



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report

Bellevue College

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May 6, 2019

Jerry Weber, President
Bellevue College

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 18-025 at the Bellevue College.

The State Auditor's Office received an assertion of improper governmental activity at the College. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the results of our investigation.

If you are a member of the media and have questions about this report, please contact Director of Communications Kathleen Cooper at (360) 902-0470. Otherwise, please contact Assistant Director of State Audit Troy Niemeyer at (360) 725-5363.

Sincerely,

Pat McCarthy
State Auditor
Olympia, WA

cc: Governor Jay Inslee

Suzette Yaezenko, Assistant Vice-President, Human Resources
Kate Reynolds, Executive Director, Executive Ethics Board
Cheri Elliott, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertions and Results

Our Office received a complaint asserting that numerous employees of Bellevue College (College) violated state laws, rules and policies. Among these were civil rights violations, failure to conduct background checks, confidential information breaches, creating a hostile work environment, allowing unqualified staff to teach, awarding stipends to staff for duties that were part of their job descriptions, and paying administrative staff to teach classes during their administrative hours – essentially, double dipping.

We found reasonable cause to believe improper governmental actions occurred.

Background

Because the Whistleblower Act (RCW 42.40) precludes our Office from investigating personnel-related issues, we opened an investigation into whether administrative staff were improperly using state resources when they contracted to teach classes during their administrative hours and received stipends for work that was a part of their administrative duties. Although the complaint alleged numerous administrative personnel were involved in these activities, after speaking with the complainants we narrowed our investigation to five employees.

We requested payroll, travel, and leave documentation for the five employees. After we reviewed the documentation, we found that three of them mainly taught classes after their administrative hours. Therefore, we further narrowed the investigation to the remaining two employees.

About the Investigation

Once we narrowed the investigation to Subject 1 and Subject 2, we requested additional information for review including hard drives; data from the College's online learning platform, Canvas; and additional class information.

Our initial review of the subjects' desktop hard drives revealed no data within our investigative period for Subject 1 and sporadic data for Subject 2. We then requested the hard drives from laptops assigned to the subjects. According to the College's IT department, Subject 1 returned her laptop nearly six months before our investigation because she was having problems with it. Following College procedure, technical support personnel erased and formatted the hard drive. Subject 1 was not assigned another laptop. A College IT department official said Subject 1 logged into various laptops located throughout the campus.

We were able to obtain laptop hard drive data for Subject 2 and Canvas data for both.

During our investigative period, from January 2017 through January 2018, both subjects held program director and assistant director positions.

After reviewing the evidence, we found no clear line of distinction between the time spent on administrative duties and the contract, and stipend-paid duties.

Subject 1

Subject 1's position included teaching a weekly class during her administrative hours. Subject 1 has taught classes, in addition to her administrative duties, since fall of 2015.

Winter 2017

According to Subject 1, because she was on maternity leave this quarter, she was paid to teach the class that is normally part of her administrative duties. The remaining quarters, when she was working, she received no extra pay for that class. In addition, she received a stipend of \$250 to attend a Research Innovation Service Experiential Learning Institute (RISE) course consisting of three one-hour sessions.

Spring 2017

The subject worked 80 percent of a full-time schedule. Subject 1's 80 percent schedule was accomplished by taking leave and leave without pay, instead of adjusting her salary. The table below shows her work and class schedules during this quarter.

Work and class schedules

Monday	Tuesday	Wednesday	Thursday	Friday
<i>Work</i>				
7-11 AM	7-11 AM, 12:30-4:30 PM <i>Lunch:</i> 11:30-noon	7-11 AM, 12:30-4:30 PM <i>Lunch:</i> 11:30-noon	7-11 AM, 12:30-4:30 PM <i>Lunch:</i> 11:30-noon	7-11 AM
<i>Class</i>				
11:30 AM -12:20 PM	11:30 AM-12:20 PM	11:30 AM-12:20 PM 2:30-4:20 PM* Online 6-7 PM	11:30 AM-12:20 PM	11:30 AM-12:20 PM

Note: The two contract classes totaled 10 credits. Her office hours for student contact for the day classes were Mondays from 8 to 10 AM or by appointment. The hours for the online class were during class time or by appointment.

