BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:              EEB Case No. 2015-055
Eugene Payne,                FINAL ORDER
Respondent

I. PROCEDURAL HISTORY

On March 24, 2017, the Executive Ethics Board (Board) found reasonable cause to
believe that the Respondent, Eugene Payne, violated the Ethics in Public Service Act while
employed as a Custodial Supervisor at Wenatchee Valley College (WVC). Notice of the
Reasonable Cause Determination and the right to request a hearing was served upon Mr. Payne
by regular mail and certified mail on March 27, 2017. Mr. Payne failed to respond to the
Reasonable Cause Determination within 30 days as required by WAC 292-100-060(2).

The Board entered an Order of Default on July 14, 2017. On July 17, 2017, Board staff
provided Mr. Payne with notice of the Board’s Order of Default by regular and certified mail.

Pursuant to WAC 292-100-060(4) Mr. Payne was allowed 10 days to request vacation
of the Order of Default. Mr. Payne has not moved to vacate the order entered on July 14,
2017.

II. FINDINGS OF FACT

1. Mr. Payne hired by WVC on August 13, 2012 as a Custodial Supervisor and
was in that position until his resignation from state service on June 3, 2016. Mr. Payne’s
resignation was not related to this or any other complaint filed against him.

2. On February 20, 2015, the SAO received a whistleblower report alleging that
Mr. Payne was using state his state computer to listen to music and watch videos for many
hours during his workday. After receiving the whistleblower complaint, the SAO requested a
copy of Mr. Payne’s work computer hard drive for analysis of the alleged non-work related internet activity.

3. The SAO investigators reviewed Mr. Payne’s internet activities for the period of February 2014 through March 2015. The significant amount of non-work related internet activity occurred between the periods of December 21, 2014 through March 16, 2015. See the chart below for details of their findings:

<table>
<thead>
<tr>
<th>Month/Year</th>
<th>Entertainment/News</th>
<th>Pandora/YouTube Music Videos</th>
<th>Shopping/Guns</th>
<th>Other</th>
<th>Total Minutes</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 2014</td>
<td>0</td>
<td>154</td>
<td>67</td>
<td>16</td>
<td>237</td>
</tr>
<tr>
<td>January 2015</td>
<td>50</td>
<td>133</td>
<td>95</td>
<td>0</td>
<td>278</td>
</tr>
<tr>
<td>February 2015</td>
<td>194</td>
<td>320</td>
<td>19</td>
<td>11</td>
<td>544</td>
</tr>
<tr>
<td>March 2015</td>
<td>269</td>
<td>59</td>
<td>15</td>
<td>28</td>
<td>371</td>
</tr>
<tr>
<td><strong>Total Minutes</strong></td>
<td><strong>513</strong></td>
<td><strong>666</strong></td>
<td><strong>196</strong></td>
<td><strong>55</strong></td>
<td><strong>1,430</strong></td>
</tr>
</tbody>
</table>

4. Mr. Payne was shown his non-work related internet history (above) by the SAO investigator. Mr. Payne admitted to the non-work related internet usage. Mr. Payne told the SAO investigator that he mostly streamed music or YouTube videos in the background as he was completing his paperwork.

5. On August 5, 2015, Board staff requested a copy of Mr. Payne’s computer hard drive from WVC. On September 2, 2015, Board staff received Mr. Payne’s actual hard drive by US Mail from WVC. On September 10, 2015, Board staff made a forensic copy of the hard drive to be used for analysis. On June 8, 2016, the forensic copy of Mr. Payne’s hard drive was analyzed using Internet Evidence Finder (IEF) software.

