BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: LUVERSA SULLIVAN, Respondent.	No. 03-038 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, LUVERSA SULLIVAN, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through SUSAN HARRIS, 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 January 17, 2002, the Executive Ethics Board received a Whistleblower complaint from the State Auditor's Office (SAO) alleging that Luversa Sullivan, an employee of the State of Washington, The Evergreen State College (TESC), may have violated state law by: (1) having outside employment that is in conflict with her official duties, (2) failing to submit proper leave documentation, and (3) using school facilities for fundraising activities for the private benefit or gain of another.

1.2. 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.

1.3. Luversa Sullivan 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).

1.4. Luversa Sullivan recognizes that the evidence available to the Board staff 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 set forth below.

1.5. Luversa Sullivan 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 the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing.

1.6. If the Board accepts this stipulation, the Board will release and discharge Luversa Sullivan 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. Sullivan 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.

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

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

1.9. If the Board rejects this stipulation, or if Luversa Sullivan does not accept the Board's proposed modification(s), if any, Ms. Sullivan 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. Sullivan 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 complaint in this matter was filed, and at all times material hereto, Luversa Sullivan was employed by the State of Washington, TESC. Ms. Sullivan began working at TESC as an adjunct faculty member in September 1996 teaching evening and weekend computer classes. On January 4, 2001, she also became a full-time classified state employee as a computer specialist at the Tacoma campus. Ms. Sullivan has primary responsibility for the computing hardware, network and operating system software and applications support to the administrative staff, faculty and students at the Tacoma campus of TESC. Ms. Sullivan's working hours are from 6:00 a.m. to 3:00 p.m. Monday through Friday. She also teaches computer classes on Saturdays.

2.2. Ms. Sullivan's job description form does not actually indicate the hours for her position. The position is listed as "non-scheduled". Ms. Sullivan is required to work 40 hours

per week but not on a specific schedule. TESC runs daytime, nighttime and weekend sessions. The position specification form states that the hours for the position are generally 6:30 a.m. to 3:30 p.m.

Outside Employment

2.3. Ms. Sullivan indicated that she has two companies--the Women's Community Impact Consortium that is a non-profit that she started in about 1995 and the Institute of Electronic Design, a for-profit organization in which she did contract work in the areas of computers and multi-media technology. The Institute of Electronic Design is no longer active. The Office of Financial Management (OFM) indicated that no state contracts had been issued to Ms. Sullivan or her businesses.

2.4. In August 2000, the Tacoma Urban League (TUL), a non-profit organization, in conjunction with TESC received a grant from the Intel Corporation to establish a Computer Clubhouse. The grant permitted TUL to hire a program coordinator to oversee the activities at the Clubhouse. Ms. Sullivan stated that at the time the grant was submitted and issued, it was understood that she would become the program coordinator.

2.5. Ms. Sullivan was hired as the program coordinator in October 2000. Ms. Sullivan and the Executive Director of the TESC Tacoma Campus were unaware of the outside employment approval process policies and did not get this outside employment approved by TESC.

2.6. The Executive Director of TESC, Tacoma Campus, and TUL entered into a Memorandum of Understanding regarding the operation of the Clubhouse on January 14, 2002. The Memorandum states:

> TESC-T will, along with TUL, provide clubhouse management assistance, training and mentors, event coordination, marketing and recruitment assistance and other program support as described in the joint proposal to Intel Corporation. TESC-T will be identified and recognized as a partner in the Intel Computer Clubhouse program in all collateral materials, media outreach, and other public presentations and events.

Failure to Submit Proper Leave Documentation

2.7. The Clubhouse is open from 3:00 p.m. to 7:00 p.m. Monday through Friday but Ms. Sullivan is usually there until 10:00 or 11:00 p.m. The Clubhouse is open on Saturdays and Sundays. Timesheets from the organization reveal Ms. Sullivan is paid for working eight hours a day with an annual salary of $32,000 per year. Ms. Sullivan received benefits from TUL until April 2001. She also accrues annual and sick leave from TUL.

2.8. Ms Sullivan would go to the Clubhouse during the day if an emergency arose. There were staff meetings at the Clubhouse every Monday morning and Ms. Sullivan would attend at least two a month. No documentary evidence was found to verify this information. Ms. Sullivan did not attend the staff meetings on a regular basis.

2.9. The CEO of TUL could not verify or provide documentation as to Ms. Sullivan's daily working hours. The CEO stated that Ms. Sullivan must operate the Clubhouse a minimum of 20 hours per week with the expectation that she will devote 20 hours per week to managing the day-to-day details of the program.

