

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Kelly Jo Kegerreis
Respondent.

No. 2020-023

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Kelly Jo Kegerreis 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 April 17, 2020, the Executive Ethics Board (Board) initiated a complaint after receiving a State Auditor's Office (SAO) Fraud Report alleging that Rosanne Kenedy (Ms. Kenedy), an Administrative Manager (AM), and Kelly Jo Kegerreis (Ms. Kegerreis), a Secretary Senior (SS), with the Washington State University (WSU) School of Music (SOM), may have violated the Ethics in Public Service Act by using state resources for private benefit or gain.

2. According to the WSUIR, Ms. Kegerreis was hired on June 9, 2014 as a SS for the SOM. Ms. Kegerreis' responsibilities included reception, scheduling, mail, receipting, time cards

and time/leave reports, and other duties specific to assisting with students and faculty. Her position was classified, overtime eligible.¹

3. According to the SAO, the WSU Internal Audit Department notified their office of potential losses of public funds. The SAO reviewed WSU's final investigation reports and selected four cases totaling misappropriation of \$12,238.55 that occurred between August 2014 and February 2019. According to the SAO, they reviewed WSU's investigations and agreed with the conclusions reached.²

4. According to the Chief Audit Executive for WSU Heather Lopez (Ms. Lopez),³ on July 14, 2017, they received information from Human Resource Services (HRS) Consultant Zami Wilson (Ms. Wilson) regarding suspected fiscal irregularities and employee misconduct in the SOM. Based on an evaluation of preliminary information they opened an investigation (WSUIR) to determine if SOM employees were being properly paid and if their use of leave was being properly recorded.

5. According to the WSUIR, the scope of the review was specific to SOM reception office employees Ms. Kenedy and Mr. Kegerreis. Because these two employees held a number of fiscal responsibilities, they also reviewed purchasing card activity, general procurements and travel.

6. According to the WSUIR, they performed a review of Ms. Kenedy's time and leave reports through the date of her hire. They found numerous errors in calculation, accrual rates and

¹ The WSUIR stated that for classified employees, all time worked and time taken off from regular schedules should be recorded on monthly Time Reports.

² One of the four cases involved two employees in the same office. Board staff initiated complaints on all five of the individuals named in the WSU/SAO investigations.

³ Author of the WSUIR and ethics advisor for WSU.

carryforward. Ms. Kenedy had also taken time off but did not record it as leave for breaks in August and December.

- Audited annual leave balance at December 31, 2017 was 131.08 hours (recorded was 132.42 – a difference of -1.34).
- Audited sick leave balance at December 31, 2017 was 609 hours (recorded was 589.5 – a difference of 19.50).
- Significant errors in carryforward balances impacted end balance.
- Time off that should have been recorded as leave but was not:
 - 40 hours August 2015
 - 40 hours August 2016
 - 24 hours December 2016
 - 80 hours in July 2017 only recorded as 64

7. According to the WSUIR, Ms. Kenedy was listed as supervisor to Ms. Kegerreis during the whole period of the review although Mr. Yasinitzky signed Ms. Kegerreis's time reports. According to the WSUIR, Ms. Kenedy, as Ms. Kegerreis' supervisor, allowed Ms. Kegerreis to take time off without recording it. The WSUIR stated that even if Ms. Kenedy did not sign the time/leave report, Ms. Kenedy was in the position to schedule, supervise and be aware of subordinate activity and should have reported time correctly to Mr. Yasinitzky.

8. According to the WSUIR, Ms. Kegerreis had a start date of June 2014. In August 2014, both Ms. Kenedy and Ms. Kegerreis closed the SOM office and took a full week off without claiming leave. Each August (and December) after that, both took block periods off and did not report the time as leave.⁴

⁴ Both employees were paid for those hours that were not worked.