6. For the period of January 2014 through March 16, 2015, Board staff found the following non-work related internet activity by Mr. Payne:
PANDORA Internet Radio (January 13, 2014 through March 9, 2015)

<table>
<thead>
<tr>
<th>Month/Year</th>
<th>No. of visits</th>
<th>No. of days</th>
<th>No. of days worked</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 2014</td>
<td>11</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>February 2014</td>
<td>3</td>
<td>3</td>
<td>20</td>
</tr>
<tr>
<td>July 16, 2014</td>
<td>1</td>
<td>1</td>
<td>23</td>
</tr>
<tr>
<td>December 2014</td>
<td>13</td>
<td>7</td>
<td>16</td>
</tr>
<tr>
<td>January 2015</td>
<td>10</td>
<td>7</td>
<td>19</td>
</tr>
<tr>
<td>February 2015</td>
<td>9</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>March 2015</td>
<td>2</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>TOTALS</td>
<td>49</td>
<td>40</td>
<td>113</td>
</tr>
</tbody>
</table>

Other non-work related Internet sites visited (December 24, 2014 through March 16, 2015):

- Entertainment/News
  - YouTube.com
  - MSN
  - Rollingstone.com
  - Kpopstarz.com
  - Huffingtonpost.com
  - Setlist.com
  - Yardbarker.com
  - Bloomberg.com

- Shopping
  - GunBroker.com
  - Armslist.com
  - Budsgunshop.com
  - Toyotacenter.com/upcoming events
  - Windemerewenatchee.com
  - Realtor.com
  - Zillow.com
  - Sears.com
  - Guitar-King.com
  - AutoTrader.com
  - Campbellsresort.com
  - Chelanresortssuites.com
  - Craigslist.com
7. The following shows non-work related internet searches using Google, Bing, and YouTube search engines:

- **Google Searches** — 74 searches, all appear to be non-work related.
- **Parsed Search Queries (Bing, YouTube)** — 1,301 searches, most appear to be non-work related and mostly related to entertainment, music and videos.

8. Mr. Payne indicated in his response to Board staff that he streamed music and music videos using his state computer. He further indicated that the music and music videos would play in the background as he completed paper work at his desk.

9. Mr. Payne completed the online ethics training provided by the DES Learning Management System (LMS) in October 2014.

10. On June 17, 2015, Mr. Payne received a Letter of Reprimand by WVC for his improper use of the internet citing the SAO whistleblower investigation.

11. Mr. Payne resigned from state service on June 6, 2016 to take a position with a private company.

**III. CONCLUSIONS OF LAW**

1. **RCW 42.52.160(1)** — Use of persons, money, or property for private gain, 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. Under WAC 292-110-010 Use of state resources, prior to April 2016, state employees may use state resources for personal use as long as the use is reasonably related to the conduct of the state duties; authorized by an agency head or designee as related to an official state purpose; or for a specific use that promotes organizational effectiveness or
enhances job-related skills. Additionally, state employees are allowed occasional but limited
use of state resources as long as the following conditions are met:
   (i) There is little or no cost to the state;
   (ii) Any use is brief;
   (iii) Any use occurs infrequently;
   (iv) The use does not interfere with the performance of any officer's or
employee's official duties; and
   (v) The use does not compromise the security or integrity of state
property, information, or software.

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

4. Based on the evidence, Mr. Payne used his state issued computer and time for
his private benefit or gain in violation of RCW 42.52.160. Mr. Payne’s activities do not meet
the exceptions for the use of state resources as permitted in WAC 292-110-010.

5. The Board is authorized to impose sanctions for violations to the Ethics Act
pursuant to RCW 42.52.360.

6. In determining the appropriateness of the civil penalty, the criteria in WAC 292-
120-030 have been reviewed.

   IV. FINAL ORDER

Based on the foregoing:

IT IS HEREBY ORDERED Respondent Eugene Payne is liable for and shall pay a
civil penalty of two thousand dollars ($2,000). The payment shall be made to the Executive
Ethics Board within forty-five (45) days of this Order.
V. AUTHORITY AND PROCEDURE

Pursuant to RCW 34.05.470, Respondent has the right to file a Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition must be filed with the Executive Ethics Board at 2425 Bristol Court SW, Olympia, Washington 98504, or by U.S. Mail at P.O. Box 40149, Olympia, Washington 98504-0149, within ten (10) days of service of the Final Order upon Respondent.

The Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in this matter. A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the petition is filed, the Board does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on a petition.

Respondent has the right to petition the superior court for judicial review of the Board’s action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

DATED this 8th day of September, 2017

Anna Dudek Ross, Chair

Lisa Marsh, Member

Samantha Simmons, Vice-Chair

Shirley Battan, Member

John Ladenburg, Member