

No. 35712-7-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

Court of Appeals Division II Case No. 32664-7-II  
Thurston Superior Court Case No. 04-2-02084-8  
(PAB No. RULE-03-0008)

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BENJAPON SAKKARAPOPE, Appellant.

v.

WASHINGTON STATE UNIVERSITY, Respondent.

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STATE OF WASHINGTON  
BY   
COURT OF APPEALS  
DIVISION II

REPLY BRIEF FOR APPELLANT

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Benjapon Sakkarapope,  
714 South Jefferson Street  
Moscow, ID 83843-3030  
Phone: (208) 882-2138

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**I.**  
**INTRODUCTION**

Appellant respectfully submits this Reply Brief and objection to WSU's misleading and meritless statements in its Brief of Respondent (Resp. Br.) dated April 6, 2007.

**II.**  
**COUNSEL MISCONDUCT; FRAUD AND  
MISREPRESENTATION, AND FRIVOLOUS DEFENSE**

**A. Sanction for Frivolous Defense, Misconduct and Fraud Are Warranted**

Counsel Stambaugh has high duty to its own profession and the courts, including judicial tribunals. The lawyer's duty is of a double character. She owes to her client the duty of fidelity, but she also owes the duty of good faith and honorable dealing to the judicial tribunals before whom she practices her profession. **She is an officer of the court - a minister in the temple of justice. Her high vocation is to correctly inform the court upon the law and the facts of the case, and to aid it in doing justice and arriving at correct conclusions.** *See also*, 7 Am. Jur. 2d Attorneys at Law § 5 (1963); and 20 Am. Jur. 2d Courts § 4 (1965). *CHARLES A. DIKE, JR., v. ROBBIN ANGELA DIKE, JOHN R. SIMMONS, THE STATE OF WASHINGTON*, 75 Wn.2d 1 (1968) As of being assistant attorney general, Counsel Stambaugh has duty to enforce

the existing laws and authorities, not twisting, manipulating and/or misrepresenting them.

Ms. Stambaugh has duty to comply with the oath of attorney and Rule of Professional Conduct (RPC), e.g., RPC 3.1, 3.3, 3.4 and 8.4., but failed to so do so. The Director and the PAB denied Sakkarapope's request for remedial action based on the only reason that the work hours did not exceed the 1050 limit in any consecutive month periods since initial date of hire, in which it is depended upon the application if the 1990 approved procedure under WAC 251-19-120(7).

While RULE 3.3, requires Ms. Stambaugh to candor toward the tribunal, the DOP and the PAB, but she has taken every effort to exclude the 1990 approved procedure from consideration in all proceedings. Ms. Stambaugh did not correctly inform the PAB and the court upon the law and the facts of the case, and to aid them in doing justice and arriving at correct conclusions from the beginning, including in this court.

While Ms. Stambaugh is not allowed to coach/assist/induce the witnesses or other in conduct involving dishonesty, fraud, deceit or misrepresentation, she coached the witness to testify before the tribunal and misleadingly produce the Exhibit R-10 to justify its meritless argument, and prejudicially and frivolously suggested the guilt of Sakkarapope that he would have obligated to terminate his employment

prior to the 1050 limit, inconsistent with the DOP's precedent rulings. Where Ms. Stambaugh should have reasonably known the immigration status is beyond the scope of the DOP, the PAB and the court, Ms. Stambaugh intentionally and persistently introduced an immigration issue and the exclusion of the entire records of the DOP for review. Despite the DOP, the PAB and the court all determined that the immigration issue was not within its jurisdiction and would not consider as part of the appeal, Ms. Stambaugh still continues insisting and misleadingly presenting it.

While Ms. Stambaugh did not cite any director's precedent rulings in the PAB and the trial court proceedings, it misleadingly cited some in its memorandum in response to remand from the trial court. See, Resp. Memo. Remand; Appendix B. Ms. Stambaugh continues stonewalling in justifying its misconduct by citing the outcome of its own misconduct, and in presenting the argument in the remand proceeding.

A fraud consists nine elements: (1) the representation of an existing fact; (2) its materiality; (3) its falsity; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) intent that it should be acted on by the person to whom it is made; (6) ignorance of its falsity on the part of the person to whom it is made; (7) the latter's reliance on the truth of the representation; (8) right to rely upon it; and (9) consequent damage. *Tokarz v. Frontier Fed. Sav. & Loan Ass'n*, 33 Wn. App. 456, 463, 656

P.2d 1089 (1982).

Based on the facts and circumstance in the case at hand, Ms. Stambaugh intentionally continues to concealing and attempting to exclude the 1990 approved procedure from the proceedings. The conduct of Ms. Stambaugh as presented therein meets the test of fraud. Appellant respectfully submits that Ms. Stambaugh has violated the RPCs, and committed fraud and misrepresentation of the facts and authorities, as well as abused the processes. By signing the documents filed in the courts, Ms. Stambaugh certified that it had reasonably inquiry of the truths of the fact and existing authorities, but the facts show Ms. Stambaugh did not comply with Civil Rule 11, thus a sanction is warranted. Sakkarapope is entitled to award cost, expense and fees including attorney fee. The trial court erred.

**B. An Oral Decision Is Not A Judgment; The Oral Or Written Pinions Have No Final And Binding Effect Unless Formally Incorporated Into The Findings, Conclusions And Judgment**

Appellant respectfully objects to Ms. Stambaugh's misleading statement<sup>1</sup> that:

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<sup>1</sup> Ms. Stambaugh continued misrepresenting the status of the case in the remand proceeding (Appendix B.):

The Superior Court denied Mr. Sakkarapope's appeal of all issues other than the one involving WSU's internal procedure which is the subject of this remand proceeding. Those rulings by the Superior Court with regard to those other issues have not been appealed and **therefore the decision surrounding those contentions is final and binding**. See, its Respondent's Memorandum in Response to Remand from Superior Court (Resp. Memo. Remand) at 2.

There is no proof that WSU or its counsel has engaged in any of these prohibited actions. Mr. Sakkarapope's assertions are not based in fact, but are merely unfounded speculations on his part. Further, WSU's defense to Mr Sakkarapope's petition was not frivolous. Because the trial court ruled in WSU's favor in all but one of the issues presented by Mr. Sakkarapope, the defense was not frivolous and an award of terms pursuant to RAP 18.9 ;RCW 4.84.185] is not appropriate. *See*, Resp. Br. at 8, 15.

The statement is misleading and without merit, and not supported by the facts presented in the records. Any competent lawyer should have reasonable understanding that an oral decision is not a judgment. *Grin v. LaPomma*, 47 Wn.2d 40, 286 P.2d 97 (1955); *State v. Goard*, 32 Wn.2d 705, 203 P.2d 355 (1949). An appeal to appellate court will not lie from anything other than a formal written final order or judgment signed by the judge and entered upon the records of the court, unless otherwise authorized by statute. *Robertson v. Shine*, 50 Wash. 433, 97 Pac. 497; *State v. Diamond Tank Transport*, 200 Wash. 206, 93 P. (2d) 313; *STATE EX REL. THOMAS v. LAWLER*, 23 Wn.2d 89-90 (1945).

Although a court's oral opinion or written memorandum of opinion may be considered in interpreting the court's findings of fact and conclusions of law and amounts to an informal expression of opinion when rendered, **the oral or written opinions have no final and binding effect unless formally incorporated into the findings, conclusions and**

**judgment.** *State v. Wilks*, 70 Wn.2d 626, 424 P.2d 663 (1967)<sup>2</sup>.

The formal order was drafted by Ms. Stambaugh as instructed by the court although WSU is not a prevailing party. Ms Stambaugh received a privilege; it was her choice to exclude the context of the oral opinion from the formal order; Ms. Stambaugh should not claim any part of oral opinion to binding Sakkarapope. Where the trial court did not include the oral decision within the formal entry of judgment, Sakkarapope has no need to appeal on those so-called "...ruled in WSU's favor in all but one..." as it has no binding effect. The attachment of the informal decision has no binding effect on any person. Like the minute entry made by the clerk, the Verbatim Report of the oral decision "was nothing more an announcement of the court's conclusions;" it was not a final judgment and has no binding effect on the parties.

Where the trial court entered a formal entry of judgment that "the decision of the PAB entered in this matter on October 5, 2004, is reversed," the decision of the PAB is void in its entirety. The PAB's decision was NOT reversed in part and affirmed in part; thus, it was reversed in its entirety. WSU by Ms. Stambaugh did not file any appeal or

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<sup>2</sup> See also, *FERREE v. DORIC CO.*, 62 Wn.2d 561, 567, 383 P.2d 900 (1963); *CLIFFORD v. STATE*, 20 Wn.2d 527, 148 P.2d 302 (1944); *SEIDLER v. HANSEN*, 14 Wn. App. 915, 547 P.2d 917 (1976); *DGHI ENTERS. v. PACIFIC CITIES, INC.*, 137 Wn.2d 933(1999).

cross-appeal any part of the trial court's final judgment; it was absolutely and completely final. WSU must be bounded by the reversal decision. Ms. Stambaugh advanced its argument without merit and misled the court and the tribunal; that violates the RPCs.

**C. Any Director Approved Procedure for Controlling and Monitoring Exempt Positions Identified in RCW 41.06 Under WAC 251-19-120(7) Is Part of Remedial Action Pursuant to WAC 251-12-600**

Ms. Stambaugh ignored its professional duty under RPCs, and continued to misinform the court and the tribunals.<sup>3</sup> RCW 41.06.070(1) provides that student employees exempt from the provision, but what constitutes "a student" for employment purpose is defined by the Washington Personnel Resources Board (PRB). The PRB and WSU publish its rules and procedures in WAC 251 and WAC 504. The PRB defines the exemption positions in WAC 251-04-040 and simply delegated

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<sup>3</sup> The objections to the misleading statements were made: (i) "DOP approved those monitoring procedures in 1990 even though they contained a definition of a student that was not reflected in the remedial action rule," and ...the BPPM in question, although, it contains some definitions that are similar to the 1990 procedures that were approved, is not encompassed in the remedial action WAC. The first question.... should be answered in the negative;" (ii) "Mr. Sakkarapope's work hours from 1996 and 1996 were not at issue the PAB. Since a rule violation to the PAB generally needs to be filed within 30 days of the effective date of the action appealed...I agreed with their decision. Notably, the Thurston County Superior Court did not rule in Mr. Sakkarapope's favor regarding this issue;" and (iii) Ms. Stambaugh's statements:

Notably, those conditions do not refer to or incorporates institutions' policies or procedures that might relate to or discuss the types of appointments that are contemplated by the rule. This rule grants authority to the director to determine compliance with this rule. It does not make mention of compliance with an institutions internal policy or procedure.

