BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: ELIZABETH WISE, Respondent.	No. 02-042 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Elizabeth Wise, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through BRIAN R. MALARKY, Executive Director. The following stipulated facts, conclusions, 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.

Section 1: PROCEDURAL FACTS

1.1. On June 14, 2002, the Executive Ethics Board received a complaint alleging that during a conversation at the Budd Bay Café in approximately August 2000, Ms. B.J. Wise, an employee of the Superintendent of Public Instruction (OSPI), commented on the rise in Scientific Learning Corporation's (SLC) stock prices and commented on alerting her family of the rise in stock and the purchase of SLC stock. The conversation is alleged to have occurred after work hours and in the presence of employees of SLC. SLC was at the time an OSPI vendor.

1.2. Ms. Wise was the respondent in a previous Executive Ethics Board complaint EEB Case No. 01-82. On April 12, 2002, the Board approved a settlement agreement, which resolved the allegations contained that complaint. The previous complaint involved conduct that occurred during 1999 to approximately June 2001. The allegations contained in the present complaint

occurred during 2000, however, the Board was unaware of these allegations at the time the prior complaint was adjudicated.

1.3. The Board is authorized under RCW 34.05.060 to 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.

1.4. Elizabeth Wise understands that if Board staff proves any or all of the alleged violations 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).

1.5. Elizabeth Wise recognizes that the evidence available to the Board staff is such that the Board may conclude Ms. Wise 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 set forth below.

1.6. Elizabeth Wise 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) which provides in part:

> The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

1.7. If the Board accepts this stipulation, the Board will release and discharge Elizabeth Wise from all further ethics proceedings under chapter 42.52 RCW for matters arising out

of the facts contained in the complaint 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 agreed order. Ms. Wise 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 and agreed order.

1.8. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Elizabeth Wise and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

1.9. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.10. If the Board rejects this stipulation, or if Elizabeth Wise does not accept the Board's proposed modification(s), if any, Ms. Wise waives any objection to participation at any subsequent hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Ms. Wise understands and agrees that this proposed stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

Section 2: FINDINGS OF FACT

2.1. When the Board received the complaint in this matter, and at all times material hereto, the State of Washington, OSPI employed Elizabeth Wise as an Assistant Superintendent of Special Populations. Ms. Wise started working for OSPI on July 1, 1999 and retired on June 30, 2001. Ms. Wise now works for a private employer.

2.2. In approximately April 1999, Ms. Wise admits that she became aware that SLC had developed a product based on research that she had been following for years. She informed a family member about the company and its products.

2.3. Ms. Wise admits that in July 2000 she bought 200 shares of SLC stock at $5.93 per share. She asserts that she has not purchased additional SLC stock, as of early 2003, the SLC stock

was worth approximately $1.59 per share, and her SLC stock holdings represents .000828 of her total stock holdings.

2.4. On September 29, 2000, OSPI entered into an agreement with SLC for a clinical trial of an unlimited number of Fast Forward Training Programs used for the Migrant Worker Students in ESD 105 District. The purchase price was $40,000. Ms. Wise negotiated the contract terms on behalf of OSPI and was the superintendent's designee to monitor SLC's obligations under the contract.

2.5. Ms. Wise asserts that the conversation at Budd Bay Café in approximately August 2000 is different from that described in the complaint. Ms. Wise states that the point of the conversation was that the stock price had fallen significantly and consistently since April 1999, having lost about 75% of its value. Ms. Wise was concerned about the company still being around in the future.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Elizabeth Wise and over the subject matter of this complaint.

3.2. 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.

3.3. The Ethics in Public Service act prohibits a state employee from having a financial interest in a business that is in conflict with the employee's official duties. 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.

3.4. A state employee may not participate in a transaction involving the state when the employee owns a beneficial interest in the company seeking to provide services to the state. RCW 42.52.030(3) states, in relevant part:

> No state officer or state employee may participate in a transaction involving the state in his or her official capacity with a person of which the officer or employee

is an officer, agent, employee, or member, or in which the officer or employee owns a beneficial interest, ...

3.5. RCW 42.52.010(21) defines "transaction involving the state" as:

> [A] proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the state officer, state employee, or former state officer or state employee in question believes, or has reason to believe:
> (i) Is, or will be, the subject of state action; or
> (ii) Is one to which the state is or will be a party; or
> (iii) Is one in which the state has a direct and substantial proprietary interest.

3.6. In EEB Advisory Opinion 97-07, the Board advised that stock ownership creates a conflict of interest if a state officer or employee participates in a transaction with the state on an issue involving the interests of the person in which the officer or employee owned stock.

3.7. Based on Findings of Fact 2.1 through 2.5, Elizabeth Wise violated RCW 42.52.020 and .030(3) when she participated personally and substantially in a transaction between her employing agency, OSPI, and SLC, while she owned SLC stock.

3.8. The Board may 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. Although prior Board complaints are generally considered aggravating factors for consideration pursuant to WAC 292-120-030(3)(e), the conduct at issue occurred contemporaneously with the conduct at issue in EEB Case No. 01-82 and does not present an aggravating factor.

3.9. It is a mitigating factor that: (a) it appears the value of the stocks purchased did not constitute a substantial portion of Ms. Wise's holdings (WAC 292-120-030(4)(e)); and (b) the state did not incur any damages as a result of the violation (WAC 292012909390(1)(c)).

Section 4: AGREED ORDER

4.1. Elizabeth Wise will pay a civil penalty in the amount of two hundred fifty dollars ($250.00) of which one hundred and twenty-five ($125.00) consists of investigative costs.

4.2. The civil penalty of $250.00 is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

CERTIFICATION

I, Elizabeth Wise, hereby certify that I have read this Stipulation and Agreed Order in its entirety. I knowingly and voluntarily waive my right to a hearing in this matter; and I fully understand and voluntary agree to this Stipulation.

Elizabeth Wise 4/28/04

Elizabeth Wise Date
Respondent

Stipulated to and presented by:

Brian R. Malarky 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;

X MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):

monetary penalty will be $1000.*

DATED this 9th day of April, 2004.

Marilee Scarbrough, Chair

Paul Zellinsky, Vice Chair

James M. Vaché, Member

Trish Akana, Member

Evelyn Yensen, Member

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

Elizabeth Wise, Respondent 4-25-04 Date