

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Allison Criswell

Respondent.

No. 2017-070

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, ALLISON CRISWELL, 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 November 2, 2017, the Executive Ethics Board (Board) received a complaint alleging Allison Criswell (Ms. Criswell), Faculty member at Grays Harbor College (GHC), may have violated the Ethics in Public Service Act by requiring her students to purchase the book "*Everything You Need to Know About College Writing*" which she co-authored with Lynne Lerych, another GHC faculty member.
2. Ms. Criswell is employed by GHC and is currently a tenured faculty member in the English Department and was in that position for all times pertinent to this investigation.

3. In July of 2011, Ms. Lerych and Ms. Criswell entered into an agreement with the Bedford/St.Martin's Publishing Company (Publisher) to publish an English textbook they had written, *The Little Black Book of College Writing*. The textbook was to be used at GHC for the English 095, 101 and 102 courses, starting in the fall quarter of 2011 through the spring quarter of 2012.

4. To avoid implications of the state's ethics laws the Publisher agreed to pay GHC a ten (10) percent royalty on the net amount received from the sale of the book. This royalty payment went directly to the college and not to Ms. Lerych or Ms. Criswell.

5. GHC provided documentation showing that GHC received \$2,662.15 in royalty payments from the Publisher.

6. Ms. Lerych and Ms. Criswell used the *Little Black Book of College Writing* in their classes starting in the Fall quarter of 2011 through the start of Winter quarter, January 2016.

7. In 2012, Ms. Lerych and Ms. Criswell entered into an Agreement for Publication with the Publisher for a new book that would eventually be titled, *Everything You Need to Know About College Writing*. The new book was to be a revision of the *Little Black Book of College Writing*.

8. According to the agreement, a completed first draft of *Everything You Need to Know About College Writing* was due by December 28, 2012 and the final manuscript was due by August 31, 2013.

9. According to the agreement, Ms. Lerych and Ms. Criswell were paid \$20,000 (\$10,000 each) as an advance against royalties. In addition to the advance, \$5,200 in permission fees¹ was added to the total to be paid off by the authors before any royalty payments could be made.

¹ Permission fees are charges for the use of other copyright protected material in their book.

10. Both Ms. Lerych and Ms. Criswell confirmed to Board staff that they received the advance of \$10,000 each.

11. On September 30, 2015, Ms. Clary sent an email to Ms. Lerych and Ms. Criswell requiring them to attend a meeting with her, Mr. Jones and other faculty members to discuss faculty members using their own textbook in the classes they teach at 1:30 pm to 2:30 pm on October 5, 2015.

12. Ms. Criswell did not make the October 5, 2015 meeting with Ms. Clary but received an email from Ms. Lerych outlining the discussion.

13. At 3:20 pm on October 5, 2015, Ms. Clary sent an email to Ms. Lerych and Ms. Criswell providing confirmation of her approval for the use of their textbook, *Everything You Need to Know About College Writing*, in the English 095, 101, and 102 courses.

14. Ms. Clary told Board staff that there is no book committee and that the classroom instructor makes the determination for the textbook they use. She stated that in this case, because it was a textbook that was authored by Ms. Lerych and Ms. Criswell, she made the determination to approve of the use, which she believed allowed them to make a profit from royalties on the sale of the book, referring to a Western Washington University (WWU) policy.

15. WWU policy states:

Authored Faculty Using Their Textbooks in Their Classes – The Ethics Act states that faculty members may not have a beneficial interest in a textbook they have assigned to their own students. (RCW 42.52.030) This does not mean that faculty members are precluded from using their own textbooks in their classes. This restriction means that faculty can not financially benefit from their decision to use their textbook in classes at Western. However, if a chair or committee, that does not include the faculty author, selects/designates the textbook then the faculty author can use the textbook and legally receive royalties from the textbook. This also applies if the faculty author is a decision maker in the choice of textbooks for other classes if his or her textbook is used in classes taught by other faculty. (RCW 42.52.020 & 42.52.110) (Revised 5/18/04).

16. Ms. Clary further indicated she made the determination to allow the use of *Everything You Need to Know About College English* because Ms. Lerych and Ms. Criswell had been using a similar book, *Little Black Book of College Writing*, in their classes for a few years and she felt that it was a good textbook to use.

17. *Everything You Need to Know About College Writing* was published in mid-December 2015 with a 2016 copyright.

18. Ms. Criswell required her student to purchase the textbook for two quarters, Fall 2016 and Fall 2017 (a total of two quarters and four classes).

19. In June of 2016, a new faculty agreement was entered into between the Board of Trustees of Washington Community College District No. 2 and the Grays Harbor College Federations of Teachers Local #4984 (the Union) for the period of 2016 through 2019.

20. A new section was added related to faculty members requiring their students to use books they had authored. At the time the new language was added to the agreement, Ms. Lerych was the President of the union and Jack Lerych, her husband, was the Vice President and advocated for the additional language. See below:

Section 5. Faculty Authors Using Their Textbooks in Their Classes

The Ethics Act states that faculty members may not have a beneficial interest in a textbook they have assigned to their own students. (RCW 42.52.030) This does not mean that faculty members are precluded from using their own textbooks in their classes. This restriction means that faculty cannot financially benefit from their unilateral decision to use their textbook in classes at GHC. However, if a chair or the Vice President for Instruction or a committee that does not include the faculty author, selects/designates the textbook then the faculty author can use the textbook and legally receive royalties from the textbook. This also applies if the faculty author is a decision maker in the choice of textbooks for other classes if his or her textbook is used in classes taught by other faculty. (RCW 42.52.020 & 42.52.110) (Emphasis added)

21. Assistant Attorney General (AAG) Justin Kjolseth told Board staff that he did not participate in the drafting or approval of Section 5, above.