Resp. Memo. Remand at 8-10. These statements are frivolous. See, Appendix B.

its statutory authority to WSU to develop for director approval a procedure for monitoring and controlling exempt position through WAC 251-19-120(7). The so-called 1990 approved procedure provides rules of procedure for temporary employment identified in RCW 41.06, which are “substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by” WSU under WAC 251-19-120(7).

Ms. Stambaugh has full knowledge of the 1990 approved procedure in the first place, but intentionally attempted ignoring it since Ms. Karen Kruse was designated as a contact person in that regard. (CP-II 174-188) The same Karen Kruse issued the letter of April 23, 2003, and sat next to Ms. Stambaugh at the July 13, 2004 PAB hearing throughout the entire proceeding. Ms. Stambaugh has persistently argued there was no such approved procedure by the DOP from the beginning and in bad faith. After the so-called 1990 approved procedure was forced to disclose under the Public Record Disclosure Act, the document was faxed from WSU’s HRS office, the DOP then released that document to Sakkarapope. Ms. Stambaugh still continued stonewalling to avoid acknowledging of such existing authority, not to abide by it.

The so-called “BPPM” is WSU’s business/administrative manual, which contains a collection of rules and procedures from various

departments/units. The so-called BPPM 60.26 is the place where the approved procedure for monitoring and controlling authorized and adopted under WAC 251-19-120(7) was published in compliance with RCW 42.56.040. If not, where do WSU publish the adopted rules and procedures? The so-called “60.26” is a reference number of the manual that contains the rules and procedures for WSU’s temporary employment. The languages in the so-called Personnel Rule “60.26” are explicit of the rules and procedures under RCW 41.06 and WAC 251. The statements to the trial court, such as ....”doesn't say "60.26. It doesn't say "BPPM." It's not the same policy as 60.26,” “that's not a published rule. It's an internal policy and procedure,” are extremely frivolous; it should not come from any person who is considered him/herself a professional lawyer.

RCW 49.44.160 provides that any “employer policies” are part of the state employment contractual relationship between the employer and employees. For the case at hand, WSU’s policies for temporary employment adopted under WAC 251-19-120(7) is indeed part of the state civil service law, including WAC 251-12-600. Where authorized by other laws, what and how WSU defines the term, “student,” for other purpose monitoring is irrelevant to the temporary employment at issue. Ms. Stambaugh’s misleading and meritless statements show either its bad-faith intention to mislead the tribunal or its incompetent of apprehending and

applying the laws<sup>4</sup>. Ms. Stambaugh is mentally irresponsible.

The trial court was already having of the opinion that “the rule that was relied upon by Mr. Sakkarapope in his presentation was, in fact, approved pursuant to the WACs and have been part of the case.” *See*, Tr. 12-01-2006 at 8. In the absence of any other approved procedure<sup>5</sup>, WSU and the DOP must adopt and apply the procedure approved by the Director in 1990. The definition of a student using seven-credit enrollment must be used to determine whether Sakkarapope’s work hours exceeded the 1050 limit in any twelve consecutive month period since the initial date of hire, March 21, 1995. WAC 251-12-600(1). The so-called “internal policy” does not supersede the 1990 approved procedure. However, not only Ms. Stambaugh did not take the court’s advisement of the pure matter of law. statement, but also continued making excuse of excluding the 1990 approved procedure in the court as well as in the remand proceeding.

Additionally, where Ms. Stambaugh indicated doubt in regard to

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<sup>4</sup> Ms Stambaugh misled the cited authority, *Patrick Taback v. Eastern Washington University*, HEPB No. 3726 (1992). *See* Resp. memo. Remand; App. B. By suggesting that because the so-called 1990 approved procedure was not titled as the BPPM 60.26, it was not part of compliance with WAC 251-19-120(7), it is frivolous.

<sup>5</sup> Given that the statements, “[t]here is no evidence that WSU actually submitted its BPPM policy 60.26 to DOP for approval by the director” and “that rule was never approved by the Department of Personnel” pursuant to WAC 251-19-120(7), are true, the change parameter of the credit enrollment parameter from 7 to 6 in defining the term of a student for temporary employment was not approved by the director. Res. Memo. Remand at 7-8. Sakkarapope is not adversely affected by those unapproved or unpublished procedures or terms/rules. RCW 42.17.250(2).

the approved procedure under WAC 251-19-120(7) in the trial, it simply did not perform reasonable inquiry as required by Civil Rule 11. In the PAB and the court proceedings, Ms. Stambaugh did not mention or cite any precedent rulings of the DOP and intentionally ignored them while Sakkarapope cited them all along, and continued its misrepresentation in the remand proceeding<sup>6</sup>.

The PAB interpreted WAC 251-12-600 that:

...the applicable rules do not contain an exception or excuse for Respondent based on substantial compliance. More so, the intent of the rules and the highest standards of state human resource practices lead to inclusion in the civil service with exclusion being the exception within narrowly defined parameters. *Victor Keith Myers v. University of Washington*, RULE-01-0038.

The statements by Ms. Stambaugh are no different from asking the DOP, the PAB and the courts to abuse its authorities to make exception to the applicable rules. The PAB and the courts are not a ruling making body in this regard. Also, the statements are no different from making excuses based on substantial compliance. Such action prejudices to the

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<sup>6</sup> Now, Ms. Stambaugh misleadingly cited some of them in its Resp. Memo. Remand and Resp. Br., e.g., *Tyler Scott Kelsey* (2000), *Daniel Watkins* (1995) and *Louis E. Cobet* (1976). Counsel Stambaugh is mentally irresponsible. Ms. Stambaugh continued misrepresented and ignored the approved procedure under WAC 251-19-120(7) in the remand proceeding. In knowing that WAC 251-19-120 was initially filed 12/30/87 and made effective 2/1/88, Ms. Stambaugh still misleadingly and frivolously cited *Clarence Hill v. Eastern Washington University*, HEPB No. 1840 (1984). See, Resp. Memo. Remand at 12. The *Clarence Hill* was out-of-date; it was the case made prior to WAC 251-19-120 first made effective 2/1/1988..

administration of justice. RPC 8.4. WSU must be abided by the 1990 approved procedure to meet “the intent of the rules and the highest standards of state human resource practices.”

Additionally, Ms. Stambaugh misleadingly claimed that the 1990 approved document was not admitted into evidence. *See*, Resp. Br. at 9. The approved procedure is not a material fact of evidence, but it is an existing authority concealed by Ms. Stambaugh. The citation of existing authority can be presented before the court at any time.

On the other hand, it is evident showing that Ms. Stambaugh failed to comply with Civil Rule 11, the RPCs and the oath of attorney. Ms. Stambaugh falsely certified the facts and existing authorities in the summary judgments and trial proceedings. A sanction for frivolous defense under CR 11 is warranted. The trial court erred.

**D. WAC 251-12-600(1)(b) Is Determinant of the Work Hours From the Initial Date of Hire**

Ms. Stambaugh ignored its professional duty under RPCs, and continued to misinform the tribunals regarding the twelve consecutive month periods. Ms. Stambaugh was reasonably having knowledge of that the use of the beginning period of March 21, 1995 (CR 330), and the approved procedure by the DOP in 1990 would result in the fulfillment of the four conditions for granting a remedial action prescribed in WAC 251-

12-600(1) in five twelve consecutive month periods. By manipulating, twisting and misrepresenting of the beginning period and the approved procedure, Ms. Stambaugh suggested the PAB took the work hours of 403.25 hours as exempt by considering the 3 credit enrollments as student employment to justify that the fourth condition did not meet. This is a deliberated calculation of the outcome of the proceeding to denying Sakkarapope's employment based-benefit authorized by the laws. This advancement of legal argument in this regard is meritless.

Ms. Stambaugh continued its misrepresentation of WAC 251-12-600(1)(b) in the trial court and the PAB proceedings by misleadingly citing the 30-day period for filing a request for remedial action as a benchmark to exclude the other periods from consideration. *See*, Report of Proceeding of October 6, 2006, at 21-24 and December 1, 2006. The 30-day limit for filing a request for remedial action is not determinant of the number of twelve consecutive month periods to be considered under WAC 251-12-600(1)(b) since it was dictated by the initial date of hire, which was the time after October 1, 1989. The DOP correctly determined all periods since the initial date of hire, but it arbitrarily selected the wrong date of June 16, 1993, as the initial date of hire to begin with, where it would result in the work hours less than 1050 limit in all periods; this is the point. Prior to March 21, 1995, there is also a time break of 10 months

and five days with no any employment appointment. The using of June 16, 1993 did not meet the definition of twelve consecutive month periods since initial date of hire as prescribed in WAC 251-01-077.

WAC 251-12-600(3)(b) provides the DOP's jurisdiction that a request for remedial action must be filed within the 30 days "**after the effective date of the alleged violation** of the conditions of employment which are to be specified in the written notification of temporary appointment." [Emphasis added] The 30 days for filing a request governed by WAC 251-12-600(3)(b) has nothing to do with the parameter set forth in WAC 251-12-600(1)(b). The 30-day limit for filing a request for remedial action is to run after the realization of the alleged violation occurred. Sakkarapope was notified by the Dr. Campbell's letter of February 24, 2003, (CP 397), that the work hours exceeded the 1050 limit, which the condition of temporary employment was violated. Sakkarapope's request for remedial action was made March 1, 2003. The DOP did not dismiss the appeal for untimely filing such request. Once the DOP retains jurisdiction over such request under WAC 251-12-600(3)(b); the DOP has duty to determine the four conditions as prescribed under WAC 251-12-600(1)(b).

The alleged violations in the prior periods were not realized prior to February 2003. It was uncovered after WSU released the entire records

of the payroll as of Kruse's letter dated April 23, 2003. WSU did not notify Sakkarapope if any violation occurred prior to February 2003. Sakkarapope was under no duty to file a request for remedial action where he was not realized such violation occurred. Ms. Stambaugh advanced meritless argument in violation of the RPCs prejudicial to justice. A sanction is warranted.