9. According to the WSUIR, in interviews, Ms. Kenedy noted a week of closure in August was standard going back at least ten years. Mr. Yasinitsky confirmed the week off in August but he stated he always presumed when the time was taken off it was recorded as annual leave.⁵ Employees in units outside of the SOM office also acknowledge the SOM office has, for several years, closed a week in August. This was noted to create an inconvenience for which faculty and staff have found workarounds. It was further noted that other employees, outside of the SOM office, may sometimes take some time off that same week – but if time was taken off, it was recorded as annual leave. According to the WSUIR, the investigators verified with three employees outside of the SOM office that time was either worked during the August SOM office close period, or, if taken off, the hours were recorded as annual leave hours.

10. Although Mr. Yasinitsky signed off on Ms. Kegerreis' time reports each month, Ms. Kenedy stated she had performed careful review of Ms. Kegerreis' time reports for at least the first 4-6 months of employment to "ensure they were correctly prepared and completed." The WSUIR stated that Ms. Kenedy did not identify that the time reports were completed incorrectly and did not correct Ms. Kegerreis' time report when she did not claim as leave a full week of no work in August 2014 when the SOM office was closed.

11. According to the WSUIR, Ms. Kegerreis improperly completed her time report from the second month of hire and through the review date. As an overtime eligible employee she was to record time worked on a positive basis on the time report. She did this correctly only in the first month of employment. The second month and forward she used the time report but did not

⁵ Board staff were advised by Ms. Lopez that for the first two time frames that Ms. Kegerreis and Ms. Kenedy took time off without claiming leave, Mr. Yasinitsky was confirmed to be in travel status for work. After that she did not check the rest of the times that Ms. Kegerreis and Ms. Kenedy called out since Mr. Yasinitsky was not under investigation. She said she also interviewed other staff and did not find anyone else had taken time off during those time periods without claiming leave.

record hours worked each day, as the form requires, and instead only recorded time taken off. This was an incorrect use of the report and time tracking requirements. The WSUIR states that Ms. Kegerreis' training record notes she participated in time report training which goes over the proper completion of time reports.

12. According to the WSUIR, after review of emails and calendars, the misuse of time by both employees started around when Ms. Kegerreis first started her employment. As comparison, in 2013, the year before Ms. Kegerreis' appointment, Ms. Kenedy had reported 40 hours annual leave during the reported SOM office closure in August.

13. According to the WSUIR, the office hours for the SOM were reportedly in place when Mr. Yasinitsky began his tenure as SOM Director. When he started as the Director he was told by Ms. Kenedy what the office hours would be (8am- 4pm) and what hours she worked. He did not question this. The office hours did not align with university required hours of operation (8am-5pm).

14. According to the WSUIR, Ms. Kegerreis was responsible to provide reception duties for the SOM, including answering phone calls and managing mail. If regular hours were not maintained, the ability to perform these duties as intended and to provide service to the faculty, staff and students of the SOM is impacted.

15. According to the WSUIR, for the review of Ms. Kenedy they requested time/leave from the SOM. They received the requested records from Annette Bednar (Ms. Bednar), the Finance Manager called in to assist the SOM, for reports through June 2017. They noted for June 2017, there were corrections applied to the employee and supervisor signed report. The ending annual leave balance of 233.40 hours was replaced with 172.40 hours. There was no note on the signed report of how the new balance was derived or who applied the corrections. The WSUIR

stated that during an interview with Ms. Kenedy in January, she said she ‘audited’ her time/leave reports in May/June 2017 and the corrections were hers as a result of that review.

16. According to the WSUIR, they requested and received time/leave reports for July 2017 through December 2017. They received two copies, one copy from Ms. Bednar and one copy from Ms. Kenedy. There were variances between the versions:

