

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2016-041

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**

1. On March 25, 2016, the Executive Ethics Board (Board) received a complaint alleging that ██████████ Deputy Director of the Washington Traffic Safety Commission (WTSC), may have violated the Ethics in Public Service Act by using state resources for his personal benefit and gain by using resources for his continuing education and outside business interests.

2. ██████████ was appointed to Deputy Director of the WTSC in August of 2014. His current work schedule is Monday through Thursday 8:00 am to 5:00 pm, with a ½-hour lunch break and Friday 8:00 to 2:30 pm, with a ½-hour lunch break.

3. Board staff obtained [REDACTED] work computer, a Microsoft Surface Pro, and a copy of [REDACTED] user folder located on the WTSC server identified as [REDACTED].

4. The following evidence was found during the Board staff's examination of [REDACTED] work computer:

**Continuing Education**

- 1) Tuition Reimbursement Request dated July 22, 2015 for courses required for a Doctoral Program in Organizational Change and Leadership at the University of Southern California(USC). Dates the request covered are January 6, 2015 through May 2, 2015.
- 2) Forty visits to the USC website from February 5, 2016 through April 13, 2016.
- 3) Sixteen downloads from the USC website from October 8, 2015 through December 22, 2015, including:
  - a. EDUC522 – Reflective review.
  - b. EDUC 627 – Week 8 – Schraw & Lehman, PDF.
  - c. EDUC 627 – Week 8 – Pajares, PDF.
  - d. EDUC 627 – Unit 6 – Cognitive 1 – Post –KH, PowerPoint.
- 4) One visit to the USC library website on August 26, 2015, from 9:45 am to 10:02 am.
- 5) Two PowerPoint presentations
  - a. Nonprofit Accountability/Balanced Scorecard, October 13, 2015. Printed at 1:50 pm on October 13, 2015, USC.
  - b. Dissertation and Capstone in the Ed.D. in Organizational Change and Leadership, November 24, 2015 at 4:51 pm, USC.
- 6) Six Word documents
  - a. Distracted Driving: A review of Literature, [REDACTED], EDUC 619 – Framing Educational Leadership, April 23, 2015, USC.
  - b. Managerial Impact on Employee Engagement: A review of Motivational Influences, [REDACTED], EDUC 627 – Learning, December 2, 2015, USC.
  - c. The Impact of Leadership Style on Follower Satisfaction in State Government, [REDACTED] Organizational leadership 501-B2, May 6, 2011, Gonzaga.
  - d. Dissertation and Capstone by Course Map, November 24, 2015, USC.
  - e. Accountability Relationships: Problems Resulting from Ambiguous Director Roles, [REDACTED], EDUC 522 – Accountability, November 24, 2015, USC.
  - f. Public Value Seeking Leadership: An Application in State Government, [REDACTED] EDUC 522 – Accountability, November 9, 2015, USC.

[REDACTED] contends that he accessed and downloaded these documents to assist him in his work as WTSC Deputy Director.

**Outside Business**

- 1) **Whitefield Strategy Inc.** (26 files)
  - a. New Mexico TRCC Performance Assessment Report: Authored by [REDACTED], Senior Consultant, Whitefield Strategy Inc. Last modified on August 29, 2015 at

3:30 pm by [REDACTED], created on August 18, 2015, authored by cmadill@WTSC.WA.GOV. Authored on September 4, 2015.

- b. New Mexico TRCC Performance Assessment: Authored by [REDACTED], Senior Consultant, Whitefield Strategy, Inc. Last modified on August 29, 2015 at 9:40 pm by [REDACTED], created on August 19, 2015, authored by [REDACTED]@WTSC.WA.GOV. Authored on September 7, 2015.
- c. Download NM-Go-Team-Report- CM-10-18-2015.docx, December 9, 2015 at 1:38 pm, was opened by user cmadill.
- d. Image of a document, New Mexico Department of Transportation, Joint State Traffic Records Coordinating Committee, Wednesdays July 29, 2015, Agenda 9:00 – 9:30, Go-Team Engagement Meeting Objectives, [REDACTED], Whitefield Strategy. Download NM- Go-Team-CM-10-18-2015.docx
- e. Whitefield Strategy PowerPoint Presentation to Atlas Dentistry, Workforce Learning Initiative, April 8, 2016. Last modified by [REDACTED] on April 8, 2016 at 8:04 am.
- f. One web page visit to Atlas Dentistry on January 29, 2016 at 12:25 pm.

5. [REDACTED] stated that he used the New Mexico Assessment Report mentioned above to assist him in his work, using it as a template for a legislative report on the School Zone Safety Account Report. Copies of both reports were provided to Board staff to show that the New Mexico Report was used as a template for the School Zone Safety Account Report.