**E. The Immigration Status Is Outside of Jurisdiction of the DOP, the PAB and the Trial Court, Not An Employment Requirement, And Not A Basis For Granting or Denying A Remedial Action Under WAC 251-12-600; WSU Must Follow and Comply With The Federal Procedure In Employing A Non-Citizen**

Ms. Stambaugh ignored its professional duty under RPCs, and continued to misinform the tribunals regarding the immigration status<sup>7</sup>.

Appellant respectfully objects to Ms. Stambaugh's statement, "[g]iven the un-refuted testimony from Mr. Cassleman that Mr.

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<sup>7</sup> According to Dr. Kimberly Campbell and her secretary, the so-called "expulsion" and the employment termination at issue came from the Attorney General Office (AGO). It is not yet clear what role Ms. Stambaugh has played in this regard since the AGO has withheld the public records relating to Ms. Stambaugh. The withholding the requested records is still ongoing. According to Margo Balzarini's to Grimes dated 1/31/2003, it indicated that:

I have drafted a termination letter for Benjapon. Steve Vinsonhaler called me today to check on the letter. Enrollment is not always terminated when a student is dropped. Frequently we allow them to complete the term, **but he wanted to make sure that we terminated the enrollment as soon as possible**. We can have Kris submit the cancellation of enrollment if you agree. I am assuming that well be your Kris. As you can see, I included that statement in the letter. [Emphasis added]

Ms. Steve Vinsonhaler was one of Ms. Stambaugh's colleagues. The Office of Attorney General, which Ms. Stambaugh is under, has played substantial role in the entire story.

Sakkarapope was not legally able to be employed at WSU, and Mr. Sakkarapope's appeal requesting permanent employment, the connection was certainly appropriate." Resp. Br. At 18-9. WSU, Ms Stambaugh, the PAB and the trial court have no authority to determine whether or not Sakkarapope is able to work. The statement is a legal conclusion, prejudiced and misrepresented. **The immigration status is not an issue under WAC 251-12-600 and before the PAB and the trial court.** See, Court Report of Proceeding 11-6-2006 at 17; the PAB's Report of Proceeding at 404-5.

While granting a remedial action will result in a permanent employment status, retroactively; and employing a non-citizen is allowed, Ms Stambaugh knows that WSU has duty to follow prescribed procedure, retroactively. 8 U.S.C. 1153(b) provides employment-based immigrant visa. See also, C.F.R. Title 8. Both the United States and the State Supreme Courts have been solicitous of the economic rights of aliens under the constitution. See, *Graham v. Richardson*, 403 U.S. 365, 29 L. Ed. 2d 534, 91 S. Ct. 1848 (1971); *HERRIOTT v. SEATTLE*, 81 Wn.2d 48, 500 P.2d 101 (1972). Ms. Stambaugh frivolously asserted the immigration requirement to hold the position and threatened to terminate Sakkarapope's employment afterward if a remedial action is granted, and continued its misrepresentation and meritless argument in the remand

proceeding and in the Court of Appeals<sup>8</sup>. Resp Br. at 18-9. Ms. Stambaugh cited no authority to support its contention. The testimony of Mr. Cassleman was coached by Ms. Stambaugh. Mr. Cassleman and Ms. Stambaugh are not a competent court; it has no authority to interpret any immigration laws, including Mr. Sakkarapope's student and employment statuses. It shall not do so. Mr. Cassleman is just a low rank of WSU employee; his testimony was made without a proper authority other than coached by Ms. Stambaugh. His testimony was made outside of the PAB's authority. It is reasonable to believe Ms. Stambaugh and her colleagues were behind the so-called "being out of status," and then used it as the claimed basis of termination of employment.

In *Truax v. Raich*, 239 U.S. 33, 42, 60 L. Ed. 131, 36 S. Ct. 7 (1915), the court stated:

The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as chose to offer hospitality.

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<sup>8</sup> While citing WSU's BPPM 60.05 (showing only one page) regarding employing a non-citizen, Ms. Stambaugh misrepresented the context of the entire procedure. See, Resp. Memo. Remand at 6, 12-3.

The Court found this suggestion unrealistic. The result [employment termination], though more indirect, is a very real interference with the opportunities of [federally certified] aliens to earn a living as public employees, and concluded that the citizenship restrictions, as applied in areas of general public employment, are invalid obstructions to the execution of the comprehensive federal scheme for immigration and naturalization. [Plaintiffs are entitled to take the civil service examination.] *HSIEH v. CIVIL SERV. COMM'N*, 79 Wn.2d 529, 488, 540 P.2d 515 (1971). *See also, Graham v. Richardson*, 403 U.S. 365, 29 L. Ed. 2d 534, 91 S. Ct. 1848 (1971)

In *CHIA CHU GEORGE HSIEH et al., v. CIVIL SERVICE COMMISSION OF THE CITY OF SEATTLE et al.*, 79 Wn.2d 529 (1971):

**...The trial court found that plaintiffs were hired as provisional employees. We see nothing in the civil service rules which makes provisional hiring, for which examination is not required, ipso facto a waiver of examination to attain civil service status. Plaintiffs could have made application at any time and we see no injustice, absent countervailing evidence, in limiting plaintiffs' potential retroactive status to such time as each would have been entitled had he taken and passed the first examination following his application. [Emphasis added]**

Once an alien lawfully enters and resides in this country he becomes invested with the rights guaranteed by the Constitution to all people within our borders. *Bridges v. Wixon*, 326 U.S. 135, 161, 89 L. Ed.

2103, 65 S. Ct. 1443 (1945). Such rights include those protected by the First and the Fifth Amendments and by the due process clause of the Fourteenth Amendment.... They extend their inalienable privileges to all "persons" and guard against any encroachment on those rights by federal or state authority. *HERRIOTT v. SEATTLE*, Id.

*In Truax v. Raich*, 239 U.S. 33, 60 L. Ed. 131, 36 S. Ct.7 (1915), the Court invalidated an Arizona statute and stated at page 41:

**It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure.** The court, however, allowed an exception if the state could show a "special public interest" with respect to a particular business. [Emphasis added]

Under the instant case, the positions at issue are general public employment. Sakkarapope is not required to show that the right to work for a living in the common occupations of the community that is of the very essence of the personal freedom and opportunity” to earn a living as public employee at WSU. Once a remedial action is granted, an employing procedure will have to retroactively follow in compliance with the applicable laws. The immigration status is not one of those conditions for granting or denying such remedial action request.

The contention that “Sakkarapope has not been in a legal F1 status

for WSU since his dis-enrollment as a student in early 2003,” is without merit, and a legal conclusion made by incompetent WSU’s staff and the bad-faith lawyer. Ms. Stambaugh advanced meritless argument in violation of the RPCs prejudicial to justice. A sanction is warranted.

**F. A Remedial Action Is Not Discretionary Of The Director’s Discriminatory Preference, But It Is A Remedy Provided By the Statute Where The Public Employer Failed To Meet The Established Human Resource Standard And The Four Conditions Under WAC 251-12-600(1) Exist**

Ms. Stambaugh continued misrepresenting and ignoring the intent of a remedial action provision under WAC 251-12-600 in the remand proceeding<sup>9</sup>. WAC 251-12-600(1) provides that “The director may take remedial action when it is determined that the following conditions exist.” Based on the precedent ruling in *Clarence Hill v. Eastern Washington University*, HEPB No. 1840(1984) cited by Ms. Stambaugh, where the word, “may, “ is not defined in WACs, the dictionary for assistance is warranted. The word, “may,” used in WAC 251-12-600 has the meaning of “MUST” and it refers to an act of the Director to act when the four conditions exist. The *Merriam Webster’s Deluxe Dictionary*, 10th

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<sup>9</sup> The statements, “...conferring of permanent status by the Director of DOP is not automatic, but rather it is a discretionary decision on behalf of DOP,” “It does not make mention of compliance with an institutions internal policy or procedure,” and “Mr. Sakkarapope did not meet the 1,050 hour requirement,” are meritless and not supported by the facts and existing authorities. See, Resp. Memo. Remand at 9-10; App. B

Collegiate Edition (1998), provides that the word, “may,” means “Shall, Must” when it is “used in law where the sense, purpose, or policy requires this interpretation. The *American Heritage Dictionary*, 3rd Edition (1994) provides that the word, “may,” means “[t]o be obliged; must,” when it is “used in statutes, deeds, and other legal documents.” The Rule of Appellate Procedure 1.2(b) also provides that the words, “will” and “may,” are interchangeable when referring to an act of the appellate court.

Furthermore, the term, “may,” has been used consistently in the meaning of “Must or Shall,” throughout the relevant statutes. For example, RCW 41.64.140(2) provides that “Appellate review of the order of the superior court may be sought as in other civil cases.” The meaning of the word, “may,” refers to “must.” An appeal cannot be sought via other procedures, e.g., a criminal case or other special proceeding. RCW 41.64.010(1) provides that:

- ....Such members:
- (a) **May** not hold any other employment with the state;
- (b) **May** not during the terms ...; and
- (c) **May** not for a period of one year.... [Emphasis added]

The meaning of word, “May,” in all these sections clearly refers to a “Must.” WAC 251 was established under the statutory authority of RCW 41 Chapter. The term, “may,” used in WAC 251-12-600 must be consistent with the statute and its legislative intent. It cannot be used upon

WSU administrator's or the Director's preference or at convenience or at will. The term, "may," used in WAC 251-12-600 must have the same meaning as the "must," which is consistent with the meaning provided by the dictionaries, the precedent standard set forth in *Clarence Hill*.

RCW 41.06.010 declares the general purpose of the chapter that is "to establish for the state a system of personnel administration based on merit principles and scientific methods." Rules adopted by the director shall provide for local administration and management by the institutions of higher education. RCW 41.06.130 and 133. These legislative intents do not authorize the Director to exercise its discretion upon its personal preference or discriminatory policy.

Under the case at hand, the director of personnel delegated its authority to WSU under WAC 251-19-120(7) to develop for director approval a procedure for monitoring and controlling the exempt positions. The 1990 approved procedure in compliance with WAC 251-12-170(7) was indeed the rules adopted under RCW 41.06 by the director for local administration and management by WSU. This 1990 approved procedure was published in the BPPM section 60.26 et seq., which is the so-called "internal policy."