** Administrative assignment*

During this quarter, she also attended three one-hour RISE sessions immediately after her administrative hours, continuing the RISE course from the previous quarter, and again received a stipend of \$250. In May, she received an additional stipend of \$250 for facilitating four workshops from 9 to 10:30 AM on four Mondays. According to Subject 1, she did not take leave for these hours, but might have made up the hours.

We also found that, during this quarter, she took one week off from work and took every Friday off, using leave for her absences of administrative time. However, according to a human resources employee, Subject 1 did not use leave for her absences from her classes nor did she arrange to cover the classes. In response to this issue, Subject 1 said she did arrange for the classes to be conducted and provided an email that advised of her upcoming absence and her intentions to cover her classes for her week off. Regarding her absences on Fridays, she said she did not miss any classes. She said that she was told to account for all of her of absences on one day each week instead of the actual day she did not work a full day. She said there was never a discussion about using leave if she missed a class.

Subject 1 did not teach during the summer quarter.

Fall 2017

The table below shows Subject 1's work and class schedules during this quarter.

Work and class schedules

Monday	Tuesday	Wednesday	Thursday	Friday
<i>Work</i>				
7:30 AM-5:30 PM <i>Lunch: 30 minutes, unscheduled</i>	7:30 AM-5:30 PM <i>Lunch: 30 minutes, unscheduled</i>	7:30 AM-5:30 PM <i>Lunch: 30 minutes, unscheduled</i>	7:30 AM-5:30 PM <i>Lunch: 30 minutes, unscheduled</i>	7 AM-2 PM <i>Lunch: 2-2:30</i>
<i>Class</i>				
12:30-1:20 PM	12:30-1:20 PM	12:30-1:20 PM 2:30-4:20 PM*	12:30-1:30 PM	Online 8-9 AM 12:30-1:20 PM

Note: The two contract classes totaled 10 credits. Her office hours for student contact for the day classes were Mondays from 8 to 10 AM or by appointment. The hours for the online class were during class time or by appointment.

** Administrative assignment*

Although Subject 1 again attended the RISE course, she said she did not receive a stipend because she went during her administrative hours and she said it was considered part of her job.

Subject 1 said that during the fall quarter she left her child at the on-campus childcare for 10 hours each day, proof, she believed, that she worked extra hours. However, her schedule was 10-hour days Monday through Thursday to allow for an hour to teach her contract class, a 30-minute lunch, and a six-hour Friday, not counting the hour she added on Friday to teach a contract class. According to one of her syllabi, she also taught an online class on Friday mornings, but did not add another hour to cover it. When we asked about the apparent shortage in hours, Subject 1 said that hour was “part of those open walk in hours in which anyone could come in and talk to me ...

but at no point did any online student contact me to set up a phone call or meeting. If no one walked in, I would work on email and various other tasks.”

This is further evidence of the blurred line between the two jobs she worked.

Winter 2018

The table below shows Subject 1’s work and class schedules during this quarter.

Work and class schedules

Monday	Tuesday	Wednesday	Thursday	Friday
<i>Work</i>				
7:30 AM-5:30 PM <i>Lunch: 30 minutes, unscheduled</i>	7:30 AM-5:30 PM <i>Lunch: 30 minutes, unscheduled</i>	7:30 AM-5:30 PM <i>Lunch: 30 minutes, unscheduled</i>	7:30 AM-5:30 PM <i>Lunch: 30 minutes, unscheduled</i>	8 AM-3:30 PM <i>Lunch: 10:30-11</i>
<i>Class</i>				
9:30-10:20 AM	9:30-10:20 AM	9:30-10:20 AM 2:30-4:20 PM*	9:30-10:20 AM	9:30-10:20 AM

Note: The contract class was 5 credits. Her office hours for student contact for that class were Fridays from 8 to 9 AM or by appointment. The hours for the required class were Wednesdays from 2:30 to 4:20 PM.

