

1 **BEFORE THE WASHINGTON STATE**
2 **EXECUTIVE ETHICS BOARD**

3 In the Matter of:

EEB Case No. 2014-079

4 Antoinette Bates,

FINAL ORDER

5 Respondent
6

7 **I. PROCEDURAL HISTORY**

8
9 On May 8, 2015, the Executive Ethics Board (Board) found reasonable cause to believe
10 that the Respondent, Antoinette Bates, violated the Ethics in Public Service Act while
11 employed with Pierce College. Notice of the Reasonable Cause Determination and the right to
12 request a hearing was served upon Ms. Bates by regular mail and certified mail on May 11,
13 2015. Ms. Bates failed to respond to the Reasonable Cause Determination within 30 days as
14 required by WAC 292-100-060(2).

15 The Board entered an Order of Default on May 8, 2015. On May 11, 2015, Board staff
16 provided Ms. Bates with notice of the Board's Order of Default by regular and certified mail.
17 Pursuant to WAC 292-100-060(4) Ms. Bates was allowed 10 days to request vacation of the
18 Order of Default. Ms. Bates has not moved to vacate the order entered on May 8, 2015.

19 **II. FINDINGS OF FACT**

20 1. Ms. Bates has worked for Pierce College since September 2008 and was so
21 employed for all times pertinent to the investigation.

22 2. In or around October of 2013 Pierce College initiated an internal investigation
23 into allegations made by the co-workers of Ms. Bates, alleging that she was using her state
24 computer, internet, e-mail, printer, and phone for her personal benefit.

25 3. The internal investigation found substantial evidence to support the allegations
26 that Ms. Bates was using state resources for her personal benefit. On January 16, 2014 Pierce

1 College referred the case to the State Auditors Office (SAO) in the form of a whistleblower
2 complaint.

3 4. The SAO obtained Ms. Bates' state issued computer hard drive and emails.
4 Because some of the internet history files were written over through the computer's normal
5 processes, the internet data was sporadic relative to dates.

6 5. The SAO's review of Ms. Bates' internet history covered 47 days, between
7 October 23, 2013 and March 11, 2014. Of those 47 day, 40 had non-work related browsing
8 history including the following:

- 9
- 10 • Updating profiles on social networking sites.
 - 11 • Shopping for clothing.
 - 12 • Streaming music through internet radio and viewing videos.
 - 13 • Browsing personal interest and dating sites.
 - 14 • Searching for religious-based youth treatment centers.
 - 15 • Searching for personal travel, cruise, airline and hotel information.

16 6. The SAO's investigation confirmed that Ms. Bates spent over 4,500 minutes
17 browsing non-work related websites over the 40 days. On 31 of those days, Ms. Bates spent
18 over 60 minutes per day searching non-work related sites.

19 7. In addition to Ms. Bates' internet use, there is evidence to show that she also
20 used the state email system for her personal benefit. A review of Ms. Bates' emails from June
21 6, 2011 through October 16, 2013 revealed the following evidence of personal use:

22 Inbox:

- 23 • 213 emails total
- 24 • 163 (77%) were non-work related.

25 All of these e-mails were responded to during work hours.

26 Sent:

- 5, 237 emails total
- 1,108 (21%) non-work related

Some examples of emails sent:

- 23 emails to Louis Baldwin including some with pictures attached;
- 251 emails to Matherine Green about fundraising, private football club information, and pictures;
- 12 emails to Roman Dixon son's football team;
- 14 emails to ShanaH son's football team and fundraising;
- 19 emails to Mendy Crosby pertaining to children's school;
- 103 emails to Patrick Osby with the subject line of "Hey";
- 3 emails to Pierce College employees regarding the direct sale of jewelry.

8. Additionally, on average, Ms. Bates sent four non-work related emails every workday between June 8, 2011 and October 16, 2013. On 25 of those work days Ms. Bates sent more than 8 non-work related emails. Some examples of the number of emails sent on a given day are shown below:

- 11 non-work related emails sent on September 25, 2012;
- 9 non-work related emails sent on July 31, 2012;
- 10 non-work related emails sent on June 1, 2012;
- 20 non-work related emails sent on May 3, 2012;
- 22 non-work related emails sent on April 17, 2012;
- 32 non-work related emails sent on January 24, 2012;
- 14 non-work related emails sent on January 23, 2012.

Deleted emails:

- 4,722 emails total
- 652 (13%) non-work related

9. Print logs were also reviewed which showed non-work related documents were printed using Ms. Bates' logon ID. The review showed 548 instances or 1801 pages of non-work related documents being printed from September 1, 2011, through October 16, 2013. The cost of printing is calculated at five cents per page for a total of \$90.05. Some examples of the personal documents printed are shown below:

- Yearly Spanish Goals – 3/11/14 at 10:31 am;
- Progress report for A. Bates – 2/24/14 at 8:22 am;
- Physical Science – Week 2 – 2/7/14 at 4:00 pm;
- Semester Finals Review Materials – 1/21/14 at 10:37 am;
- Psy 100 – Chapter 1,2,and 3 slides – 11/4/13 at 10:39 am;
- Psy 100 – Chapter 4, and 6 slides – 11/4/13 at 10:38 am;

- Chapter 11 test – 2/27/14 at 1:05 pm;
- Camp Goodtimes West Update – 1/22/14 at 2:46 pm;
- World Studies – 1/29/14 at 1:30 pm.+

10. A review of Ms. Bates' long distance SCAN calls showed that from November 5, 2012 through July 18, 2013 she made 118 personal long distance phone calls using her state issued SCAN number. These long distance calls resulted in very little extra cost to the state.