The purpose of a remedial action is clearly established. Where the institution failed to perform the prescribed standards and guidelines to the

best standard of personnel administration and the four conditions prescribed in WAC 251-12-600(1) exist, the power for granting a remedial action is Not discretionary of the Director's discriminatory preference, but it is a statutory remedy provided to the employee. *See also, Tony Jongkol v. University of Washington*, HEU No. 3534 (by Kari Lade); *Harborview Medical Interpreters et. al. v. University of Washington (HMC)*, HEU No. 4283 (by Kris Brophy, July, 2000). The PAB also already interpreted WAC 251-12-600 that the employee is entitled to benefits as of the date when his hours exceeded 1050 (e.g., a total of 1078.50) and **“the applicable rules do not contain an exception or excuse for Respondent based on substantial compliance..., the intent of the rules and the highest standards of state human resource practices lead to inclusion in the civil service with exclusion being the exception within narrowly defined parameters.”** *Victor Keith Myers v. University of Washington*, RULE-01-0038. [Emphasis added].

Thus, the Director is required to take a remedial action where; (i) the four conditions under WAC 251-12-600(1) exist, (ii) it has statutory duty to maintain the prescribed personnel standard and (ii) is required to be consistent with its own administrative decisions, precedent rulings and in their construction of statutory terms. *SOLTMAN v. CENTRAL WASH. STATE COLLEGE*, HEPB 311 (1976); *VERGEYLE v. DEPARTMENT OF*

*EMPL. SEC.*, 28 Wn. App. 399, 623 P.2d 736 (1981).

Pursuant to WAC 251-12-600(2), a remedial action includes the power to confer permanent status, set salary, establish seniority, and determine benefits accrued from the seniority date. Remedial action also includes other actions the director may require to meet the highest personnel standards. These remedies are wages and benefits the employer owes the employee. No need to specify the amount of dollar term.

The contention that “he has not shown that he incurred such fees,” is frivolous. Resp. Br. at 20. Ms. Stambaugh advanced meritless argument in violation of the RPCs prejudicial to justice. A sanction is warranted. Sakkarapope is entitled to recover the entire costs, expense and fees, including attorney fees under remedial statute and sanction for frivolous defense. RCW 49.48.030; RCW 4.84.185, 250, 290; CR 11.

Under RCW 4.84, attorney fee is allowed for a prevailing, unrepresented party. RCW 4.84.030 allows cost taxed as attorney fees to the prevailing party. Ms. Stambaugh gets pay from doing such frivolous defense. Instead of use the time for making money, Sakkarapope has to spend time doing legal research and preparing the documents to deal with her frivolous defense. The time should be recovered/compensated at the same pay rate of Ms. Stambaugh. The attorney fee of \$10,000 requested is reasonably small when considering Ms. Stambaugh’s pay rate and the

amount of time Sakkarapope spent since October 11, 2004. This court has authority to award such fees and costs on appeal pursuant to RCW 4.84.290.

### III. CONCLUSION

Based on the facts and existing authorities therein, Ms. Stambaugh failed to maintain its duty as an officer of the court - a minister in the temple of justice. What Ms. Stambaugh referring to as “attorney’s enthusiasm or creativity in pursuing factual or legal authorities,” and “zealous advocacy on part of counsel” is beyond the scope of RPCs, e.g., RPC 3.1, 3.3, 3.4 and 8.4, and the oath of attorney as well as “an officer of the court.” *See*, Resp. Br. at 15-20. The trial court erred. Appellant respectfully asks this court reverse the trial court’s decision and award the entire costs, expenses and fees as requested. The monetary award will not affect any WSU normal operation since the fund for this purpose is made available through the risk management administration account.

Respectfully submitted this 7th day of May, 2007,



Appellant

**Appendix:**

- A. Brief on Remand for Appellant
- B. Respondent’s Memorandum in Response to Remand

**CERTIFICATE OF SERVICE**

I certify that one copy of REPLY BRIEF FOR APPELLANT has been served upon Respondent by first class mail, pre-postage, on this 7th day of May, 2007, to the address:

Richard A. Health,  
Associate Vice President for Administration and Human  
Resources, Washington State University,  
139 French Adm. Bldg., Room 432  
P.O. Box 641045  
Pullman, WA 99164-1045



Benjapon Sakkarapope

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DIVISION II  
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STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

# **Appendix**

**A. Brief on Remand for Appellant**

**B. Respondent's Memorandum in Response to Remand**

BEFORE THE DEPARTMENT OF PERSONNEL,  
STATE OF WASHINGTON

1  
2 IN THE MATTER OF: )  
3 BENJAPON SAKKARAPOPE, )  
4 Appellant, ) No. HEU 4478  
5 v. )  
6 WASHINGTON STATE UNIVERSITY, ) **BRIEF ON REMAND FOR APPELLANT**  
7 Respondent. )

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8 **I.**  
9 **REMAND TO MODIFY THE FINDINGS, CONCLUSION, AND**  
10 **DETERMINATION OF THE DIRECTOR**

11 Pursuant to WAC 251-12-600 and the Thurston County Superior Court's final judgment  
12 entered December 22, 2006, Appellant, Mr. Benjapon Sakkarapope, respectfully asks the  
13 Director of the Department of Personnel modify its FINDINGS, CONCLUSION, AND  
14 DETERMINATION OF THE DIRECTOR, July 8<sup>th</sup>, 2003, in compliance with the judgment:

15 ...the decision of the PAB entered in this matter on October 5, 2004, is reversed. This  
16 matter is remanded back to the Department of Personnel to determine whether WSU's  
17 Business Policies and Procedures Manual, Personnel Rule 60.26, is part of compliance by  
18 WSU with WAC 251-19-120(7), and if so, whether under the terms of Rule 60.26, Mr.  
19 Sakkarapope is a person qualified for consideration of remedial action under WAC 251-  
20 12-600, and if so, to consider whether a remedial action should be offered to Mr.  
21 Sakkarapope. (*see* Court's Order, December 22, 2006)

22 **II.**  
23 **STATEMENT OF THE CASE<sup>1</sup>**

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24 <sup>1</sup> The Clerk's Papers filed in the Court of Appeals in the appeal of interlocutory decision, case No. 32664-7-II is  
25 cited as "CP-I," and the supplemental Clerk's Paper filed in this case at hand is cited as "CP-II." The agency  
26 Certified Records was previously filed in this court in the appeal of interlocutory decision, case No. 32664-7-II is  
cited as "CR." Exhibits of the Findings, Conclusions, and Determination of the Director entered dated July 8, 2003  
will be cited as it is designated, i.e., Exhibit E-1 thru E-16, (*see* the PAB's Certified Records ("CR") 159-320 or CP-  
I 260-413). Exhibits of Appellant's Document submitted to the PAB at the hearing of July 13, 2004 will be cited as  
Exhibit 1 thru 4, (*see* CP-I 515-595). Exhibits of the Errors in the Findings, Conclusions, and Determination of the  
Director, October 10, 2003 will be cited as it is designated, i.e., Exhibit A thru H, (CP-I 439-514; CR 1-158)

1 (1) RCW 41.06.070(1) provides that student employees exempt from the provision, but  
2 what constitutes "a student" for employment purpose is defined by the Washington Personnel  
3 Resources Board (PRB). The PRB defines the exemption positions in WAC 251-04-040 and a  
4 procedure for monitoring and controlling in **WAC 251-19-120(7)**:

5 Each institution shall develop for director approval a procedure which indicates its  
6 system for controlling and monitoring exempt positions as identified in chapter 41.06  
7 RCW.

8 On **July 23, 1990**, Washington State University (WSU) submitted its procedures for  
9 controlling and monitoring temporary employees in accordance with **WAC 251-19-120(7)** for  
10 approval by the Director of Higher Education Personnel Board, and designated **Karen Kruse** as  
11 a contact person in that regard. WSU by Lynda L. Brown was notified of the Director's approval  
12 in Director John A. Spitz's letter dated **August 30, 1990**. (CP-II 174-188) The approved  
13 Washington State University Procedures for Insuring Compliance with HEPB Rules Controlling  
14 Student and Non-Student Temporary Employment defines the term, "students" as:

15 Student employees are enrolled at Washington State University (WSU) for a minimum of  
16 **seven credits during the fall or spring semesters and four credits during the summer**  
17 **session**. They work 516 hours or less in any six consecutive months, exclusive of hours  
18 worked in a temporary position (s) during the summer and other breaks in the academic  
19 years, provided such employment does not take the place of a classified employee laid off  
20 due to lack of funds or lack of work or fill a position currently or formally occupied by a  
21 classified employee during the current or prior calendar or fiscal year, whichever is  
22 longer. WAC 251-04-040(2) [Emphasis added] (CP-II 179)

23 Further, WAC 251-19-120(1) provides that "Temporary appointment may be made only  
24 to meet employment conditions set forth in the definition of "temporary appointment" in WAC  
25 251-01-415." WAC 251-01-415(2): "Performance of work which does not exceed one thousand  
26 fifty hours in any twelve consecutive month period from the original date of hire or October 1,  
1989, whichever is later, in accordance with WAC 251-04-040(6)." The Director of the  
Department of Personnel (DOP) also set precedents as follow:

(i) The DOP determined that the WSU's monitoring practice of using the beginning of  
pay period (the 1st and the 16th day of the month) to start tracking hours was not proper. *Bill*  
*Williams v. WSU*, HEU 3968 (1994, by Kari Lade).

(ii) The DOP repeatedly ruled in the other cases on the same basis that "Since an  
employee was not properly informed of the conditions of these appointments, he did not take part

1 in any willful failure to comply with the HEPB rules.” *McCrary v. Univ. of Wash.*, HEU 4255  
2 (2000, by Kari Lade); *Hayward v. Bellevue Community College*, HEU 4251(1999, by Kris  
3 Brophy); *Kelsey v. Western Wash. Univ.*, HEU 4279; *Schmidt v. Western Washington Univ.*,  
4 HEU 4269(2000, by Kari Lade).

5 (iii) “Remedial Action is intended to afford non-classified persons access to the classified  
6 service through appeal to the Director of the Higher Education Personnel Board when certain  
7 appointment criteria have not been met by an institution” set forth in WAC 251-12-600(1). *Tony*  
8 *Jongkol v. University of Washington*, HEU No. 3534 (by Kari Lade); *Harborview Medical*  
9 *Interpreters et. al. v. University of Washington (HMC)*, HEU No. 4283 (2000, by Kris Brophy).