22. On September 14, 2016, a student at GHC sent Ms. Criswell an email indicating he was concerned that it seemed unethical for her to require her students to purchase a book that she authored at full price from the bookstore and wanted an explanation as to why it was not.

23. Ms. Lerych drafted the following response and forwarded it to Ms. Clary for her input before sending it to the student.

Yes, the bookstore sells new books at full price. When a new book is sold, its authors receive a small percentage of that sale in royalties. But the bookstore also sells used copies and rents both new and used copies for lower prices. Authors don't make any money on rentals or sales of used books. If you would be more comfortable if none of your money goes to the authors of the book, then used or rental is the way to go.

We require the book because there is not another book available, to our knowledge that is as good, as useful. Or as inexpensive. We could require a different book instead, but it would be both a worse book and a more expensive book. And honestly, would n' t it be strange if professors who spent years writing exactly the right book to use in teaching their students didn't actually use the book? We wrote the book so that we could use it to help students learn.

In order to protect authors in our position while safe guarding the rights of students, GHC has a policy requiring the approval of the text by a curriculum committee or administrator (this is not true of textbook decisions in general, which are left up to the faculty themselves).

I hope this answers your questions.

24. On September 15, Ms. Clary responded to the student with the following email:

I was forwarded your email regarding faculty assigning textbooks they authored and published for their classes. The Washington State Ethics act states that:

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.

This means that faculty members may not have a beneficial interest in a textbook they have assigned to their own students. (RCW 42.52.030) This does not mean that faculty members are precluded from using their own textbooks in their classes. This restriction means that faculty cannot financially benefit from their unilateral decision to use their textbook in classes at GHC. However, if a chair or the Vice President for Instruction or a committee that does not include the faculty author, selects/designates the textbook then the faculty author can use the textbook and legally receive royalties from the textbook. This also

applies if the faculty author is a decision maker in the choice of textbooks for other classes if his or her textbook is used in classes taught by other faculty. (RCW 42.52.020; 42.52.110)

Ms. Criswell, Ms. Lerych, and all other GHC faculty who have authored texts have followed the Washington State Ethics Law in receiving approval to use their published works as class texts.

Grays Harbor College is proud of the time and effort Invested by its faculty in producing textbooks and other scholarly works that contribute to the education and success of students locally, nationally and internationally.

If you have any further questions regarding this subject, please direct them to me.

*Laurie Kaye Clary
Vice President for Instruction
Grays Harbor College*

25. Mr. Jones told the State Auditor's Office (SAO) investigator that he was not aware of the above email until September 2017 when the new VPI Emily Lardner (Ms. Lardner) brought it to his and the AAG's attention. Ms. Lardner indicated that she was concerned about the decision made in the email.

26. Mr. Jones told the SAO investigator that AAG Kjolseth advised that it appeared that Ms. Lerych and Ms. Criswell were too involved in the decision to use the textbooks.

27. GHC administration informed Ms. Criswell that further use of her textbook in her class might violate state ethics laws she made the decision to stop using it in October 2017.

28. Board staff reviewed royalty statements provided by Ms. Lerych and Ms. Criswell showing the initial advance of \$20,000 (\$10,000 each) and the additional Permission Fees of \$5,200 (\$2,600 each).

29. The royalty statement ending October 2016 shows that 1,784 copies (paperback and electronic copies) of the book were sold reducing the amount of the advance to \$16,028.34 (\$8,041.17 each).

30. Royalty payments to Ms. Lerych and Ms. Criswell will not be paid until the advanced amount of \$25,200 (\$12,600 each) is paid back to the publisher.

31. According the GHC Bookstore, 209 copies of the textbook were sold to GHC students.

32. Ms. Criswell indicated in her response to the Reasonable Cause Determination by the Board that she would make about \$3 per book sold and that if 100% of her students in the four classes (about 100 students) purchased the book she would have reduced her advance by a maximum amount of \$300.

B. CONCLUSIONS OF LAW

1. 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.

2. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from having 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. 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.

4. Based on the stipulated facts above, Ms. Criswell required her student to purchase a textbook she co-authored resulting in a personal beneficial interest in violation of RCW 42.52.020 and

42.52.030. Additionally, Ms. Criswell secured a special privilege for herself in violation of RCW 42.52.070.

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 a mitigating factor that Ms. Criswell asked for and received permission from the then Vice President of Instruction and later when she was informed that her actions might be a violation of the ethics act she immediately stopped using her book in her classes. 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 and they were continuous in nature.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Allison Criswell 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. Allison Criswell 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. Allison Criswell 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. Allison Criswell 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 Allison Criswell 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. Allison Criswell 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 Allison Criswell 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 Allison Criswell 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 Allison Criswell 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, Allison Criswell 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, Allison Criswell 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.

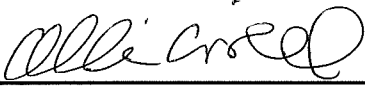
11. Allison Criswell agrees to pay a civil penalty in the amount of one-thousand, five-hundred dollars (\$1,500) associated with violations of RCW 42.52. The Board agrees to suspend one-thousand dollars (\$1,000) on the condition that Allison Criswell complies with all terms and conditions of this Stipulation 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 five-hundred dollars (\$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, Allison Criswell, 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.

 6/19/18

ALLISON CRISWELL Date
Respondent

Presented by:

 7/2/18


KATE REYNOLDS Date
Executive Director

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 13th day of July, 2018



John Laderburg, Sr., Chair




Shirley Battan, Vice-Chair



Lisa Marsh, Member



Anna Dudek Ross, Member



Gerri Davis, Member

* I, Allison Criswell, accept/do not accept (circle one) the proposed modification(s).

Allison Criswell, Respondent Date