** Administrative assignment*

Subject 1 said she consistently spent time on email in the mornings before her work hours to “maximize her time in the office.” She provided emails to our Office, which she said demonstrated that she was using “flex time” or making up time before her scheduled hours. We reviewed 45 emails and found all but a few contained no more than a one or two sentence response to emails she received earlier in the day.

Subject 1 said she included her student-contact hours during her administrative hours “because they are open to anyone and I always discuss career questions with students. I am not compensated for that time by the adjunct contract.”

Not specific to any quarter, Subject 1 said she often worked through her lunch and emailed after hours.

She explained, “Because we are exempt, the schedules do not function in the same way as a classified schedule because we are not limited to those hours. We are expected to flex and go beyond them.” Considering her statement, we question why Subject 1 received stipends to attend the RISE course when, as she said, it was part of her work, and the classes were held immediately after her core administrative hours.

Subject 2

During our investigative period, January 2017 through January 2018, Subject 2 held an administrative position. Unlike Subject 1, Subject 2's administrative position did not include teaching during his administrative hours. Subject 2 has been teaching contract classes, in addition to his administrative duties, since fall of 2009.

Winter 2017

The table below shows Subject 2's work and class schedules during this quarter.

Work and class schedules

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
<i>Work schedule</i>						
7 AM-4 PM <i>Lunch: 9:30-10:30 AM</i>	7 AM-4 PM <i>Lunch: 1 hour, unscheduled</i>	7 AM-4 PM <i>Lunch: 1 hour, unscheduled</i>	7 AM-4 PM <i>Lunch: 1 hour, unscheduled</i>	7 AM-4 PM <i>Lunch: 1 hour, unscheduled</i>		
<i>Class schedule</i>						
9:30-10:20 AM 4:30-5:20 PM	4:30-5:20 PM	4:30-5:20 PM	Jan. 12 *: 11 AM-12:30 PM	Jan. 27 *: 9-10 AM Feb. 24: 4:30-8:30 PM	Feb. 25: 8:30 AM-5:30 PM	Feb. 26: 8:30 AM-5:30 PM

Note: The classes totaled 12 credits. Office hours for student contact were Mondays and Wednesdays from 4 to 4:30 PM and after class. He said that if necessary he would stay late on Tuesdays, Thursdays and Fridays.

** Subject 2 received a \$200 stipend to facilitate this discussion. He said he adjusted his schedule by coming in early or staying late, or working from home on the weekend and evenings.*

Subject 2 also received a \$700 stipend for 35 non-instructional hours. He said he was paid extra to meet with the students in his class "because of the skills needed to work with 'at risk' youth outside of the classroom." He said he did not track these hours. Subject 2 is currently the director of the program under which these classes fall.

Spring 2017

The table below shows Subject 2's work and class schedules during this quarter.

Work and class schedules

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
<i>Work schedule</i>						
7-4 <i>Lunch: 9:30-10:30</i>	7-4 <i>Lunch: 1-hour, unscheduled</i>	7-4 <i>Lunch: 1-hour, unscheduled</i>	7-4 <i>Lunch: 1-hour, unscheduled</i>	7-4 <i>Lunch: 1-hour, unscheduled</i>		
<i>Class schedule</i>						
9:30-10:20 4:30-5:20	4:30-5:20	4:30-5:20		May 12: 4:30-8:30	May 13: 8:30-5	May 14: 8:30-5

Notes: The classes totaled 12 credits. Office hours for student contact were Mondays and Wednesdays from 4 to 4:30 PM and after class. He said if necessary he would stay late on Tuesdays, Thursdays and Fridays.

Subject 2 received a \$700 stipend for 35 non-instructional hours.

Our review of Subject 2's desktop hard drive found the data available was sporadic; therefore, we limited our review to the period from February 2, 2017, through May 8, 2017, which was the most consistent period. We found 735 minutes of browsing activity that appeared to be unrelated to Subject 2's work, such as news and entertainment, finances, and his personal educational course work. On one day, he spent 146 minutes browsing. He spent a total of 172 minutes on his personal educational course work. We also found his personal course work saved on his work computer.