2.10. Ms. Sullivan's state leave records were reviewed, along with the leave records from TUL. Comparison of leave records revealed discrepancies between leave slips on file with the TESC and TUL: Leave was taken on: May 21-25, 2001, (40 hours); August 13-17, 2001, (40 hours); August 26-30, 2002, (40 hours); and September 2-16, 2002, (80 hours). Ms. Sullivan's leave balance at TESC did not reflect the 200 leave hours taken. Ms. Sullivan stated she submitted the leave slips to her supervisor at TESC.

2.11. Ms. Sullivan reviewed her calendar and indicated that on August 13-17, 2001 and on August 26 through September 16, 2002, she was in Africa. Her calendar indicates she was at work at TESC on May 21-25, 2001, however, TUL's leave slip signed by the employee showed she was out of town.

2.12. TESC has no documentation showing the 200 hours of leave taken by Ms. Sullivan. Ms. Sullivan's leave records have been corrected to appropriately account for the

200 hours of leave time. For time taken when no leave balance would have been available Ms. Sullivan was required to take leave without pay. The cash balance owed was taken from her pay for March 10, 2003.

2.13. On November 7, 2003, the Interim Academic Vice President and Provost issued a letter to Luversa Sullivan clarifying her work schedule with TESC and TESC's process for leave requests.

Fundraising Activities for Intel Clubhouse

2.14. Ms. Sullivan had fundraising activities for the clubhouse using TESC facilities. Activities included selling food in the school lunchroom, selling raffle tickets and holding three car washes on campus to raise money for the computer clubhouse. Ms. Sullivan's supervisor, the Executive Director, stated that based on past practices, she gave the students permission to hold these fundraisers on campus.

2.15. The Executive Direct reimbursed TESC $250 for use of the school parking lot for three carwashes and for room use for three student-sponsored lunch sales.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Luversa Sullivan 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.

Conflicts of Interest in Outside Employment

3.3. State employees are prohibited from having interest in a business that is in conflict with the proper discharge of the employee's 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 personally benefit from a grant awarded through a program the employee administers. This issue is governed by RCW 42.52.030 which states in part:

> (1) No state officer or state employee, . . . 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.
> . . .

3.5. Outside employment is primarily, though not exclusively, governed under RCW 42.52.120. RCW 42.52.120 provides conditions under which compensation may be received for the performance of contracts or grants outside of official duties. A state employee may receive outside compensation for services performed outside official duties <u>only if each</u> of these conditions under RCW 42.52.120(1) is met:

> (a) The contract or grant is bona fide and actually performed;
> (b) The performance or administration of the contract or grant is not within the course of the officer's or employee's official duties, or is not under the officer's or employee's official supervision;
> (c) The performance of the contract or grant is not prohibited by RCW 42.52.040 or by applicable laws or rules governing outside employment for the officer or employee;
> (d) The contract or grant is neither performed for nor compensated by any person from whom such officer or employee would be prohibited by RCW 42.52.150(4) from receiving a gift;
> (e) The contract or grant is not one expressly created or authorized by the officer or employee in his or her official capacity;
> (f) The contract or grant would not require unauthorized disclosure of confidential information.

3.6. RCW 42.52.120(1)(c) contains two separate requirements. The first is that the outside employment cannot be prohibited under RCW 42.52.040 which provides:

> (1) Except in the course of official duties or incident to official duties, no state officer or state employee may assist another person, directly or indirectly, whether or not for compensation, in a transaction involving the state:
>
> (a) In which the state officer or state employee has at any time participated; or

(b) If the transaction involving the state is or has been under the official responsibility of the state officer or state employee within a period of two years preceding such assistance.

(2) No state officer or state employee may share in compensation received by another for assistance that the officer or employee is prohibited from providing under subsection (1) or (3) of this section.

(3) A business entity of which a state officer or state employee is a partner, managing officer, or employee shall not assist another person in a transaction involving the state if the state officer or state employee is prohibited from doing so by subsection (1) of this section.

3.7. The meaning of a "transaction involving the state" as used in chapter 42.52. RCW is a contract or similar matter that is the subject of state action; a matter to which the state is a party; or, a matter in which the state has a direct and substantial proprietary interest. RCW 42.52.010(19)(a).

3.8. RCW 42.52.040 would prohibit the state employee from doing two things. First, the state employee could not work, volunteer, or share in compensation received from any matter relating to a grant or contract under the authority or supervision of the state employee. Second, under subsection (3), the state employee could not create a business entity or work for a business entity for the purpose of assisting a grant recipient or contractor if the state employee participated in the grant or contract.

3.9. The second requirement in RCW 42.52.120(1)(c) is that the performance of the contract does not violate applicable laws or rules governing outside employment. This provision recognizes the ability of individual agencies to have specific rules on outside employment, and that employees must comply with those rules.

