

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2014-085

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, ██████████, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, 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. This stipulation is based on the following:

A. STIPULATED FACTS

A. ██████████ Biology Professor with Wenatchee Valley College (WVC), was alleged in a complaint to have violated the Ethics in Public Service Act by using state resources for his personal benefit and gain in support of his homeschooling business. The complaint was also sent to the State Auditor's Office (SAO) as a whistleblower complaint. SAO completed the initial investigation and provided the Ethics Board with their findings. On June 24, 2015, the Board received the referral from the State Auditor's Office.

B. [REDACTED] has worked at Wenatchee Valley Collage as a biology professor since 1989 and was so employed for all times pertinent to this investigation.

C. The SAO obtained [REDACTED] WVC laptop computer hard drive and Outlook emails to examine for evidence supporting the allegation. A summary of the information found from December 2013 through November 2014 is shown below:

- 90 emails related to homeschool activities (outside employment)
- 17 documents related to homeschooling

D. [REDACTED] told SAO investigators that he did not create documents related to his homeschooling activities at work and that the emails were sent to disseminate information.

E. In addition to the emails and documents related to home schooling, the SAO found an additional 520 emails that were personal in nature.

F. The SAO investigation also found three files containing 874 personal pictures.

G. Witness #2 told SAO investigators they had observed [REDACTED] using the copy machine to make copies for his homeschool classes.

H. Board staff's examination of [REDACTED]'s work computer hard drive discovered 12 word documents related to [REDACTED] homeschooling activities for the period of February 19, 2010 through May 28, 2014. A summary of the documents are shown below:

Title	Document type	Last saved	Printed	Length (pages)	Time edited
A&P Lab For Homeschoolers 10-11	Word	2/19/10 at 8:21 am		1	3 minutes
A&P Lab For Homeschoolers 12-13	Word	2/27/12 at 7:47 am		1	10 minutes
A&P Lab For Homeschoolers 13-14	Word	2/17/13 at 4:18 pm		1	12 minutes
A&P Lab For	Word	5/16/14 at		1	14 minutes

Homeschoolers 14-15		8:40 am			
A&P Lab Cleanup For Homeschoolers	Word	1/17/12 at 12:29 pm		1	6 minutes
A&P Lab Schedule For Homeschoolers 12- 13	Word	2/24/12 at 9:31 am		1	3 minutes
Biology Lab for Home Schoolers 10-11	Word	2/19/10 at 8:20 am		1	7 minutes
Biology Lab for Home Schoolers 12-13	Word	2/24/12 at 9:22 am		1	14 minutes
Biology Lab for Home Schoolers 13-14	Word	2/17/13 at 4:18pm		1	16 minutes
Biology Lab for Home Schoolers 14-15	Word	5/15/14 at 8:39 am		1	20 minutes
Biology Lab for Home Schoolers Grades 2011	Word	5/26/11 at 9:21am	5/26/11 at 9:18 am	2	5 hours, 14 minutes
Biology Lab for Home Schoolers Grades 2014	Word	5/28/14 at 7:46 am	5/28/14 at 7:46 am	1	3 hours, 2 minutes

I. The document identified above, as “Biology Lab Home Schoolers Grades 2011 and “Biology Lab Home Schoolers Grades 2014,” are letters describing the contents of the course, [REDACTED] qualification to teach the course and a final grade of the student. In the body of the letter, [REDACTED] explains that supplemental laboratory materials were adapted and modified from the curricula he uses at WVC.

J. WVC issued [REDACTED] a “Written Reprimand” for the improper use a state resources which indicates that his use for personal reasons were not brief or infrequent in violation of the Washington State Ethics Laws and the Washington Administrative Code (WAC) 292-110-010.

B. CONCLUSIONS OF LAW

1. 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.

2. Based on the stipulated facts above, ██████ used state resources for a personal benefit in violation of RCW 42.52.160.

3. 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.

C. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, aggravating factors are that these types of violations significantly reduce the public respect and confidence in state government employees.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over ██████ and over the subject matter of this complaint.

2. Under RCW 34.05.060, the Board can 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.

3. 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.

4. [REDACTED] agrees that if any or all of the alleged violations were proven 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).

5. [REDACTED] further agrees that the evidence available to the Board 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.

6. [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).

7. If the Board accepts this stipulation, the Board agrees to release and discharge [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts 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 stipulation. [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.

8. If the Board accepts this stipulation, it 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.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. 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 before the Board. If an administrative hearing is scheduled before the Board, [REDACTED] waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. [REDACTED] agrees to pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500). The Board agrees to suspend one thousand dollars (\$1,000.00) on the condition that Rob Fitch complies with all terms and conditions of this stipulation and commits no further violations of chapter 42.52 RCW for a period of two years from the date this stipulation is signed and accepted by the Board.

12. The non-suspended civil penalty in the amount of one thousand five hundred dollars (\$1,500.00) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

II. CERTIFICATION

I, [REDACTED], hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify 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, I understand that I will receive a signed copy.

[REDACTED] 6-1-16
Date
Respondent

Presented by:

K. Reynolds 6/8/16
KATE REYNOLDS Date
Executive Director

