

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Lisa Cutler,

Respondent.

No. 2020-005

No. 2020-064

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, LISA CUTLER, 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 December 18, 2019, the Board received a complaint (2020-005) alleging that Lisa Cutler (Ms. Cutler), Computer Technology Specialist at Clover Park Technical College (CPTC), may have violated the Ethics in Public Service Act by using state resources for her personal benefit and to support the Classified Union at Clover Park Technical College Local 4789 (Union).

2. On November 5, 2020, the Board received a second complaint (2020-064) alleging that Ms. Cutler may have violated the Ethics in Public Service Act by using state resources for her personal benefit and to support the Union.

3. Ms. Cutler was hired at CPTC on May 20, 2004 as the Support Secretary for the Advising Counsel. In February 2010, she became a Program Assistant, Student Services and on September 1, 2010, she became an Instructional Support Specialist. On July 1, 2017, she was

appointed to her current position as a Computer Technology Specialist. Ms. Cutler was in that position for all times pertinent to this investigation. Ms. Cutler attended a four-hour ethics course presented by Board staff on January 16, 2018.

4. In December 2005, Ms. Cutler received a verbal warning for the improper use of state computer resources.

5. Ms. Cutler was the President of the Union, and over the past fifteen years she has been an executive board member and officer, shop steward, grievance chair and negotiations team officer. On November 20, 2020, she ended her term as union president and on December 11, 2020, her term as a member of the union negotiating team ended.

6. The 2015 - 2019 Collective Bargaining Agreement (CBA) between Clover Park Technical College District #29 and Clover Park Federation of Classified Employee, Local 4789, Article 4 – Union Rights and Responsibilities, Article 4 states the following:

**4.2 Work time for representation purposes:**

Employees shall not conduct more than de minimis AFT<sup>1</sup> Washington or Union business on work time, except that with approval by the supervisor or the College's Chief Human Resources Officer ("CHRO") an employee may use a reasonable amount of work time for administration of this Agreement or as required by law.

**4.4 Use of Employer communications equipment and facilities:**

Members of the Union may make reasonable use of the Employer's communications equipment and facilities solely for the purpose of lawful communications in administration of this Agreement, provided that the Employer does not incur any additional costs and such use does not (A) regularly take up a significant portion of any employee's work time, (B) interfere with job duties or Employer operations, or (C) violate any law, including the state Ethics law. Any such use will be subject to public disclosure and records retention requirements that apply to public records.

**4.5 Use of Employer physical facilities:**

- A. Building usage: The Union shall have the right to use the Employer's buildings for lawful activities in administration of this Agreement, **provided that normal scheduling and security procedures are followed**, all College uses get priority, and no additional cost is incurred by the Employer. **(Emphasis added)**

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<sup>1</sup> AFT – American Federation of Teachers

7. On November 14, 2019, Ms. Cutler used CPTC room 113K in Building 15 to hold a Union membership meeting. CPTC was unable to find any record of space being reserved for the Union by Ms. Cutler or anyone else.

#### **Computer and email examination**

8. Board staff's examination of Ms. Cutler's state issued desktop computer, CPTC server and Outlook emails showed data related to her use of state resources to support an outside organization, namely, the Union. Certain documents were found, either on her desktop computer or on the CPTC server, related to conducting the business of the Union and not reasonably related to the negotiation and administration of collective bargaining agreements. Some illustrative examples are: a Word document named "Survey.docx"; a Word document named "Fall 2019 Newsletter for review.docx"; a Word document named "Member Roster 11-14-19.docx"; and a PDF document named "Sound Banking Co. statement".

9. For the period of April 11, 2017 through January 8, 2020, Board staff located 150 emails sent by Ms. Cutler from her CPTC Outlook email account directly related to the Union. Of those 150 emails, approximately 20% of the emails were related to conducting the business of the Union and not reasonably related to the negotiation and administration of collective bargaining agreements.

10. For the period of January 8 through November 5, 2020, Board staff located 60 emails sent by Ms. Cutler from her CPTC Outlook email account directly related to the Union. Of those 60 emails, Board staff believes that approximately 50% of the emails were related to conducting the business of the Union and not reasonably related to the negotiation and administration of collective bargaining agreements.

11. For the period of January 8 through November 5, 2020, Board staff located emails related to bill pay and advertisement notifications, including 32 emails regarding bill payment and 545 emails that appear to be advertisements. Board staff acknowledges that the majority of these were in her spam filter, but believes that in order for Ms. Cutler to have received these ads via her

state Outlook email account she would have had to signed up to receive them at her state email account.

## 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. WAC 292-110-010 Use of state resources 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;
- (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.

3. EEB Advisory Opinion – 02-01 states, in part: “the *Board advises that state agencies do not have the authority to execute provisions in a written collective bargaining agreement that directly conflict with the Ethics in Public Service Act. Conduct that may directly conflict with the Ethics in Public Service Act includes, but is not limited to, a use of state resources to support or oppose a ballot initiative or a candidate to public office; a use of state resources for Union activities that are not reasonably related to the negotiation and administration of collective bargaining agreements, such as Union organizing, internal Union business, or advocating for a Union in a certification, union shop, or other election , except as authorized under statute or rules.*” (emphasis added).

4. Based on the stipulated facts above, Ms. Cutler used state resources for a personal benefit for herself and to support the union in violation of RCW 42.52.160 and WAC 292-110-010.

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, the aggravating factors include that these types of violations significantly reduce the public respect and confidence in state government employees, and the violations were continuous in nature.

### **D. STIPULATION AND AGREED ORDER**

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Lisa Cutler 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. Lisa Cutler 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. Lisa Cutler further agrees that the evidence available to the Board is such that the Board may conclude they 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. Lisa Cutler waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or their 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 Lisa Cutler 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. Lisa Cutler 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 Lisa Cutler and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

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 Lisa Cutler 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, Lisa Cutler 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, Lisa Cutler 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. Lisa Cutler 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 one thousand dollars (\$1,000) on the condition that Lisa Cutler 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.



**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

- x*   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):

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DATED this 14th day of May 2021.

*approved via virtual meeting*  
Shirley Battan, Chair

*absent*  
Gerri Davis, Vice-Chair

*approved via virtual meeting*  
Jan Jutte, Member

*approved via virtual meeting*  
Earl Key, Member

\* I, Lisa Cutler,  accept /  do not accept (circle one) the proposed modification(s).

<u><i>Lisa Cutler</i></u>	<u>4/26/21</u>
Lisa Cutler, Respondent	Date