

BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

KATHRYN SMITH,

Appellant,

vs.

WASHINGTON STATE UNIVERSITY,

Respondent.

CASE NO. R-SUSP-08-005

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER OF THE BOARD

**I. INTRODUCTION**

1.1 **Hearing.** This matter came before the Washington Personnel Resources Board, MARSHA TADANO LONG, Chair and LAURA ANDERSON, Member. The first day of the hearing was held at the Office of the Attorney General in Spokane, Washington, on November 13, 2008. The second day of hearing was held by telephone conference on December 4, 2008. Closing arguments were submitted in writing on December 11, 2008.

1.2 **Appearances.** Appellant Kathryn Smith represented herself. Donna J. Stambaugh, Assistant Attorney General, represented Respondent Washington State University.

1.3 **Nature of Appeal.** This is an appeal of a one-day suspension for failing to maintain confidentiality of student information.

**II. FINDINGS OF FACT**

2.1 Appellant Kathryn Smith is a permanent employee for Respondent Washington State University (WSU). Appellant and Respondent are subject to Chapter 41.06 RCW and the rules promulgated thereunder at Title 357 WAC. Appellant filed a timely appeal with the Personnel Resources Board on June 3, 2008.

1 2.2 Appellant is a Program Support Supervisor 1 in the Disability Resource Center (DRC) in  
2 the Division of Student Affairs, Equity and Diversity. She has worked for the DRC for 5 years.  
3 Rosie Pavlov became the Interim Director of the DRC and Appellant's supervisor in February  
4 2007. The DRC provides services to students in need of accommodation in a wide variety of areas  
5 such as testing, note taking, transportation, adaptive technology, alternative print materials,  
6 accessibility, and counseling.

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8 2.3 Appellant had a history of corrective actions including a January 2008 notice of counseling  
9 that included a reminder to keep confidences of students and a March 4, 2008, letter of reprimand  
10 that included issues dealing with confidentiality of student records.

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12 2.4 When Ms. Pavlov became the Interim Director of the DRC, she initiated management  
13 changes for the center which included, in part, written policies and procedures and requirements  
14 such as staff keeping their calendars up-to-date, staff calling in when they are sick or out of the  
15 office, staff receiving permission to work overtime, and staff having scheduled work hours and  
16 lunch breaks. These management changes resulted in increased accountability for staff and  
17 efficiency of operations.

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19 2.5 During the hearing on this appeal, the Board heard extensive testimony about the changes  
20 made by Ms. Pavlov, about issues related to Appellant's work as the program supervisor, and  
21 about matters that did not form the basis for the disciplinary action subject of this appeal. The  
22 matter under appeal is limited in scope and is described in the disciplinary letter signed by Michael  
23 Tate, Vice President for the Division of Student Affairs, Equity and Diversity.

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25 2.6 By letter dated May 7, 2008, Mr. Tate, notified Appellant of her one-day suspension. Mr.  
26 Tate alleged that Appellant failed to maintain the confidentiality of student information when she  
27 divulged a student's name, the student's accommodation and the student's testing ability.

1 2.7 The incident for which Appellant was disciplined occurred on March 26, 2008, in an open  
2 area of the testing center. At the time of the incident, students were taking tests in the testing  
3 center. Appellant was at the Proctor's desk monitoring the testing and talking to another student.  
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5 2.8 While Appellant was talking with the student, Ms. Pavlov asked Appellant when another  
6 student who needed a scribe would be coming in. Ms. Pavlov did not use the student's name.  
7 Rather than giving Ms. Pavlov the time the student would be in, Appellant replied with the  
8 student's name. Appellant then made the comment that the student tested quickly. By using the  
9 student's name in response to Ms. Pavlov's question, Appellant connected the student by name to  
10 the accommodation of needing a scribe. By stating that the student tested quickly, Appellant  
11 divulged information about the student's testing ability.  
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13 2.9 A preponderance of the credible testimony establishes that due to the nature of work  
14 performed at the DRC, services provided and information about students must be held in highest  
15 confidentiality. Staff, including Appellant, receives numerous forms of training on confidentiality  
16 and the requirements of the Family Educational Rights and Privacy Act (FERPA). Appellant was  
17 aware of the importance of maintaining confidentiality of student information.  
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19 2.10 Ms. Pavlov was concerned that Appellant had shared confidential student information in  
20 front of another student and in the testing area where others could have heard the information.  
21 Ms. Pavlov spoke to human resources staff and to Mr. Tate about her concerns. Mr. Tate shared  
22 her concerns.  
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24 2.11 By letter dated April 14, 2008, Ms. Pavlov notified Appellant of a pre-disciplinary meeting  
25 scheduled for April 16, 2008. The letter described the incident and the meeting allowed Appellant  
26 an opportunity to respond to the charge. Appellant attended the meeting and after the meeting,  
27 submitted a written response. Appellant's written response was provided on April 20, 2008.  
28 Neither her response during the meeting nor her written response directly addressed the incident  
29 for which she was disciplined.

