

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Gregory Spatz

Respondent.

No. 2018-059

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Gregory Spatz, 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 May 30, 2018, the State Auditor's Office (SAO) received a whistleblower complaint alleging Gregory Spatz (Mr. Spatz), a Professor at Eastern Washington University (EWU), used state resources to promote his new CD.
2. On October 19, 2018, the Executive Ethics Board (Board) received an SAO referral alleging Mr. Spatz may have violated the Ethics in Public Service Act by using state resources for private benefit or gain.
3. According to EWU, Mr. Spatz was hired as a Visiting Assistant Professor of English/Creative Writing from September 18, 1998 to June 12, 2000. On September 15, 2000, he was

given a probationary tenure-track faculty position. Mr. Spatz was granted tenure, promoted to Associate Professor of English/Creative Writing effective September 1, 2006, and promoted to Professor of English/Creative Writing effective September 1, 2010. As a EWU faculty member, Mr. Spatz is expected to perform work in three primary areas: teaching, scholarship, and university/community service.

4. According to the SAO report, on May 29, 2018, Mr. Spatz used his personal email to draft and forward an email to the program coordinator, Pamela Russell-Elliott (Ms. Russell-Elliott), for distribution. Ms. Russell-Elliott used her EWU email to forward the message from Mr. Spatz to 70 students and faculty. The email invited the recipients to purchase tickets to attend a launch party for Mr. Spatz's CD. The email also provided a link to listen to and purchase Mr. Spatz's music.

5. Board staff were provided a copy of the email from Mr. Spatz's personal email address, gspatz1@earthlink.net, dated May 29, 2018 at 3:31pm to Ms. Russell-Elliott, with the subject line: *CD Release Party and Potluck Invitation*. Additionally, Board staff were provided a copy of an email from Ms. Russell-Elliott's EWU email address, dated May 29, 2018 at 3:52 pm, addressed to approximately 70 students and faculty. The subject line was *FW: CD Release Party and Potluck invitation*. Both emails stated:

*You're invited to Caridwen¹ and Greg's **CD Release Party and Potluck!** Come on out, fill your plate, raise a glass, and help us celebrate the release of our brand new CD, **All Along the Sea**.*

Where: Interpunct Press, 2618 West Sinto Ave., Spokane, WA.

When: June 9, 6-10PM. Bring a dish or a bottle to share. Food starts at 6, music around 7PM.

Tickets: \$15 apiece, \$10 with a student ID, 12 and under free. You can buy them at the door or in advance here: <https://www.brownpapertickets.com/event/3440366>

¹ Mr. Spatz's wife.

Not convinced? Hear some samples now, right here:

<https://caridwenandgregspatz.hearnow.com/>

Questions? Call or email: gspatz1@earthlink.net, 509-870-7772

6. According to the SAO report, Mr. Spatz said they used the same list of recipients for previous program event notifications, such as lectures, art openings, and “anything arts related that seems potentially of interest.”

7. According to the SAO, Mr. Spatz sent a separate email from his EWU email account to a local radio station to promote the launch party. Board staff were provided a copy of the email. The email was sent from Mr. Spatz’s EWU email address, gspatz@ewu.edu to dpbx@kpbx.org². The email was dated May 26, 2018 at 12:34 pm with the subject line: *An event announcement!*

Kate,

Caridwen tells me you're looking for this information about our CD Release Party. Here it is:

When: June 9, 6PM-till close

What: CD Release Party and Potluck -- bring a dish or a bottle to share, enjoy some great music. Celebrate the release of Caridwen and Greg Spatz's brand new CD, All Along the Sea.

Where: !Nterpunct Press, 2618 West Sinto Ave., Spokane

How much: \$15 adults

More: This is an all-ages music and potluck event at !Nterpunct Press! Load your plate, fill your glass and hear some great music. Potluck starts at 6PM, music follows at about 7PM.

\$15 admission, \$10 with a student ID and free for anyone 12 or under.

Order in advance from Brown Paper Tickets, or buy at the door. Same price!

Band:

Caridwen and Greg Spatz

A beguiling blend of Celtic, Klezmer, jazz, old-time, French-Canadian, and original music featuring fiddles, bouzouki, banjo and Caridwen's ethereal vocals. There will be some surprise guest players too!

Here's the Facebook announcement:

<https://www.facebook.com/events/173516029978608/>

² Board staff confirmed this is the email address for Spokane Public Radio.

8. The signature block on the email included the following information: Prof. Gregory Spatz, Program Director, www.gregoryspatz.com, The MFA @ EWU, Eastern Washington University, 668 North Riverpoint Blvd #260 Spokane, WA 99202, 509-828-1310 office, 509-990-8706 mobile.