10 (2) Sakkarapope had been continuously employed by the Department of Crop and Soil  
11 Sciences, Washington State University (“WSU”) since the initial hiring date of March 21, 1995,  
12 through its temporary employment program, Position title: Service Worker I. (Exhibit (“Exh.”)  
13 E-4, E-5; CR at 268, 261-3). While the last reappointment was made from May 16, 2002 thru  
14 May 15, 2003, Sakkarapope’s employment was terminated due to the work hour of 1,165.25  
15 non-student hours exceeded the 1050 hours limit effective February 21, 2003. (Exh. E-7, E-1F;  
16 CR 201, 216). At the time of termination, the total non-student/non-exempt work hours was  
17 determined by using the *Business Policies and Procedures Manual*, “Personnel Rule 60.26,”  
18 which the term, “students,” is defined as:

19 For purposes of temporary employment, a student is one who is enrolled at WSU for six  
20 or more credit hours during fall or spring semesters. During summer session a student is  
21 one who is enrolled for three or more credit hours<sup>2</sup>. (CP-I at 298)

22 Ms. Laurie Stemmene, WSU’s witness, testified before the PAB at the July 13, 2004,  
23 hearing that:

24 SAKKARAPOPE: How many, how long have you used the same criteria to monitor temp  
25 employee’s hours that’s on this exhibit?

26 STEMME: The 1050 hour limitation came in, I believe, 1989. (CR at 383)

Further, the Personnel Rule 60.26 indicates that “Employees appointed to duties included  
in a classified staff job description for 20 or more hours per week for six months or longer are

<sup>2</sup> The number of credit enrollment was reduced by one credit (to six and three, respectively) where the DOP and WSU still conceal the full records in this regard of the change. It is believed that it was changed prior to November, 2000. However, the change will not affect the determination of the total non-student/non-exempt work hours and the outcome in this case.

1 classified staff regardless of the source of funds or a specific termination date.” The undisputed  
2 fact is that Sakkarapope was assigned to perform a research technician’s job description<sup>3</sup> after  
3 Mr. John Pritchett, a research technician<sup>4</sup>, retired in March 2000. Sakkarapope did not perform a  
4 duty as a service worker, but as a research technician job which is a classified staff job  
5 description subject to civil service laws. Nonetheless, WSU misclassified Sakkarapope’s  
6 employment in violation of RCW 49.44.160 by retaining the temporary employment  
7 appointments as Service Worker I. It is constituted an unfair practice as defined in RCW  
8 49.44.170.

9 (3) After Sakkarapope’s request for remedial action pursuant to WAC 251-12-600 was  
10 filed with the DOP on February 23, 2003. The **same Karen Kruse**, a designated contact person  
11 having the full knowledge of the approved procedures for controlling and monitoring temporary  
12 employees in accordance with WAC 251-19-120(7), intentionally committed fraud and  
13 misrepresentation of the approved procedure by issuing the letter dated April 24, 2003,  
14 deceptively introducing an unpublished definition of a “student” to reconstruct the Exhibit 3 with  
15 Exhibit 4 and Revised Exhibit 4 (*see* Exh. E-4, E-8; CR at 259-60, 202-4):

16 For monitoring purposes WSU uses 6 credit hours to determine student status which  
17 exempts the employee from the 1050 hour limit. Hours worked under this definition are  
18 reflected in Exhibit 3. Previous decisions from the Higher Education Personnel Board  
19 have determined that a student is “enrolled for credit” with no set number of credit hours.  
20 Exhibit 4 reflects a total of 811.75 hours as a non-student if we follow this precedent  
21 because he for 3 credits fall 2002.

22 According to Natividad Valdez, Esq.’s letter dated December 21, 2006, the DOP  
23 confirmed that the decision referenced in a letter to Kari Lade from Karen Kruse dated April 24,  
24 2003, is Patick Tabak v. Eastern Washington University, HEPB No. 3726 (by Sandra Brownrigg,  
25 1992).

26 At the PAB’s July 13, 2004, hearing, Laurie Stemmene, testified that:

MORGAN: Was the official document computerized payroll document?  
STEMMENE: Yes.

<sup>3</sup> There is undisputed fact that the Department of Crop and Soil Sciences made the appointments to a Service Worker I position, but the actual work performed was research technician’s duty--a classified staff job description of “Agricultural Research Technologist I,” Class code: 4504, and these positions are subject to civil service laws. (Exhibit E-5, C and E; CP-I at 352-60, 491, 496-9)

<sup>4</sup> Exhibit F and G show an example of types of duties Sakkarapope had performed, which was obviously not a type of work or duty a job description of a Service Worker I and not a low rate of pay \$7.50 – 10.50 an hour. (CP-I 501-6)

.....  
1 MORGAN: Okay. Now was this the document that generated the letter from your office  
2 identified in E-1F? Indicates, "Due to notification from WSU Campus Student and  
3 Hourly Employment Office, on February 19, that you have exceeded the 1050 hourly  
4 limit." Would that have been generated off this document?

STEMMENE: Yes. The information is the same.

4 MORGAN: So, on February 19, your office notified Mr. Sakkarapope's department that  
5 he had exceeded 1050 hours based on E-7?

STEMMENE: Correct.

.....  
6 MORGAN: As E-7, and yet the numbers have changed.

STEMMENE: Correct.

7 MORGAN: How's that?

8 STEMMENE: Based on communications from Carey (unintelligible) [Kari Lade] of the  
9 Department of Personnel, and email from Mr. Sakkarapope, there was consideration for  
10 the, some enrollment and so the summary was adjusted but we did not, we did not adjust  
11 the official body of that document.

MORGAN: That was some several months later.

STEMMENE: Correct.

11 MORGAN: After E-7, after E-1F, when you got to Department of Personnel which was  
12 probably close to a year later, then these changes started to be made.

STEMMENE: Correct.

13 MORGAN: And then we move to E-8, page 2, earning types all stay the same and we've  
14 now done a different configuration with the numbers based on disenrollment.

STEMMENE: Correct.

15 MORGAN: And then page 3 of E-8, now it appears that all of the earning types have  
16 been changed in the third section.

STEMMENE: Correct.

16 MORGAN: Why?

17 STEMMENE: Based on communications with Mr. Sakkarapope and Carey  
18 (unintelligible) [Kari Lade], it was asked for better clarification as to the hours to make  
19 earning types also fit.

MORGAN: Prior to February 19, 2003, had the University used the 6 hours?

STEMMENE: Yes. (CR at 393-4)

20  
21 (4) In the original proceeding, the Director of the Department of Personnel, had  
22 determined whether Sakkarapope's request for remedial action met the four criteria set forth in  
23 WAC 251-12-600(1). While there is no dispute that the three of the four criteria for granting a  
24 remedial action, WAC 251-12-600(1), are met, the Director determined that WSU did not  
25 comply with the temporary employment appointment, and denied a remedial action based on the  
26 fourth criteria for granting a remedial action--whether non-student work hours exceeded the 1050  
limit in any twelve consecutive months since the initial date of hire, by arbitrarily and

1 manipulatively using June 16, 1993, as the initial date of hire, adopting an unpublished definition  
2 of a student as who enrolls for "some credits," and retroactively applying WAC 251-04-035.

3 The DOP entered the Findings, Conclusions, and Determination of the Director dated  
4 July 8, 2003 denying a remedial action by adopting the unpublished definition of a "student" as  
5 suggested in the Kruse's letter of April 24, 2003, and excluded the Personnel Rule 60.26, 60.27  
6 and 60.05 from its consideration. In the original proceeding, the Director determined whether  
7 Sakkarapope's request for remedial action met the four criteria set forth in WAC 251-12-600(1)  
8 solely based on WSU's records and without a hearing, either a teleconference or in person, and  
9 then concluded that WSU did not comply with the temporary employment appointment.

10 While there is no dispute that the three of the four criteria for granting a remedial action,  
11 WAC 251-12-600(1), are met, the Director denied a remedial action based on the fourth criteria  
12 for granting a remedial action--whether non-student work hours exceeded the 1050 limit in any  
13 twelve consecutive months since the initial date of hire, by arbitrarily and manipulatively using  
14 June 16, 1993, as the initial date of hire, adopting an unpublished definition of a student as who  
15 enrolls for "some credits," and retroactively applying WAC 251-04-035, as suggested by WSU.  
16 (CP-I 260-413)

17 The DOP's proceeding was conducted in bad faith, fraud and misrepresentation of facts  
18 of laws. The Investigator, Kari Lade, asked some follow-up questions as indicated in her May 6,  
19 2003, email. Despite Sakkarapope's request and objection to their private conversation, WSU  
20 did not provide written answer to the questions. Ms. Lade had a private conversation with WSU  
21 and conveyed the phone conversation to Sakkarapope on their behalf via email. Ms. Lade was no  
22 longer interested in WSU's written responses. (Exh. E-13, E-14, E-15 and H; CP-I 507-14).

23 Further, on May 6, 2003, Sakkarapope questioned the application of WAC 251-04-035.  
24 There was NO exemption provision in effect from September 1 to November 13, 2002, because  
25 the WAC 251-04-035 did not exist prior to November 14, 2002: (i) the WAC 251-04-040  
26 (former exemption provision) was repealed in the July 11, 2002, Personnel Resources Board  
meeting effective September 1, 2002; and (ii) on an emergency basis, WAC 251-04-035 was  
reinstated and made effective permanently June 12, 2003. (CP-I 569, 575).

(5) Sakkarapope took the Exceptions to the Director's Determination pursuant to WAC  
251-12-600(4)--the Exceptions to the Findings, Conclusions, and Determination of the Director  
("Exception") and the Errors in the Findings, Conclusions, and Determination of the Director,

1 (“Errors/DOP”) were filed on August 1, and October 10, 2003, respectively. (CP-I 414-514) The  
2 PAB did not conduct a full administrative review on the specific items set forth in the exception  
3 based on the entire records of the original DOP proceeding, WAC 251-12-600(4), but a partial  
4 review as suggested by Counsel Stambaugh.