The data from Subject 2's laptop encompassed May 27, 2017, through January 3, 2018. During that time, the data shows only 53 days of use, predominantly for what appears to be personal use. Only 13 days show work-related activities and then only minimally. He also used this device for his personal educational coursework.

We sent the information from the hard drives to Subject 2 and asked him to review our classifications of his time as work-related or not work-related. We asked that if he did not agree with our classification of activity unrelated to work to explain why.

Regarding the overlap in his schedule and his use of state computers, Subject 2 responded:

Your report shows that my internet searches show that my time has been evidence of teaching, personal use and etc. My job as director of High School Initiatives, requires me to oversee the operations of high school programs. That requires me to direct case-mangers [sic], oversee day to day operations (including instruction). From your report, it may appear that my internet usage shows overlap. I can concur,

overlap can happen because of my job requirements. I would also like to note that canvas continues to run weather [sic] you are directly using it or not. Also, I would like to add that I arrive each day between the hours of 6:15-645am. I commute on the train. I am not always accurate in the overlapping, but I make sure I always work my 40 hours for my director position. I have always shown integrity and have committed to complete my 40 hours required in my contractual obligation.

Canvas

We reviewed Canvas, the online learning platform used by the College, and found that both subjects accessed their contract classes during their administrative hours. We could not determine the amount of time each spent in Canvas because the data does not track each second spent in the site. Each movement to a page has a time stamp that changes when a new page is accessed. For example, a time stamp might be at 7:54 AM and the next at 8:54 AM. In this example, without knowing the content of the specific page and how much information needed to be reviewed, we cannot determine whether the first page was accessed for 10 minutes or for one hour, all we know for sure is that two pages were accessed.

Subject 1 accessed Canvas during her scheduled administrative time each month she taught, with a high of 16 days of access in January 2018 and a low of four days in December 2017. On average, she accessed Canvas for her contract classes 10.13 days each month.

Subject 2 accessed Canvas during his scheduled administrative time each month he taught, with a high of 15 days of access in January 2018 and a low of two days in December 2017. On average, he accessed Canvas for his contract classes 6.73 days each month.

Both subjects said they made up any administrative time they spent working on their contract classes.

We found there was no clear, distinguishable line between the subjects' administrative positions and their contract work; both admitted to using their administrative time to perform their contract work, considered an outside business. Using state resources, which includes time, for an outside business violates state ethics laws.

Additionally, Subject 2 violated state ethics laws when he used his state computer for personal purposes.

Therefore, we found reasonable cause to believe improper governmental actions occurred.

College's Plan of Resolution

Thank you for the opportunity to review and respond to the State Auditor's Office (SAO) draft report on Whistleblower Case Number 18-025. Bellevue College takes the assertions seriously and appreciates the assistance of the SAO in developing important facts from its investigation.

In accordance with applicable collective bargaining agreements and College policy, the College will afford the employees an opportunity to respond to the Auditor's report. Based on the outcome of that process, the College will take appropriate action, which may include formal disciplinary action.

Bellevue College recognizes the importance of ensuring appropriate usage of state resources. The College will continue to work on developing additional trainings and resources to ensure that employees understand, and adhere to, the ethical standards of the State of Washington. Even before the SAO commenced its investigation, the College had recognized that extra duty assignments assumed by some employees conflicted with their regularly scheduled duties and, in response, developed safeguards through both policy and practice to eliminate those conflicts. Bellevue College recognizes the importance of strong internal controls and will continue to evaluate our practices.

State Auditor's Office Concluding Remarks

We thank College officials and personnel for their assistance and cooperation during the investigation.

WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

RCW 42.52.160 Use of persons, money, or property for private gain.

(1) 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.

WAC 292-110-010(1) - Use of state resources.

(1) Statement of principles. All state employees and officers are responsible for the proper use of state resources, including funds, facilities, tools, property, and their time. This section does not restrict the use of state resources as described in subsections (2) and (3) of this section.

(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.