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2 2.12 Mr. Tate considered the information from the pre-disciplinary meeting and Appellant's  
3 response. He was concerned that Appellant did not grasp the seriousness of her responsibility to  
4 guarantee confidentiality of student information. He was aware that the issue had been addressed  
5 with Appellant numerous times yet she continued to fail to meet directives and expectations  
6 regarding proper handling and disclosure of student information. Because Appellant had received  
7 prior progressive corrective actions, including counseling, a performance expectation plan and a  
8 letter of reprimand that addressed a breach of confidentiality, Mr. Tate concluded that disciplinary  
9 action was necessary to impart to Appellant the seriousness of her action.

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11 2.13 In determining the level of discipline to impose, Mr. Tate considered Appellant's work  
12 history and length of service with WSU, her training record and the prior corrective actions. He  
13 concluded that a one-day suspension would be sufficient to impress upon Appellant the  
14 seriousness of her misconduct and the importance of meeting workplace standards and  
15 expectations.

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17 2.14 By letter dated May 7, 2008, Mr. Tate notified Appellant of her suspension, effective May  
18 21, 2008.

### 19 **III. ARGUMENTS OF THE PARTIES**

20 3.1 Respondent asserts that Appellant engaged in inappropriate conduct that compromised the  
21 confidentiality of a student's information. Respondent contends that Appellant's conduct was  
22 contrary to the previous directives she had been given and the training she had received.  
23 Respondent argues that Appellant was aware that breaches of confidentiality were against  
24 department procedures and guidelines and that she was aware that further occurrences of  
25 inappropriate behavior could lead to discipline. Respondent contends that the prior corrective  
26 actions and trainings did not have the desired effect on Appellant's understanding of the need to  
27 maintain confidences and that this disciplinary action was necessary to impress upon her the  
28 seriousness of her actions.  
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3.2 Appellant does not deny that she said the student's name and commented that the student took tests quickly. However, she denies that she disclosed confidential information. Appellant argues that stating that the student tests quickly was only her opinion and was not a violation of FERPA, and that because the comment was spoken, it could not be placed in the student's DRC file. In summary, Appellant alleges that she has been subject to supervisory bullying, that her supervisor asked staff to tell on others, and that the allegations by Ms. Pavlov were based on hearsay. Appellant contends that her repeated requests for assistance were not granted and that she sought assistance in finding solutions to the problems she was experiencing with Ms. Pavlov. Appellant asserts that she had no problems with her previous supervisor. Appellant argues that she should not have been disciplined or suspended for one day.

#### IV. CONCLUSIONS OF LAW

4.1 The Personnel Resources Board has jurisdiction over the parties and the subject matter.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 357-52-110.

4.3 Respondent has met its burden of proof. When asked when a student with the accommodation of a scribe would be in the DRC, Appellant disclosed the student's name and then commented on the student's test taking ability. By connecting the student's name to the student's accommodation and then commenting on the student's test taking ability, Appellant disclosed confidential information about the student.

4.4 It was clear throughout the hearing that Appellant is dedicated and eager to provide a high level of customer service to the students who use the DRC. However, while we do not believe that Appellant's disclosure of confidential information was intentional, her intent does not mitigate the

seriousness of the results of her actions. Appellant must assure that student confidentiality is maintained during all conversations in public areas of the DRC.

4.5 Under the totality of the proven facts and circumstances, a one-day suspension is appropriate. The appeal should be denied.

**V. ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Kathryn Smith is denied.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

WASHINGTON PERSONNEL RESOURCES BOARD

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MARSHA TADANO LONG, Chair

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LAURA ANDERSON, Member