5 The fundamental issue before the PAB is central to whether Sakkarapope’s non-student  
6 work hours exceeded the 1050 hour limit in any twelve consecutive month periods since the  
7 initial date of hire of March 21, 1995, WAC 251-12-600, in which it is depended on the  
8 questions of law: (i) the definition of a student for WSU’s temporary employment purpose  
9 (DOP’s Exhibit E-1D), (ii) the retroactive application of WAC 251-04-035 and (iii) the  
10 beginning date of the twelve consecutive month periods—the initial date of hire.

11 There is no dispute of the total work hours. The fundamental issue before the Personnel  
12 Appeals Board (PAB) is central to whether Sakkarapope’s non-student work hours exceeded the  
13 1050 hour limit in any twelve consecutive month periods since the initial date of hire of March  
14 21, 1995, WAC 251-12-600, in which it is depended on the questions of law: (i) the definition of  
15 a student for WSU’s temporary employment purpose (DOP’s Exhibit E-1D), (ii) the retroactive  
16 application of WAC 251-04-035 and (iii) the beginning date of the twelve consecutive month  
17 periods.

18 The PAB denied Sakkarapope’s remedial action request based on its determination that  
19 the last twelve consecutive month period using March 16, 2002, discarding the published  
20 definition of a student, Personnel Rule 60, adopting the unpublished definition of “some credits,”  
21 and retroactively applying WAC 251-04-035. The PAB entered its Findings of Fact,  
22 Conclusions of Law and Order of the Board on October 5, 2004, denying Sakkarapope’s request  
23 for remedial action. (CP-I 9-14). As suggested by Counsel Stambaugh, the PAB did not consider  
24 the Business Policies and Procedures Manual, Personnel Rule 60.26, as part of the state merit  
25 system, and erroneously and arbitrarily concluded that Sakkarapope worked only 827.75 hours  
26 from March 16, 2002 through February 24, 2003, and the 403.25 hours worked by Sakkarapope  
from August 26, 2002 through December 20, 2002 was not considered non-student hours. (CR  
at 5-6)

(6) WSU did not challenge the fact that Sakkarapope’s non-student work hours from  
March 21, 1995 thru March 20, 1996 is total of 1,090 hours regardless of a definition of a student  
being used. (Exh. B-1; CR at 75). Ms. Laurie Stemmen, testified before the PAB at the July 13,

1 2004, hearing that based on the published definition of a student as in Personnel Rule 60.26,  
2 Sakkarapope's total non-student work hours is 1,231; and by including the work hours during the  
3 breaks, the total is 1,297.5 hours, and that "It does exceed 1050," (CR at 379-82; 406-8; Exhibit  
4 R-10), in the last 12-month consecutive period of March 16th, 2002, through February 24th,  
5 2003, and is 1,244.5 non-student hours in the last 12-month consecutive period of March 21st,  
6 2002, through February 24th, 2003. (Exhibit B-8; CR at 84)

7 (7) The PAB's July 13, 2004, hearing (*see* Transcript, CR 321-421) was arbitrary and  
8 capricious:

9 (i) A hearing to review the exception under WAC 251-12-600(4) is on the records of the  
10 DOP, not a *de novo* basis. The witness testimony was obviously outside of the scope of the  
11 DOP's records and the specific items set forth in the Exception. (Exhibit 3; CP-I 541-6) Despite  
12 Sakkarapope's oral objection, the PAB's proceedings were conducted in bad faith and without  
13 WSU's pleading, answer to Exception and its amendment (Exhibit 2; CP-I 535-45), Counsel  
14 Donna Stambaugh asked the PAB to allow the witness testimonies without subpoena. (CR 323).

15 (ii) Sakkarapope moved to request for his own witness to testify at the hearing. The PAB  
16 ruled that it would sign a subpoena, but would not grant a continuance. (CR 324-7). It was  
17 impossible for anyone could proceed under such condition.

18 (iii) Prior to the hearing, the PAB did not notify the parties whether it would conduct a *de*  
19 *nov*o hearing and its reason, but surprised the party at the hearing.

20 (iv) The Board tossed out the entire Directors' Determination and its records, and the  
21 Exceptions and its amendment, and ruled that:

22 (A) The PAB would render its decision based on only the hearing of July 13, 2003, NOT  
23 based on the entire records of Director's Determination and Sakkarapope's Exceptions and its  
24 amendment.

25 (B) The issue at the hearing was limited to the last twelve consecutive month period  
26 beginning March 16, 2002.

(C) The PAB refused to admit Sakkarapope's Memorandum of Authority submitted at the  
hearing, but allowed Sakkarapope to read some portions to the records of the proceeding. (CR  
322-27, 411-2).

1 (v) Respondent admitted ten exhibits at the hearing. (CP 548-62). The Exhibit R10 was  
2 not part of the DOP's exhibits, but was created by the Respondent's witness suggesting 403.25  
3 be student work hours which should be considered exempt from the provision.

4 (vi) Despite Sakkarapope's objection, the PAB allowed Respondent to introduce the  
5 subject matter of immigration status which was outside of the Director's Determination, the  
6 Exceptions, and the PAB's jurisdiction. (CR 326-9, 394-505)

7 (vii) In knowing that the Personnel Rule 60.26 dictates a procedure for employing a non-  
8 citizen and that a discrimination in employment based on national origin is prohibited., Counsel  
9 Stambaugh misled the PAB of Sakkarapope's employment eligibility and further suggested at the  
10 hearing if the PAB granted such remedial action, WSU would terminate Sakkarapope's  
11 employment afterward. (CR 352, 417)

12 (8) A Notice of Appeal was filed with the trial court on October 11, 2004. The trial date  
13 was finally set October 6, 2006. Counsel Stambaugh not only concealed the fact of law  
14 regarding the DOP's approved procedure for monitoring and controlling the exempt positions in  
15 accordance with WAC 251-19-120(7), but also misled and lied to the court of the fact at the trial,  
16 dated October 6, 2006:

17 MS. STAMBAUGH: **I don't believe I've ever seen a policy from WSU that**  
18 **was developed pursuant to that rule. They may have one.** I don't believe the policy in  
19 question is it. It is not a WAC. It is not a published policy. It was not made pursuant to  
20 any rule-making authority. It is an internal policy and procedure as to how they track  
21 student hours. And as you have seen from the record, there are certain reasons why they  
22 have chosen six hours for financial aid purposes, for benefit purposes of the Department  
23 of Retirement Systems, for IRS purposes, and so forth. And, normally, the six-hour  
24 provision works fine. In this particular instance, it didn't work so fine, because there  
25 was a period of time when Mr. Sakkarapope was only enrolled for three hours. What the  
26 PAB determined and what eventually the DOP determined, through their back and forth -  
- and again, I wasn't involved in that proceeding. It was between The Department of  
Personnel, the director's designee, Mr. Sakkarapope, and somebody from WSU -- was  
that the rule is the rule. That is the published rule, that -- the Civil Service Rule 251,  
published by The Department of Personnel. That's the rule they have to follow when  
they look at remedial actions. If the situation were reversed and the rule said anybody less  
than six hours we're going to discount for remedial action, but you have to be enrolled for  
six hours or less -- or more, excuse me, and WSU said, no, we are going to count all  
student hours, well, they would be bound by the rule. They can't just make a policy that's  
contrary to the rule. And that's what Mr. Morgan found when he issued his order, that the  
rule in question that Mr. Sakkarapope has appealed -- he didn't appeal the policy. He  
can't. PAB has no jurisdiction to hear violations of an agency's policy. The rule in  
question said student hours are exempted. So, again, that's not a published rule. It's an

1 internal policy and procedure. And as a caveat, I believe they put some procedure in  
2 place so that this kind of problem doesn't happen again.

3 **THE COURT: Well, it says here "each institution," that would be WSU,  
4 "shall develop for director approval a procedure which indicates its system for  
5 controlling and monitoring exempt positions as identified in Chapter 41.06."**

6 MS. STAMBAUGH: They may have that.

7 THE COURT: 41.06 is the chapter we're talking about.

8 **MS. STAMBAUGH: That may have that in rule somewhere and that was  
9 approved by the director somewhere, but I don't believe that one is it.**

10 THE COURT: If it is --

11 **MS. STAMBAUGH: I mean, this wasn't in evidence before the Board, but I  
12 asked them later, and they said, that rule was never approved by the Department of  
13 Personnel. And again, that's not in evidence before this Board -- or before this court.  
14 It wasn't in evidence before the PAB. They looked at the rule. The PAB looked at the  
15 rule, the DOP looked at the rule, and said any student hours when you're enrolled as a  
16 student does not count. Does Your Honor have any other questions that I might answer  
17 on that issue?**

18 THE COURT: No.

19 **MS. STAMBAUGH: I don't know if that helps. But that's what I was advised,  
20 that that rule wasn't one that was approved by the Department of Personnel. And  
21 I'm not saying they may not have gotten one approved like they were supposed to,  
22 but I don't know what it is.**

23 THE COURT: Okay. [Emphasis added] (See, Tr. 12-06-2006 at 21-22)

24  
25 The trial court was having opinion that the relationship between the Business Policies and  
26 Procedures Manual, 60.26, a published temporary employee regulation by Washington State  
University, and WAC 251-12-600 is the most troubling issue. WAC 251-12-600 provides that  
student hours are not counted as temporary employment hours for the 1,050-hour limit. In that  
regulation and in no other regulation promulgated by the Department of Personnel is the concept  
of "student" defined. Nevertheless, an accompanying regulation in the same chapter as the  
Section 600 regulation (WAC 251-12-600), **specifically WAC 251-19-120(7) requires that an  
agency in the position of the university was required to make such procedures for tracking  
employment hours.** The evidence in this case indicates that the Business Policies and  
Procedures Manual, Personnel Rule 60.26, for purposes of monitoring Sakkarapope's temporary  
employment hours, was that the rule of six credit hours or more to establish Sakkarapope's status  
as a student was used since 1989 or prior to February 19, 2003. The PAB ignored that rule and  
declared that it was not bound by the informal policies of the university.

Under those circumstances, the trial court concludes that the Personnel Appeals Board  
committed error of law in declining to consider that rule. The legislative intent in the chapter

1 from which these regulations spring, Chapter 41.06 RCW, has as its legislative intent or  
2 expression of purpose that the rights of workers should be protected, and the Personnel Appeals  
3 Board should have considered that rule.