- July 2017 – unit copy of leave report signed by both the employee on August 9, 2017 and the supervisor on August 14, 2017. The June corrected ending annual leave balance of 172.40 was carried forward and corrected on the July report by crossing out 233.40 and replacing with 172.40. Annual leave hours calculated to 80 but the report only recorded 64 used. The ending balance was corrected to 192.07 and then again to 123.07. The unit copy of this report included an email from Ms. Kenedy to the unit noting errors found subsequent to the report submission; the annual leave should be 80 hours, so corrected end balance should be 107.07. There is no indication of subsequent supervisor approval for those corrections.
- August 2017 – unit copy of leave report signed by both the employee on September 13, 2017 and the supervisor on September 14, 2017. A copy sent by the employee had the same signatures and dates but corrections to annual leave were clearly made post-signature. These corrections were noted in an email to the unit.
- September 2017 – unit copy of this report was signed by both the employee on October 4, 2017 and the supervisor on October 10, 2017. This version has the beginning and ending annual leave balances crossed out and corrected. The corrected balances tie to both unit and employee versions and to the email sent by the employee to the unit. However, the copy sent by the employee directly to the auditor was a ‘clean’ copy with her audited balances typed in and was signed by the employee October 9, 2017 with no supervisor signature. There should not be two versions of report.
- October 2017 – unit copy of leave report signed by both the employee and the supervisor on November 29, 2017. A copy sent by the employee was only signed by the employee with a date of November 6, 2017 with the same ending balances in both versions, but there should not be two versions of the report.
- November 2017 – unit copy of leave report was signed by both the employee and the supervisor with a date of November 29, 2017. A copy sent by the employee was only signed by the employee with a date of December 4, 2017, with the same ending balances in both versions. There should not be two versions of the report.

17. According to the WSUIR, the overlap of versions of the leave reports has created confusion over the integrity of balances and approvals. For all calculations, they relied on the version from Ms. Bednar, the 'unit' copy. According to the WSUIR, they felt that corrections made to reports after the supervisor signed them are indications of document alteration and cannot be relied upon until reviewed and verified by a supervisor post-correction.

18. According to the WSUIR, they concluded that Ms. Kenedy misappropriated state resources in that she received compensation for time not worked. At least 192 hours were not worked during regular scheduled hours or University official hours, but the time off was not recorded as leave. These were not calculation errors. These were hours Ms. Kenedy closed the office, did not report to work, and did not report the time off as leave.⁶

19. According to the WSUIR, a meeting was held with Ms. Kenedy on November 15, 2018 to discuss the closing of this review. She was provided an abstract of this report with just the results and recommendations and afforded an opportunity for comment. She replied timely with no contestation of the results and claimed responsibility for the incorrect time and leave reports.

20. According to the WSUIR, their review of Ms. Kegerreis' time records and other supporting evidence found significant concerns:

- Ms. Kegerreis used 201.49 more annual hours than earned.
- Ms. Kegerreis used 23.25 more sick leave hours than recorded.
- Ms. Kegerreis reported earning 17 hours more compensatory time than earned.

⁶ 72 of those hours were in 2014 and were not within the Boards jurisdiction of 5 years.

21. The WSUIR stated that they submitted their calculations to HRS. A consultant reviewed them and found different variances due to the application of leave without pay early in the position tenure. The end result remained that a significant number of hours were paid as worked when the supporting evidence showed that Ms. Kegerreis did not work and did not have sufficient earned leave to support compensation for time off. Ms. Kegerreis took time off without recording it as leave for extended breaks in August and December, and time off to attend classes in Spokane. There were other instances of time off not recorded for sick days and miscellaneous purposes (e.g. 'truck broke down').

22. Ms. Lopez said that HRS went back to the first occurrence of Ms. Kegerreis taking leave and applied the rate of pay at the time to make adjustments for each pay period of what should have been LWOP. She said this impacted ending balances. The corrective actions are the calculations they made to get verified balance notice of what Ms. Kegerreis owed WSU and the amount needed to be reimbursed by Ms. Kegerreis.

23. Board staff contacted Ms. Lopez and asked what the difference between the audits calculating and the HRS ended up being. In a written response to Board staff, Ms. Lopez said the difference was relevant to Ms. Kegerreis' time. When they did the initial calculations of leave accrual and to audited absences, they were using running totals against evidence of use. When they sent those to HRS to verify, because Ms. Kegerreis was not eligible to use annual leave the first six months (but did take time off, and did not record that time off), the time off should have been leave without pay.