11. Pierce College conducted a review of Ms. Bates email, print log, and SCAN activity from the start of the investigation through June 2014, in an effort to determine if Ms. Bates had curtailed her personal use of state resources. The review found that Ms. Bates had continued her personal use. Personal emails were found relating to job searches, college homework, recipes, and her children's schools. Personal documents were still being printed on the state printer including graduate school applications and letters of intent, religious documents, recipes, coupons, meal planning worksheets, a scan to Global One, and an Artist and Casting Management Company requesting check deposit authorizations for her daughter. Furthermore, a review of Ms. Bates' SCAN log showed that she continued to make personal long distance phone calls.

12. A co-worker informed investigators from Pierce College that Ms. Bates continued to make personal phones calls from her personal phone and that she would bring her personal laptop in to her cubical to conduct her personal business. On one occasion this co-worker noticed Ms. Bates was taking an on-line couponing class using her personal laptop at a time when she was not on a break. The co-worker stated the class lasted about 25 minutes.

13. As a result of the Pierce College internal investigation and Ms. Bates' unwillingness to stop using state resources for her personal benefit; she was terminated from her position at Pierce College on May 2, 2014.

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III. CONCLUSIONS OF LAW

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3 1. RCW 42.52.160(1) – Use of persons, money, or property for private gain, states:

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

7 2. Under WAC 292-110-010 (use of state resources) state employees may use state
8 resources for personal use as long as the use is reasonably related to the conduct of the state
9 employees; authorized by an agency head or designee as related to an official state purpose; or
10 for a specific use that promotes organizational effectiveness or enhances job-related skills.
11 Additionally, state employees are allowed occasional but limited use of state resources as long
as the following conditions are met:

- 12 (i) There is little or no cost to the state;
13 (ii) Any use is brief;
14 (iii) Any use occurs infrequently;
15 (iv) The use does not interfere with the performance of any officer's or
employee's official duties; and
16 (v) The use does not compromise the security or integrity of state
property, information, or software.

17 3. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction
18 over Ms. Bates and over the subject matter of this complaint.

19 4. Based on the evidence included in the SAO investigation, Ms. Bates used state
20 computer resources for her private benefit or gain in violation of RCW 42.52.160. Ms. Bates'
21 activities do not meet the permitted uses or exception for the use of state resources as provided
22 for in WAC 292-110-010.

23 5. The Board is authorized to impose sanctions for violations to the Ethics Act
24 pursuant to RCW 42.52.360.

25 6. In determining the appropriateness of the civil penalty, the criteria in WAC 292-
26 120-030 have been reviewed.

1 **IV. FINAL ORDER**

2 Based on the foregoing:

3 IT IS HEREBY ORDERED Respondent Antoinette Bates is liable for and shall pay a
4 civil penalty of three thousand dollars (\$3,000). The payment shall be made to the Executive
5 Ethics Board within forty-five (45) days of this Order.

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7 **V. AUTHORITY AND PROCEDURE**

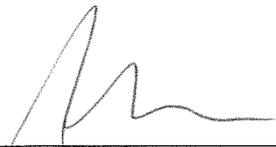
8 Pursuant to RCW 34.05.470, Respondent has the right to file a Petition for
9 Reconsideration stating the specific grounds upon which relief is requested. The Petition must
10 be filed with the Executive Ethics Board at 2425 Bristol Court SW, Olympia, Washington
11 98504, or by U.S. Mail at P.O. Box 40149, Olympia, Washington 98504-0149, within ten (10)
12 days of service of the Final Order upon Respondent.

13 The Petition for Reconsideration shall not stay the effectiveness of this order nor is a
14 Petition for Reconsideration a prerequisite for seeking judicial review in this matter. A timely
15 Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the
16 petition is filed, the Board does not (a) dispose of the petition or (b) serve the parties with a
17 written notice specifying the date by which it will act on a petition.

18 Respondent has the right to petition the superior court for judicial review of the Board's
19 action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition
20 for Judicial Review, see RCW 34.05.510 and sections following.

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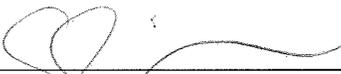
DATED this 18th day of March, 2016



Anna Dudek Ross, Chair



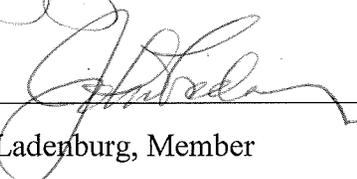
Lisa Marsh, Member



Samantha Simmons, Vice-Chair



Sumeer Singla, Member



John Ladenburg, Member

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