4 Further, the evidence in this case shows that Sakkarapope met his burden to bring the  
5 issue to the Personnel Appeals Board and argue it before them. The issue was raised but not  
6 proved to their satisfaction. After the issue was raised before the Board, and in the absence of  
7 evidence forthcoming from the employee, the Board should have requested information about  
8 that rule from WSU or the Department of Personnel to determine if the rule was part of the  
9 procedure required by WAC 251-19-120(7). (Tr. Oral Decision 10-06-2006 at 8-11)

10 Counsel Stambaugh continued to mislead and lie to the court at the presentment hearing  
11 of December 1, 2006:

12 THE COURT: Let's stop there. Ms. Stambaugh, if this information is correct, and  
13 I have no reason to doubt that it's not correct, then the first issue that I remanded back  
14 seems to have been clearly already decided back in 1990, and that the rule that was relied  
15 upon by Mr. Sakkarapope in his presentation was, in fact, approved pursuant to the  
16 WACs and have been part of the case.

17 **MS. STAMBAUGH: I guess my first inquiry is, is this newly admitted  
18 evidence?**

19 **THE COURT: No. But it's information that is of concern to me at this  
20 point.**

21 MS. STAMBAUGH: Well, I can respond after he's finished if you like or --

22 THE COURT: All right. I want to hear from you about this now.

23 MS. STAMBAUGH: Okay.

24 THE COURT: I understand the petitioner's position here.

25 MS. STAMBAUGH: Okay.

26 THE COURT: May I hear your response.

MS. STAMBAUGH: When we were here before, you asked about the Business  
Policies and Procedures Manual 60.26. **And if we go back to the PAB proceeding, this  
issue came up. And to be honest with you, I didn't give it much thought,** because I  
knew that the PAB would do what they normally do. They always say, we do not have  
jurisdiction to determine a violation of an agency's internal policies. In fact, that's what  
they said. **I didn't really give it much thought.** After the proceedings were over, I  
asked Ms. Kruse, who was then employed at WSU -- she's no longer there, she's retired -  
- did you get your Business Policies and Procedures Manual approved by the Department  
of Personnel, and she said no. I didn't ask her to check further whether there was an  
earlier -- because this doesn't say "BPP" on it anywhere. **It doesn't say "60.26" --  
whether there was an earlier monitoring policy. And if you recall, the rule says --**

**THE COURT: Now, wait a minute.**

MS. STAMBAUGH: -- the policy for monitoring exempt -

**THE COURT: Let me stop you right there. Be more specific when you  
make statements like this doesn't --**

1           **MS. STAMBAUGH:** This policy that he's now presenting to you that he got  
2 a couple weeks ago doesn't say "60.26." It doesn't say "BPPM." It's not the same  
3 policy as 60.26.

4           THE COURT: Okay.

5           MS. STAMBAUGH: And, again, before the PAB, and what I knew four weeks  
6 ago -- eight weeks ago when we were here was that, my vague recollection was  
7 somebody had told me, no, the Business Policies and Procedures Manual was not  
8 approved by DOP. And, in fact, the DOP's letter says as much. **We don't have  
9 anything that says "60.26" on the top. After our last hearing, I went back to Ms.  
10 Kruse's successor who looked in the file and found that there was something from  
11 1989, a policy to monitor exempt employment, which is what the statute requires --  
12 or, excuse me, what the WAC requires, that was sent to DOP. And I just presented  
13 that to you, because that was the evidence that I discovered after our last time here.  
14 So I wanted to make that clear to you, that I went back and checked, and --**

15           **THE COURT:** When you say you presented that to me, you mean you're  
16 telling me that now, or have you submitted it to me on --

17           **MS. STAMBAUGH:** When we were here October 4th.

18           THE COURT: Okay.

19           MS. STAMBAUGH: You asked about it, and I said to my recollection, **way  
20 back in 2004**, this issue came up. And again, policies -- they don't normally rule on  
21 violations of agency policy. That's what they did in this case. They said we don't have  
22 jurisdiction to rule on an agency policy. They can't turn a policy into a WAC, nor can  
23 DOP. And that's my recollection. That's as good as I could recall it two years earlier,  
24 that somewhere it wasn't a big deal, again, **because I didn't think it was a big deal,**  
25 **because they don't usually determine violations of policy. So I just said, by the way,  
26 was your BPPM ever approved by DOP, and she said no. After it came up in  
October, I went back and asked them. Had Mr. Sakkarapope signed my order with  
no presentment, I would have sent that to you in a letter. But since we're here  
today, I'm submitting it to you, truthfulness to the tribunal. I went back and  
followed up, and she went and found -- again, Ms. Kruse's successor found  
something that showed they went back to 1989. They submitted a policy for  
monitoring exempt employment.**

          THE COURT: Okay. All right.

          MS. STAMBAUGH: I'd also note that Mr. Sakkarapope's documents indicate a  
letter from Ms. Kruse that says the HEP Board president normally refers to just a student  
with no hours  
attached. So that's what they were going on, as well.

          MR. SAKKARAPOPE: Your Honor --

          THE COURT: Yes.

          MR. SAKKARAPOPE: -- I would like to direct you to Page No. 3 of the fax  
number -- the fax document.

          THE COURT: All right.

          MR. SAKKARAPOPE: Page No. 3, the letter from WSU Director of Human  
Resource Services to Mr. John Spitz.

          THE COURT: Yes.

1 MR. SAKKARAPOPE: And the letter is July 23rd. At the bottom -- at the last  
sentence of the letter from WSU, it says, "Please refer any questions you have regarding  
2 these procedures to Karen Kruse."

3 THE COURT: I see --

4 MR. SAKKARAPOPE: **This Karen Kruse is the same person that she was  
talking about.**

5 THE COURT: I see that it says, "Please refer any questions you have  
regarding these procedures to Karen Kruse." All right.

6 MR. SAKKARAPOPE: **That is -- they know the facts in the beginning.  
They are lying in the beginning, Your Honor.** [Emphasis added] (Tr. 12-01-2006 at 8-  
11)

7  
8 (9) By the clear existing procedure established in 1990, the only "monitoring and  
controlling temporary exempt positions" procedure approved by the DOP pursuant to WAC 251-  
9 19-120(7) defines a student for temporary employment purpose is one who enrolled at WSU for  
10 "a minimum of seven credits during the fall or spring semesters and four credits during the  
11 summer session."

12 The DOP and the PAB committed error of law by excluding the work hour of 403.25  
13 hours during fall 2002 semester, where Sakkarapope enrolled for 3 credits. In fact, the 403.25  
14 hours, in combination of 827.75 hours, shall constitute hours in excess of the 1,050 hour limit.

15 Counsel Stambuagh concealed and misrepresented the approved procedure from day one  
16 and continued to this date; never made any statement of apology.

### 17 III. REQUEST TO MODIFY

#### 18 THE FINDINGS, CONCLUSION, AND DETERMINATION OF THE DIRECTOR

##### 19 A. Whether WSU's Business Policies And Procedures Manual, Personnel Rule 60.26, Is 20 Part Of Compliance By WSU With WAC 251-19-120(7).

21 (1) Although WAC 251-04-040 defines a student who is enrolled without specifying a  
22 number of credit enrollment, WAC 251-19-120(7) requires that "[e]ach institution shall develop  
23 for director approval a procedure which indicates its system for controlling and monitoring  
24 exempt positions as identified in chapter 41.06 RCW." An institution may petition the director  
in writing for approval of exceptions to these requirements. WAC 251-19-120(8).

25 The languages in WAC 251-19-120(7) and other applicable provisions are explicit. The  
26 term, "each institution shall develop for director approval a procedure..." should be understood

1 by any licensed lawyer and competent staff of the DOP. Counsel Stambuagh has practiced law  
2 and made a living from being a professional in this area, it has duty to the PAB and the courts to  
3 conduct a reasonable inquiry the relevant existing laws and authorities.

4 In addition to his Trial Brief (CP-II 2-32) in the superior court, Sakkarapope has  
5 repeatedly brought up the term, "WAC 251-19-120(7)," in his pleadings:

- 6 (i) In "Errors in the Findings, Conclusions, and Determination of the Director, filed with  
7 the PAB October 10, 2003, (CR 34-54; CP-I 414-514), it was repeatedly cited on  
8 pages 4, 6, 8, and 12.
- 9 (ii) In Memorandum of Authority filed with the PAB on July 13, 2004, (CR 159-320), it  
10 was repeatedly cited on pages 4 and 12.
- 11 (iii) In Memorandum of Authority in Support of Appellant's Motion for Summary  
12 Judgment, filed with the trial court on October 11, 2004, (CP-I 20-53), it was  
13 repeatedly cited on pages 14-16, 21, and 24.
- 14 (iv) In Memorandum of Authority in Support of Appellant's Motion for Summary  
15 Judgment, filed with the trial court on December 10, 2004, (CP-I 607-32), it was  
16 repeatedly cited on pages 14-16, 21, and 24.

17 Counsel Stambuagh was fully informed and aware of "WAC 251-19-120(7)," but  
18 intentionally chose to ignore it and continuously deceive the existing DOP's approved procedure.  
19 The so-called "BPPM" is the University's business/administrative manual, which contains a  
20 collection of rules and procedures from various departments/units. Not all rules and procedures  
21 published in the BPPM are subject to the DOP's approval. The so-called "60.26" is a reference  
22 number of the manual that contains the rules and procedures for WSU's temporary employment,  
23 in which it must be approved by the DOP. The languages in the so-called Personnel Rule  
24 "60.26" are explicit of the rules and procedures under RCW 41.06 and WAC 251. This is  
25 mundane.

26 The statement to the trial court, such as ...."doesn't say "60.26." It doesn't say "BPPM."  
It's not the same policy as 60.26," is extremely frivolous; it should not come from any person  
who is considered him/herself a professional lawyer. No need for further justification.

It is the fact that the "Washington State University Procedure for Insuring Compliance  
with HEPB Rules Controlling Student and Non-Student Temporary Employment" was approved  
by the HEPB pursuant to WAC 251-19-120(7) in August 1990. Whether WSU's Business

1 Policies and Procedures Manual, Personnel Rule 60.26, is part of compliance by WSU with  
2 WAC 251-19-120(7) is the question of law that the DOP and WSU have full knowledge of the  
3 answer in the first place. In knowing that the approved procedure define a student that is one  
4 who enrolled for a minimum of seven credits during the fall or spring semesters and four credits  
5 during the summer session, Ms. Lade still ignored and discarded a definition of “a student”  
6 prescribed in the approved procedure and then imposed an unpublished definition of “student”  
7 on the exemption provision. Ms. Lade and Counsel Stambaugh advanced a frivolous argument  
8 since it sit on the document all along. Such practice is inconsistent with the highest personnel  
9 standard by any measure.