3.10. TUL received a grant from the Intel Corporation in August 2000 to establish a Computer Clubhouse. Ms. Sullivan did not participate in any decisions by Intel to award this grant to TUL. Part of the grant included a partnership with TESC. The Executive Director of TESC Tacoma Campus signed a Memorandum of Understanding regarding the operation of the Clubhouse. Ms. Sullivan was hired as the program coordinator for the Computer Clubhouse in

October 2000. Ms. Sullivan did not participate in the grant preparation or the memorandum of understanding that the Executive Director approved.

3.11. Ms. Sullivan had two outside companies that according to OFM did not have state contracts.

3.12. Based on Finding of Fact 2.1 through 2.6, Ms. Sullivan may have violated agency policy by not obtaining approval for this outside employment; however, Ms. Sullivan did not violate the Ethics in Public Service Act when she accepted the position with the Clubhouse or had outside businesses.

Failure to Submit Proper Leave Documentation

3.13. The Ethics in Public Service Act also governs the use of persons in an officer or employee's official control or direction and the use of public resources to benefit others. 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.

3.14. Ms. Sullivan took leave time that was not deducted from her state leave attendance records. The dates of leave taken are: May 21-25, 2001 (40 hours); August 13-17, 2001 (40 hours); August 26-30, 2002 (40 hours); and September 2-16, 2002 (80 hours). Although Ms. Sullivan stated she submitted the leave slips to her supervisor at TESC, the leave amounts were not deducted from her leave balances and Ms. Sullivan did not alert the supervisor of this discrepancy. The discrepancy was not resolved until the auditor compared the leave records of TESC with the TUL leave records and questioned Ms. Sullivan regarding the discrepancies. TESC corrected Ms. Sullivan's leave balances to appropriately account for the 200 hours of leave time taken by Ms. Sullivan. For time taken when no leave balance was available, Ms. Sullivan was required to take leave without pay. The leave balance owed to the state was taken from her pay on March 10, 2003.

3.15. Based on Findings of Fact 2.7 through 2.13, Luversa Sullivan violated RCW 42.52.160 when she did not appropriately request leave for absences from work. Ms. Sullivan did not attempt to correct the leave discrepancy until the SAO brought it to the agency's attention.

Fundraising Activities for Intel Clubhouse

3.16. The use of state resources for the benefit of others is governed by RCW 42.52.160 and Board rules. WAC 292-110-010 (1) states:

> The proper stewardship of state resources, including funds, facilities, tools, property, and employees and their time, is the responsibility that all state officers and employees share. Accordingly, state employees may not use state resources for personal benefit or gain or for the benefit or gain of other individuals or outside organizations. ... Responsibility and accountability for the appropriate use of state resources ultimately rests with the individual state office and state employee, or with the state officer or state employee who authorizes such use.

3.17. In EEB Advisory Opinion 00-11 the Board advised that state employees making decisions whether to permit a private business to use state facilities must be careful not to favor some businesses over others. RCW 42.52.070 prohibits employees from using their positions to "secure special privileges" for another person. For example, a violation of RCW 42.52.070 would occur if an employee permits one business to use agency facilities and not another.

3.18. Ms. Sullivan used state resources for fundraising for the Computer Clubhouse. She received permission to use state resources from her supervisor, the Executive Director of TESC Tacoma. The Executive Director reimbursed TESC for the state resources used for the fundraising events. Based on Findings of Fact 2.14 and 2.15, Ms. Sullivan did not violate RCW 42.52.160 when she used state resources for fund raising events.

3.19. 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. The aggravating factor in this matter is that the violation was continuing in nature, was motivated by financial

gain and that Ms. Sullivan did not make any attempt to correct the discrepancy in her leave balances.

Section 4: AGREED ORDER

4.1. For the violation of RCW 42.52.160, Luversa Sullivan will pay a civil penalty in the amount of one thousand dollars ($1,000.00). The civil penalty of $1,000.00 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, Luversa Sullivan, 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 voluntarily agree to this Stipulation.

L Sullivan 01/08/06

Luversa Sullivan Date
Respondent

Stipulated to and presented by:

Susan Harris 2/14/06

Susan Harris Date
Executive Director

II. ORDER

Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, SHEREBY 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 10th day of March, 2006.

Trish Akana, Chair

Approved via telephone
Evelyn Yenson, Vice-Chair

Judith K Golberg
Judith Golberg, Member

Neil Gorrell, Member

Approved via telephone
Paul Zellinsky, Member

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

_____
Luversa Sullivan, Respondent Date