9. Board staff reviewed Mr. Spatz's emails and confirmed the emails were sent from Mr. Spatz's state computer. Board staff also located an email from the radio station to Mr. Spatz's EWU email address confirming receipt of the email and stating that they would be putting the event on their "on-air Arts Calendar."

10. In a written response to Board staff from his EWU email address, Mr. Spatz stated that he acknowledges that he used his EWU email to invite the EWU community to an event he was hosting called a "CD Release Party." He said this was a ticketed event. Proceeds from ticket sales and CD sales went entirely to offsetting the cost of hosting the event. The event was a one-time affair, hosted at another faculty member's house. His intention, in sending around an invitation to the EWU community, was to be inclusive and collegial and to build upon their current Department Chair's efforts to make the English Department a friendlier and more inclusive department. He said he understand that the invitation, which used EWU email, constitutes a misuse of state resources since it included the ticket price and links to read more about the CD or to purchase it.

11. Mr. Spatz stated that he received EWU's letter of "constructive action" from the College of Arts Letter and Education (CALE) Dean's office. He said he agreed to meet with Deborah Danner (Ms. Danner), the Associate Vice President in Human Resources (HR), for the purpose of "constructive action" so that he can receive coaching and training about this type of ethics violation and he has agreed to the training.

12. In a written response to Board's staff's follow-up questions, Mr. Spatz said that he has never asked Ms. Russell-Elliott to send out an email announcement for a CD release event, other than

the one found by the SAO. He said he did not remember if it was his state computer or personal that he used to generate the invitation to the CD release party.

13. In a written response to Board staff, Ms. Russell-Elliott said that as the Program Coordinator for the Master of Fine Arts (MFA) Program at EWU, she answers directly to the Program Director, which is currently Mr. Spatz. At times, as needed, she also reports to the English Department Chair, Logan Greene (Ms. Greene), who supervises the Program Director.

14. She said she sees her role as support of their MFA students and faculty, by connecting to the writing community and arts here in the Inland Northwest by notifying them of events that are taking place and might be of interest. She said she creates listservs of all of their students and sends announcements to them as they come in to her if she believes they are pertinent to the arts, or may be of interest to the writing community.

15. She said the email in question was forwarded to her by Mr. Spatz as an invitation, not a directive. Ms. Russell-Elliott said she receives numerous announcements daily from students, alumni, community organizations, national literary magazines and contests and if she glances through the subject line and it appears to be of interest to her writers/students, she will forward it on to them for them to take a closer look.

16. With regard to Board staff's question about faculty using personal email addresses, she said it is for no other reason than the fact that state email addresses were lacking at best until recently. EWU has been very slow to become current and competitive with other University websites globally. Most of the faculty began by using their personal email addresses for no other reason than to have one single web email to send and receive communication from, she believes. Currently, all faculty within her department are using EWU email addresses. Ms. Russell-Elliott said that in years past, faculty home and work computers were infected by viruses that came through the EWU email service and wiped out their

hard drives. Because of years of past practice, there remains a large percentage of communication that comes by default to personal email addresses.

17. According to the SAO report, during a review of Mr. Spatz's EWU webpage, they found that Mr. Spatz referenced five books he wrote, four of which had direct links to retail sites to purchase the books. The webpage also included a link to his personal website, where his books and music could be purchased. According to the SAO, Mr. Spatz said that only three of his books are currently in publication. The remaining two are no longer in print and only available for second-hand purchase, so he receives no money from those sales. He said he has links to his books on his EWU website because his department uses their publications to entice students to enroll. He said he might have received an advance in the past but no longer receives money from those publications.

18. Board staff were provided screen shots of the Mr. Spatz's EWU website titled, *The MFA at EWU, Master of Fine Arts in Creating Writing*, and noted that there were five books listed on the website. Those books were written by Mr. Spatz. Links were provided on the website for readers to review and purchase the books.

19. In a written response to Board staff from his EWU email address, Mr. Spatz stated that he acknowledges that in the course of the SAO investigation they discovered links to the publishers of his books on his EWU faculty webpage. He said he is not the website manager for his program or his department and does not manage the website content. The links on his webpage are consistent with links on other faculty member webpages within his department and on faculty webpages at peer institutions elsewhere in Washington. He said the links are not intended to sell books but rather to help with program promotion, promotion of EWU, and recruitment of new MFA students in a highly competitive climate.