6. In regards to the Whitefield Strategy PowerPoint presentation to Atlas Dentistry on April 8, 2016, mentioned above, [REDACTED] work calendar shows that he had a private appointment on April 8, 2016 from 9:00 to 10:00 am. No leave was submitted for this appointment.

7. According the WTSC, WMS and exempt staff are not always required to submit a leave slip for one or two hours of personal time off. It is expected that these employees work their required hours and if they use an hour on personal business that it would be made up at some point.

8. Board staff reviewed [REDACTED] WTSC server file (M: drive), [REDACTED],” and a folder labeled “Personal Files.” This one folder contained 1.81 gigabits of data; 2,216 files located in 311 folders. Many of the documents dated back to 2001.

### Continuing Education

1. B.Y.U – Folder

- a. Contains 149 files, 16 folders. October 2000 through July 2010.
- 2. **Gonzaga** – Folder
  - a. Contains 789 files, 129 folders. January 2010 through April 2012.
- 3. **USC** – Folder
  - a. Contains 28 files, 6 folders. September 2014 through March 2015.
- 4. **Pepperdine** – Folder
  - a. Contains 9 files. May through October 2014.

**Outside Business**

**Whitefield Strategy Inc. (26 files)**

<b>Title</b>	<b>Type</b>	<b>Author</b>	<b>Date/Time Last Modified</b>	<b>Last modified by</b>
<b>HP L65 Performance Metric Analysis Project Checkpoint #1 Decision Paper</b>	Word	██████████, WTSC	3/30/13 at 2:51 pm	██████████, WTSC
<b>Feedback on Trevor's new deliverables</b>	Word	██████████, WTSC	4/5/13 at 5:19 pm	██████████, WTSC
<b>Intro Call HP QTAT</b>	Word	██████████, WTSC	4/2/13 at 11:03 am	██████████, WTSC
<b>Whitefield HP Project</b>	Word	██████████, WTSC	4/4/13 at 9:29 pm	██████████, WTSC
<b>Trevor Discussion</b>	Word	██████████, WTSC	4/10/13 at 4:48 pm	██████████, WTSC
<b>Information about Payment Cycle L6s Project</b>	Power Point	K. Vargo	3/18/13 at 12:21 pm	██████████, WTSC
<b>Quote TAT Variation</b>	Power Point	██████████, WTSC	4/3/13 at 8:53 pm	██████████, WTSC

**Consulting (157 files, 19 folders)**

<b>Title</b>	<b>Type</b>	<b>Author</b>	<b>Date/Time Last Modified</b>	<b>Last modified by</b>
<b>Consulting contract between Millennium Services 2000+ incorporated (MS2K)</b>	Word	Guest	8/13/13 at 2:56 pm	██████████, WTSC

<b>Non-Disclosure Agreement between MS2K and [REDACTED] (individual)</b>	Word	Bourdon	8/13/13 at 2:56 pm	C. Madill WTSC
<b>Consulting jobs for MS2K in Delaware (10-2014)</b>	Folder			
<b>Maryland (10-2014)</b>	Folder			
<b>Minnesota, (5-2014)</b>	Folder			
<b>Ohio (12-2014)</b>	Folder			
<b>Utah (2-2014)</b>	Folder			
<b>Louisiana (8-2013),</b>	Folder			
<b>Traffic Safety Analysis Systems and Services, Inc.(TSASS), (2-2014)</b>	Folder			
<b>Vanasse Hangen Brustlin (VHB), (12-2014).</b>	Folder			

Each job above is identified by folder name, e.g., Delaware 10-2014. Each folder contains documents related to each job. Some examples of the document are, signed contracts, excel document, word documents, banking information, federal tax documents, and deliverables. The above documents were opened on a work computer but there is no evidence that work on these documents was performed during work time. [REDACTED] stated that some of this material was accessed and downloaded to assist him in implementing Lean at WTSC.

### Other Personal Files

**Files Relevant to [REDACTED] work at WTSC.** A partial list includes:

- a. Organizational Change
- b. Project Management
- c. Strategic Planning
- d. Leadership
- e. HR
- f. Organizational Design

**Vidente** - (10 files - 1 PowerPoint presentation with 9 revisions) related to personal activities in developing leadership skills, November 4, 2012 through June 24, 2013.

**Finances and Taxes** – (66 files, 6 folders), January 28, 2003, through April 7, 2014.

- a. Federal Tax returns 2003 through 2013.
- b. Federal Tax returns (McInelly, In-laws) 2010 and 2011.