24. Ms. Lopez provided Board staff with a signed agreement between Ms. Kegerreis and the WSU Payroll Services, dated June 1, 2018, in which Ms. Kegerreis agreed to "write a

check out to the Washington State University in the amount of \$100 by the 25th of each month, until the total net amount of \$2,926.71 has been repaid.”

25. According to the WSUIR, they also reviewed purchasing card activity for SOM card holders. According to the WSUIR, the Internal Audit Department did not identify any travel or purchase card misappropriation.

26. In a written response to Board Staff, Ms. Kenedy confirmed that she had been the AM for the SOM. She said as the AM, her responsibilities included: being an Administrative Assistant to the Director of SOM; supervising of the receptionist position; making purchasing, reconciling and managing of all budgets, travel arrangements, payments and reconciling; maintaining all personnel records; calculating all student evaluation scores for the school; purchasing and reconciling the SOM’s Purchasing Card (Visa); creating and checking all scholarship offers; processing payroll for all FTE and review of all time card employee records submitted by the Secretary Senior; taking minutes at faculty meetings; being privy to certain confidential information; working with student records, including helping professors submit grades, getting statistics for SOM; maintaining current balances of budgets; creating room schedule which helped cross-exam the class scheduling so there were no mistakes; and all other duties as instructed.

27. Ms. Kenedy said that in approximately 2013, Mr. Yasinitsky was appointed as the new SOM Director. She said he had been a professor at the SOM for around 35 years and was a Regents Professor. She said that he never held an administrative job at the school. She said Mr. Yasinitsky has a very strong personality and at first they worked out their differences.

28. According to Ms. Kenedy, she hired Ms. Kegerreis as the Secretary Senior at SOM, in 2014. She said the strong personalities of Ms. Kegerreis and Mr. Yasinitsky clashed and it was

very stressful. The atmosphere in the office became toxic and she tried talking to Mr. Yasinitzky about it. Ms. Kenedy said she did not think HRS could help in any way, so she never addressed it with them. Ms. Kenedy said one time she wrote a note to the Dean about the situation, but nothing came of it. Ms. Kenedy said that after returning to work from taking Family Medical Leave for a few weeks, the stress was worse. The stress of everything going on at the SOM was almost unbearable and she said it managed to creep into every facet of her work⁷.

29. In regards to the Leave Reports, Ms. Kenedy said that Ms. Kegerreis was responsible to make all the updates needed for each Time and Leave Report. She would submit them to the employees and would collect the signed papers. Ms. Kegerreis then submitted them all to Mr. Yasinitzky for signature. After that, Ms. Kegerreis filed them. Ms. Kenedy said she never saw them.

30. In regards to Ms. Kegerreis' Time Reports, Ms. Kenedy said her Time Report "was a mess." She told her she had to put her hours on a Time Report, but she still used a Leave Report. Unfortunately, it was verbal instructions, so there is no proof that she ever counseled her on this issue.

31. Ms. Kenedy said she takes full responsibility for neglecting to report leave time taken. She said that fortunately she still had leave available to take care of the error. Ms. Kenedy said she was fired with cause on January 18, 2019. Ms. Kenedy said she regrets all the actions and inactions that occurred on her part.

⁷ Ms. Kenedy provided Board staff with information about personal tragedies and medical issues she experienced during this time period. In the interest of privacy, Board staff did not include that information in this investigative report.

32. According to WSU, Ms. Kenedy separated from WSU January 18, 2019. They confirmed that her leave balance was adjusted to compensate for the leave not reported prior to her payout at termination.

33. In a written response to Board staff, Ms. Kegerreis confirmed that she was hired on June 06, 2014, as the Secretary Senior for the SOM and began working on June 09, 2014. She said Ms. Kenedy told her that the reason she was hired within the first 15 days of the month was so she could begin receiving benefits right away.⁸

34. Ms. Kegerreis stated that the first week of August 2014, the SOM closed with signage on the doors. She said since she was a new employee, she inquired if she would be in the office, working on tasks. She said both Ms. Kenedy and Mr. Yasinitsky stated she would be taking that week off too and 'not to worry about it.' Ms. Kegerreis said that trusting their word, she did not worry about it.

