a transaction. RCW 42.52.030 states in part:

No state officer or state employee, except as provided in subsection (2) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

3.6. Based on Findings of Fact 2.1 through 2.13, [REDACTED] had a financial interest in hiring her husband to instruct the FCA Course for Pierce in violation of RCW42.52.030.

3.7. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing 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.

3.8. Based on Findings of Fact 2.1 through 2.13, [REDACTED] secured special privilege for her husband when she hired him without a formal hiring process in violation of RCW42.52.070

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; these types of violations significantly reduce the public respect and confidence in state government employees; [REDACTED] was aware that Mr. Caldwell was not allowed to instruct in the Pierce College FCA Program as long as she was the FCA program coordinator; and [REDACTED] benefitted financially because of these violations. Mitigating factors are the hiring of Mr. Caldwell by [REDACTED] was initially approved and supported by [REDACTED] supervisor at the time; and [REDACTED] resigned from state service.

Section 5: AGREED ORDER

5.1 For violating RCW 42.52, [REDACTED] will pay a civil penalty in the amount of, one-thousand, seven hundred and fifty dollars (\$1,750.00).

5.2 The civil penalty of \$1,750 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]

11/5/13
ate

Respondent

I have read and understood this document but I do not agree with all the findings presented. Due to my current circumstances, I want to put this matter behind me and agree to the settlement amount with an agreed payment plan.

Stipulated to and presented by:

Melanie deLeon 11-13-13

Melanie deLeon Date
Executive Director