**Church** – (254 files, 31 folders), January 2001 through March 2014.

- a. **Olympia 3<sup>rd</sup> Ward** (217 files, 22 folders), 3/2000 through 10/2014.
- b. **Gospel Doctrine** (44 files, 1 folder), 6/2011 through 9/2013.
  - i. **D&C folder** (16 files) 1/13/13 through 9/22/13.
- c. **Elders Quorum** (29 files, 1 folder), 10/2013 through 10/2014.
  - i. **Flyers folder** (3 files), 12/6 through 12/8/2013.

**Guatemala** - (16 files), March 2009 through December 2011.

**Timeshare** - (11 files), October 4, 2011 through January 5, 2012.

**Real estate** - (206 files, 15 folders), August 2005 through April 2014.

- a. **Vacant Lot** (12 PDF files), July 11, 2013.
- b. **Renting** (17 files, 1 folder), June 2008 through February 2013.
  - i. **Granite Estimates** (2 PDF files), July 31, 2012.
- c. **Montana** (66 files, 5 folders), 3/2009 through October 2014.
  - i. **Vacant Lots** (12 PDF files), July 2011 through July 19, 2013.
  - ii. **Closing Docs** (9 PDF files) 2 from April 8, 2009, 7 from December 4 through December 8, 2014.

9. WTSC Administrative Policy 11.1, Tuition/Training Reimbursement indicates that attendance at school and associated homework must be accomplished during the employee's non-working hours. Effective date of this policy is November 1993.

10. On November 9, 2009, ██████████ requested Tuition Reimbursement for classes in the Gonzaga University Organizational Leadership Master's Degree Program in accordance with WTSC Administrative Policy 11.1. The WTSC approved this request. On November 25, 2014, ██████████ requested partial Tuition Reimbursement for classes in the University of Southern California's Organizational Change and Leadership doctoral program in accordance with WTSC Administrative Policy 11.1. The WTSC also approved this request.

11. [REDACTED] indicated in the agency response that because his official duties were closely aligned with his Gonzaga course work WTSC Deputy Director Steve Lind told him that after consulting with the WSTC Director Lowell Porter that he was allowed four hours of work time each week to work on his college courses. Former Deputy Director Steve Lind indicated that he was not familiar with this policy when approval was given to [REDACTED] to have 4 hours of study time per week.

12. [REDACTED] told Board staff that in order for him to utilize the approved four hours of work time he began synchronizing a master folder between his home and work computers containing a variety of personal files, including his Gonzaga course work. According to [REDACTED], this practice allowed him to take advantage of the allotted four hours of work time and gave him the ability to work on his college courses in the evening while on official travel status for the WTSC. [REDACTED] reports that had he not had the work time approved for his studies, he would not have synched a folder between his home and work computers.

13. [REDACTED] also indicated in his response that because he was required to synchronize his home PC with his work PC his personal files located on his home PC were transferred onto his work computer. These files were on his work computer until he was issued a new computer in July of 2015. At that time, his personal files were transferred to his confidential network drive (M:). Mr. [REDACTED] also stated that he continued to synchronize folders until not long after the issuance of his new workstation in July 2015.

14. Former WTSC Director, Lowell Porter told Board staff that he did not approve Mr. [REDACTED] to spend four hours of work time to conduct his college courses. Mr. Porter told Board staff that he did not approve [REDACTED] to synchronize his personal computer to his WSTC computer or to the WTSC server. However, former WTSC Deputy Director, Steve Lind, told Board staff that he

approved [REDACTED] to spend four hours of work time each week to work on his college courses. Mr. Lind told Board staff that he believed that the WTSC and the State would benefit from both the financial support and 4 hours/week study provided to [REDACTED] because it would help [REDACTED] develop into a valued leader in state government. Mr. Lind reported that [REDACTED] used these leadership skills to restructure the WTSC program manager system. There is no indication that either Mr. Lind or [REDACTED] intentionally violated WTSC Administrative Policy 11.1.

15. Board staff reviewed over 6,000 of [REDACTED] work emails. Of those 6,000 emails, only two emails related to [REDACTED] company, Whitefield. The first email was received at Mr. [REDACTED] state email account on November 18, 2015 at 8:51 pm. The subject line of the email indicates, "Final comments on the Go Team Report #1 for New Mexico." On November 19, 2015 at 12:14 pm, [REDACTED] forwarded the email to his email address at Whitefield.

## 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 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 that, these types of violations significantly reduce the public respect and confidence in state government employees and that Mr. [REDACTED] is in a position of Management holding a position of trust within the WTSC.

It is a mitigating factor that [REDACTED] was given express, but mistaken, permission by Mr. Lind to have study time during work hours.

### 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 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] [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] [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] [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, [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) for the violations associated with RCW 42.52. 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 civil penalty in the amount of one-thousand five hundred dollars (\$1,500) 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]  
Respondent

8/18/2016  
Date

Presented by:

*K. Reynolds*  
KATE REYNOLDS  
Executive Director

*8/23/16*  
Date