35. Ms. Kegerreis said that in the beginning of 2017 she was notified that an audit was occurring within the SOM. She said that during this conversation Ms. Kenedy physically assaulted her. She said Ms. Kenedy returned back from a meeting with the HRS in the College of Arts and Sciences, reached down over the desk, grabbed her by her shirt, pulling her up onto her feet and told her that she was going to take the hit for the mess up in payroll. Ms. Kegerreis said this was the same issue that she refused to be responsible for due to her documented learning disability. She said she informed HRS in the Dean's office at the College of Arts and Sciences of Ms. Kenedy's assault. She said that Ms. Kenedy was transferred, yet nothing was done regarding her

⁸ Ms. Kegerreis also provided Board staff with ADA information regarding employment. In the interest of privacy, Board staff did not include that information in this investigative report.

physical assault upon her. She said she was labeled a ‘whistleblower’ and was unable to transfer to other departments within the WSU organization.

36. Ms. Kegerreis said in the summer of 2017, Jackie Meyer (Ms. Meyer), a Fiscal Specialist in Payroll Services came into the office and met with her. Ms. Kegerreis said she was notified that that she had received an overpayment. Ms. Meyer showed her the information (reflecting all the way back to August 2014) when Mr. Yasinitsky and Ms. Kenedy mentioned to ‘not worry about it.’ Ms. Kegerreis said that Ms. Meyer indicated she had an overpayment of \$2,926.71. Ms. Kegerreis said this was the timeframe Ms. Kenedy told her she had reached the milestone of six months and the completion of her probation period. Ms. Kegerreis said she was doing her job as instructed by Ms. Kenedy.

37. Ms. Kegerreis said they agreed on a repayment plan of \$100 a month until all funds have been repaid. She said she has not missed a payment to date and has \$526.71⁹ remaining to pay. She said she quit WSU the last week of February 2018.

B. CONCLUSIONS EOF 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.

⁹ Since providing her written response, Ms. Kegerreis has completed paying back the University in full.

(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;
- (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, Ms. Keggereis used state resources for personal benefit in violation of RCW 42.52.160. Ms. Keggereis's 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. It is a mitigating factor that Ms. Keggereis paid back the \$2,926.71 in full.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Kelly Jo Kegerreis 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. Kelly Jo Kegerreis 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. Kelly Jo Kegerreis 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. Kelly Jo Kegerreis 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 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. Kelly Jo

Kegerreis 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 Kelly Jo Kegerreis 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 Kelly Jo Kegerreis 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.

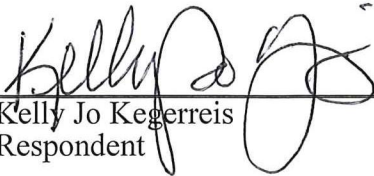
10. If the Board rejects this stipulation, or if Kelly Jo Kegerreis does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Kelly Jo Kegerreis 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. Kelly Jo Kegerreis agrees to pay a civil penalty in the amount of two-thousand five-hundred dollars (\$2,500) associated with violations of RCW 42.52.

12. The civil penalty in the amount of two-thousand five-hundred dollars (\$2,500) 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, Kelly Jo Kegerreis, 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.




Kelly Jo Kegerreis
Respondent

8/10/2020

Date

Presented by:



KATE REYNOLDS
Executive Director

9/11/2020

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 11th day of September 2020.

Approved via Virtual Meeting
Shirley Battan, Chair

Approved
Gerri Davis, Vice Chair

Approved via Virtual Meeting
Lisa Marsh, Member

Approved via Virtual Meeting
Anna Dudek-Ross, Member

Approved via Virtual Meeting
Jan Jutte, Member

* I, Kelly Jo Kegerreis, accept/do not accept (circle one) the proposed modification(s).

Kelly Jo Kegerreis, Respondent

Date