

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2016-015

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, [REDACTED], 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

1. On January 22, 2016, the Executive Ethics Board (Board) received a complaint alleging that [REDACTED], Criminal Justice and Psychology Faculty member at Big Bend Community College (BBCC), may have violated the Ethics in Public Service Act by using state resources for her private benefit and gain in her personal involvement in the Moses Lake Fire Department. The complaint further alleged that she used the state email system in support of her political campaign for Moses Lake City Council.

2. For all times pertinent to this investigation, [REDACTED] was a full-time tenured Criminal Justice and Psychology Faculty member at BBCC. [REDACTED] is employed under a 173-day annual contract that includes providing instruction to students.

3. On September 15, 2015, the BBCC Human Resource Office received a complaint alleging that [REDACTED] had used state resources to support her campaign for a Moses Lake City Council Position as well as her personal involvement in the Moses Lake Fire Department Emergency Management Services Taskforce (the Taskforce).

4. BBCC investigators reviewed [REDACTED] emails and found 41 separate folders and corresponding sub-folders. Each of the folders and sub-folders was reviewed. Two emails were found on BBCC's email server pertaining to [REDACTED] political campaign. Both of the emails were sent to [REDACTED] by her husband and included attachments relating to her campaign advertisement. The emails were not saved by [REDACTED] but were automatically saved on BBCC's server. One of these two emails was then later accessed by [REDACTED] on her personal smart phone and was forwarded to a third-party via her smart phone. Both [REDACTED] personal Gmail account and her BBCC email account were tied to one phone application and [REDACTED] failed to realize that the individual email she forwarded had been received at her BBCC email account, and not by her personal Gmail account.

5. A BBCC investigator reviewed [REDACTED] "H" drive which contained 44 separate folders. No documents were found pertaining to [REDACTED] political campaign.

6. On May 15, 2015, [REDACTED] requested permission from BBCC's President to run for a position on the Moses lake City Council. Permission was granted with the following written expectations:

1. You act as an individual and not as an official or representative of Big Bend Community College in your campaign and in office should you be elected.

2. If you are elected and a situation arises which may constitute a conflict of interest with your role as an employee of the college, you will inform your colleagues and recuse yourself consistent with your ethical codes for elected officials.
3. You will not use your BBCC email account or other BBCC resources for your campaign or elected office purposes.
4. You will not use your city email account or other resources, should you be elected, for BBCC purposes.
7. The two emails between [REDACTED] and her husband were dated June 23, 2015, and July 9, 2015, after [REDACTED] received approval and was provided with the expectations not to use BBCC resources for political activities.
8. For the period of February 10, 2015, through June 8, 2015, the BBCC investigation revealed that [REDACTED] received 49 emails and sent 33 emails pertaining to the Taskforce.
9. The BBCC review of [REDACTED] "H" drive revealed three Word documents related to the Taskforce. No other documents pertaining to the Taskforce were found.
10. The BBCC investigation concluded that [REDACTED] was invited to participate on the Taskforce due to her position as an educator. It also concluded that while most work related to the Taskforce met *de minimus* use, one day of emails between [REDACTED] and the media did violate the "brief and infrequent" intent of the *de minimus* use standard. The emails in question were multiple brief exchanges between media, the Fire Department members, and [REDACTED] coordinating dissemination of time-sensitive information. The BBCC stated that [REDACTED] did not request to use state resources for her volunteer work with the Taskforce, yet she was publicly commended by BBCC for her participation on the Taskforce at a time before any ethical violations were raised.
11. On February 2, 2016, Board staff received [REDACTED] work desktop computer hard drive. On March 8, 2016, Board staff created a forensic copy of the hard drive using FTK imager software. The copy was then used for analysis. Board staff used Internet Evidence Finder (IEFv6.7) to

analyze [REDACTED] desktop computer hard drive for internet use, Outlook email records and documents pertinent to the investigation. Several documents were found related to the Taskforce.

12. [REDACTED] indicated in a response to Board staff that she has personally taken steps to try to avoid similar inadvertent violations in the future. However, the ultimate responsibility in prevention lies with BBCC, and its IT department, meeting its obligations under statute.

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, [REDACTED] used state resources for a personal benefit in violation of RCW 42.52.160.

3. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for the purpose of assisting a campaign for election of a person to an office. RCW 42.52.180(1) states:

No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition.

4. Based on the stipulated facts above, [REDACTED] used state resources to assist in her political campaign in violation of RCW 42.52.180(1).

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.

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, it is an aggravating factor these types of violations significantly reduce the public respect and confidence in state government employees. In the matter at hand, it is a mitigating factor that [REDACTED] believed that her work with the Taskforce was community work that she and her college believed in good faith she was doing as a faculty member of BBCC, and that she corrected the issue regarding her campaign emails sent/received as soon as she was made aware. Also, it is a mitigating factor that only one political email was not also a personal private communication between family members, and while it was stored on [REDACTED] personal smart phone, it was inadvertently transmitted over the BBCC server rather than over a Gmail server because of the permissive IT policies and practices followed by BBCC.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] 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 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.

6. [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).

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. No other claims of alleged violations are pending against [REDACTED] at this time.

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, both [REDACTED] and the Board 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 dollars (\$2,000) associated with the improper use of public resources, RCW 42.52.160 and RCW 42.52.180. The Board agrees to suspend one thousand dollars (\$1,000) 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.

12. The non-suspended portion of the civil penalty in the amount of one thousand dollars (\$1,000) 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.

I. 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]

06/09/17
Date

Respondent

Presented by:

K. Reynolds

KATE REYNOLDS
Executive Director

6/10/17
Date

II. ORDER

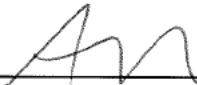
Having reviewed the proposed stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

✓ ACCEPTED in its entirety;

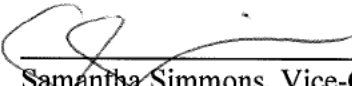
REJECTED in its entirety;

MODIFIED. This stipulation will become the order of the Board if the Respondent approves* the following modification(s):

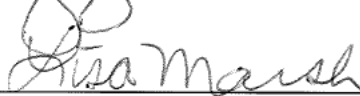
DATED this 14th day of July, 2017



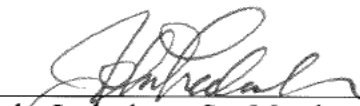
Anna Dudek Ross, Chair



Samantha Simmons, Vice-Chair



Lisa Marsh, Member



John Ladenburg, Sr., Member



Shirley Battan, Member

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

[REDACTED], Respondent Date _____