20. Board staff emailed Mr. Spatz and asked him if he directed the person that manages the website to put links to the publishers of his books on his EWU website or whether he did it himself. In a

written response, Mr. Spatz said he neither posted the links to his books on the EWU website nor instructed anyone to do so for him. The EWU MFA website was developed and built some years ago by a former student, David Ratcliff, at a time when he was not serving as program director. His only involvement with it was to check his page at the end for accuracy and for errors.

21. Mr. Spatz said that he was told that the English Department Chair has asked their web manager to deactivate links to booksellers on all Creative Writing and English Department faculty webpages. He said he would follow up with the UFE³ and EWU management for further clarification and about any changes to EWU's policies with regard to faculty webpages and compliance with Washington State ethics laws. He said he will make sure that his webpage is in full compliance.

22. In a written response to Board staff from EWU, they stated that they did not do an investigation. They relied on the investigation conducted by the SAO. In regards to the EWU website for the Creative Writing program, Melissa Dziejic (Ms. Dziejic), a graduate student, currently maintains it.⁴ It is their understanding that Ms. Dziejic does not make independent decisions about what to include or not include on the site, but has appropriate experience and understanding to maintain it. It is further their understanding that if a faculty member requested that information be added, Ms. Dziejic (or individual assigned to manage that website) would follow that instruction. According to EWU, the department has instructed that active links to commercial websites be removed.

³ UFE is the acronym for EWU's union, United Faculty of Eastern.

⁴ Mr. Spatz advised Board staff that Ms. Dziejic is an alumna of the MFA program who finished her degree work in 2015. She began working for the MFA program in 2017 as a part time Marketing Assistant. Her responsibilities include maintaining their website.

23. Board staff recently reviewed Mr. Spatz's EWU website. The website no longer markets Mr. Spatz's books but does provide a link to his personal website, which does market his books and includes links to purchase publications.⁵ The website also lists Mr. Spatz's personal email address as his contact email address. There is no mention of his EWU email address.

24. Board staff reviewed the University policy under Prohibited Uses, (2-4)(a)(4), which states, in pertinent part, that:

- University resources may not be used for product sales (online book sales or referral links to book publishers or sales houses), even though not for remuneration.

25. After reviewing the Board Determination of Reasonable Cause, Mr. Spatz requested Board staff add he has not made money in his professional capacities as a writer or a musician in the last 20 years. He stated, "I have not realized net financial gain as a result of my artistic output."

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from Use of persons, money or property for private gain. RCW 42.52.160 states:

No state officer or state employee may employ or use any person, money, or property under the officers or employees official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee or another.

WAC 292-110-010 Use of state resources, after April 2016, states, in part:

.....
(3) **Permitted personal use of state resources.** This subsection applies to any use of state resources not included in subsection (2) of this section.

(a) A state officer or employee's use of state resources is de minimis only if each of the following conditions are met:

(i) There is little or no cost to the state;

⁵ Mr. Spatz advised Board staff he was informed that Ms. Danner had advised staff that links from the EWU website to faculty personal websites did not constitute a violation of RCW 42.52. Mr. Spatz said he advised their web manager to reinstate links to faculty personal websites on the EWU MFA website in February 2019.

- (ii) Any use is brief;
- (iii) Any use occurs infrequently;
- (iv) The use does not interfere with the performance of any state officer's or employee's official duties;
- (v) The use does not compromise the security or integrity of state property, information systems, or software;
- (vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and
- (vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

2. Based on the evidence reviewed, Mr. Spatz used state resources for his private benefit or gain in violation of RCW 42.52.160. Mr. Spatz activities do not meet the exceptions for the use of state resources as permitted in WAC 292-110-010.

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 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 Gregory Spatz 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. Gregory Spatz 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. Gregory Spatz 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. Gregory Spatz 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 Gregory Spatz 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. Gregory Spatz 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 Gregory Spatz 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 Gregory Spatz 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 Gregory Spatz 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, Gregory Spatz 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, Gregory Spatz 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. Gregory Spatz agrees to pay a civil penalty in the amount of two-thousand-five-hundred dollars (\$2,500) associated with violations of RCW 42.52. The Board agrees to suspend five-hundred dollars (\$500) on the condition that Gregory Spatz 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 two-thousand dollars (\$2,000), 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.

II. CERTIFICATION

I, Gregory Spatz, 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

party, which may be filed in the future. No other claims of alleged violations are pending against Gregory Spatz 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 Gregory Spatz 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, Gregory Spatz 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, Gregory Spatz 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.

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II. CERTIFICATION

I, Gregory Spatz, 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.



GREGORY SPATZ
Respondent

6-14-19

Date

Presented by:



KATE REYNOLDS
Executive Director

6/24/19

Date