10 While issuing the letter dated April 23, 2003, Ms. Kruse had full knowledge of the 1990  
11 approved procedure since it was named as the contact person. Ms. Kruse reconstructed the  
12 Exhibit 3 into the Exhibit 4 and Revised Exhibit 4 suggesting the application of the unpublished  
13 term, “some credits,” to avoid a remedial action. (See Kruse’s letter of April 24, 2003; Exhibit  
14 E-4 thru E-8 and E-12). The suggested term, “some credits,” and “internal policy,” are frivolous  
15 and constituted fraud and misrepresentation. The Conclusion III on page 16 of the Director  
16 Determination was misrepresented in bad faith. Ms. Lade misrepresented the context of *Patick*  
17 *Tabak v. Eastern Washington University, Id.*

18 WSU published the approved procedure in the socalled *Business Policies and Procedures*  
19 *Manual*, Personnel Rule 60.26 as established under WAC 251-19-120(7) in consistent with the  
20 purposes set forth in WAC 251-04-010(1), the term, a “student”<sup>5</sup> is defined as:

21 For purposes of temporary employment, a student is one who is enrolled at WSU for six  
22 or more credit hours during fall or spring semesters. During summer session a student is  
23 one who is enrolled for three or more credit hours.

24 Counsel Stambaugh did not challenge the fact of law that RCW 41.06.070(1) provides  
25 that student employees exempt from the provision, but what constitutes “a student” for  
26 employment purpose is as defined by the Washington Personnel Resources Board (PRB). The  
PRB defines the exemption positions in WAC 251-04-040 and WAC 251-19-120(7). The bottom  
line of the fact is that WSU has adopted its *Business Policies and Procedures Manual*, Personnel  
Rule 60.26 as approved by the Director under WAC 251-19-120(7), and applied the Personnel

<sup>5</sup> There is discrepancy of the credit enrollment from the original approved procedure by the HEPB in August 1990. It is to believe that there is a subsequent approval for the change, otherwise, unlawful and the original remains in effect. However, the discrepancy does not alter the outcome of this instant case.

1 Rule 60.26 since before March 1995, then and now. Such practice of the definition of a student  
2 for employment purpose is consistent and uniform. (See also, Ms. Stemmen testimony at  
3 PAB's Certified Records (CR) 386-87). It is the parameter of the rule defining "a student" for  
4 temporary employment purpose. The WSU practice is relevant, routine and in conformity with  
5 WAC 251-04-040 and 251-12-600. Rule of Evidence RULE 406.

6 The legislature intends that public employers be prohibited from misclassifying  
7 employees, or "taking other action" to avoid providing or continuing to provide employment-  
8 based benefits to which employees are entitled under state law or "employer policies" or  
9 collective bargaining agreements applicable to the employee's correct classification. RCW  
10 49.44.160. Whatever WSU's policy is, it is part of the employment term under RCW 49.44.160.  
11 Indeed, the Personnel Rule 60.26 is part of the state merit law; it is part of the compliance By  
12 WSU with WAC 251-19-120(7); it is part of employment contractual relationship between  
13 WSU, a public employer, and temporary employees. Any reasonable persons should reach to the  
14 ONLY conclusion that the definition of "a student" as approved by the HEPB and published in  
15 Personnel Rule 60.26, is legitimate and effective for the employment purpose for WSU.

16 Respondent's witness already admitted in the PAB's July 13, 2004 hearing that the  
17 Personnel Rule 60.26 has been unchanged and effectively applied to all temporary employees  
18 since or before March 1995. The DOP and WSU are under duty to publish rules and procedures  
19 and abide with them as part of the civil service laws.

20 Any other unpublished definition of a student and/or terms is subject to non-binding  
21 effect and it does not have any adverse effect on any person. RCW 42.17.250. The "some  
22 credits" enrollment definition of a student was NOT approved by the Director and not published,  
23 but a creative of the bad faith to avoid a remedial action; it cannot be used as part of the state  
24 merit system. An application of unpublished distinction between the words, "some credits," was  
25 arbitrary, capricious and unlawful as well as abuse of discretion. *State ex rel. Bartlett v. Pantzer*,  
26 489 P.2d 375 (Mont. 1971).

Any reasonable persons should reach to the only conclusion that the adopting and  
applying of an unpublished definition of "a student" is invalid. The Director's Determination was  
arbitrary, capricious and founded on and contained an error of application of law as to it was  
willful and unreasoning action, taken without regard to or consideration of the facts and  
circumstances surrounding the action. *ABBENHAUS v. YAKIMA*, 89 Wn.2d 855, 858, 576 P.2d

1 388 (1978); *State v. Wittenbarger*, 124 Wn.2d 467, 486, 880 P.2d 517 (1994). Such Director's  
2 Order of July 8, 2003 was unconstitutional and subject to non-binding effect; it has no adverse  
3 effect on Sakkarapope. RCW 42.17.250

4 Therefore, the first remanding issue that the rule that was relied upon by Mr.  
5 Sakkarapope in his presentation was, in fact, clearly already decided back in 1990 approved  
6 pursuant to the WACs, and that should have been part of the case. There is nothing to review  
7 further in this regard; it was a frivolous conduct by Ms. Lade and Counsel Stambaugh. At the  
8 Thurston County Superior Court's December 1, 2006, hearing:

9 MR. SAKKARAPOPE: And at the bottom there, Your Honor, it says. "This procedure is  
10 filed with the Higher Education Personnel Board (HEPB) in accordance with WAC 251-  
11 19-120(7) of the HEPB rules."

12 THE COURT: All right. I see that.

13 MR. SAKKARAPOPE: And on -- you go back to the first page of that paper, Your  
14 Honor --

15 THE COURT: Let's stop there. Ms. Stambaugh, if this information is correct, and I have  
16 no reason to doubt that it's not correct, then the first issue that I remanded back seems to  
17 have been clearly already decided back in 1990, and that the rule that was relied upon by  
18 Mr. Sakkarapope in his presentation was, in fact, approved pursuant to the WACs and  
19 should have been part of the case.

20 (2) WAC 251-04-040 was repealed effective September 1, 2002, and WAC 251-04-035  
21 was proposed on an emergency basis November 14, 2002, **but it was not published and made**  
22 **effective until June 12, 2003**. Thus, any reasonable persons should reach to the ONLY  
23 conclusion that the WAC 251-04-035 cannot be applied retroactively to classify Sakkarapope's  
24 work hours from September 1, 2002, to the end of fall 2002 semester (363.5 hours) as exempt  
25 student work hours because it did not exist and was not made effective at the time his  
26 employment appointments made.

(3) In knowing that the DOP already determined that the WSU's monitoring practice of  
using the beginning of pay period to start tracking hours was not proper,<sup>6</sup> *Bill Williams v. WSU*,  
HEU 3968 (1994, by Kari Lade). Ms. Lade who wrote that ruling; here the same Lade still  
adopted WSU's beginning of pay period as the beginning of the twelve consecutive month  
period inconsistent with its own ruling.

<sup>6</sup> WSU inappropriately used February 16 as the date to start tracking hours Mr. Williams worked toward the 1050  
limit. WSU did not file any exception to the Director's determination which became a precedent.

1 Sakkarapope was initially employed as a non-student on March 21, 1995 while he not  
2 enrolled at WSU. (See Exhibit E-9, E-11 and E; PAB's Certified Records (CR) at 205, 268-9).  
3 He had been continuously employed, on a Position titled: Service Worker I, by the Department  
4 of Crop and Soil Sciences since then. In knowing that the non-student hours in the first twelve  
5 from March 21, 1995 through March 20, 1996 is 1,090 hours, the approximate monitoring period  
6 to start tracking hours is not proper; an exact date of the initial of hire must be employed. Any  
7 competent person who reads and apprehends the entire context of *Patick Tabak v. Eastern*  
8 *Washington University*, Id, should reach to the same conclusion that Ms. Lade misrepresented  
9 the context of the precedent ruling.

8 At the July 13, 2004 hearing, Ms. Stambaugh stated that:

9 "...DOP used the June date because the rule regarding exemptions indicates that student  
10 employment is exempted except for times worked in a temporary position during the  
11 summer. All of Mr. Sakkarapope's time prior to his first temporary appointment, March  
12 of 1995, was worked in a graduate assistant position, which actually is a salaried position,  
13 different than your normal student employment, and that's why WSU chose March 16,  
14 1995. DOP chose June, 1993 as the date to begin monitoring....(CR 330)

13 Ms. Stambaugh already confessed that the DOP's Determination was flaw as it used the  
14 wrong beginning date of the twelve consecutive month periods and WAC 251-04-035. Thus, the  
15 fact of law of *William* permits ONLY conclusion that Respondent and the Director must use the  
16 initial date of hire of March 21, 1995, as the beginning date of the twelve consecutive month  
17 periods to determine whether the work hours of an employee exceeds the 1,050 hour limit.  
18 Then, the application of the twelve consecutive month periods of March 16<sup>th</sup>, 2002 thru March  
19 15<sup>th</sup>, 2003 was incorrect, arbitrary and unconstitutional.

20 **B. Whether Under The Terms Of Rule 60.26, Mr. Sakkarapope Is A Person Qualified For**  
21 **Consideration Of Remedial Action Under WAC 251-12-600: Reasonable Persons Could**  
22 **Reach, But One Conclusion From The Evidences On The Records Of The Director Of The**  
23 **Department Of Personnel ("DOP") That The Four Conditions For Granting A Remedial**  
24 **Action Pursuant To WAC 251-12-600 Are Met.**

23 (I) A remedial action is granted where the four criteria set forth in WAC 251-12-600 are  
24 fulfilled. Then, an employee became a permanent classified employee on the date he exceeded  
25  
26

1 the 1050 hour temporary employment limitation<sup>7</sup>. *Robinson v. WSU*, HEU 4377; *Williams v.*  
2 *WSU*, HEU 3968; *Tyler Scott Kelsey v. Western Wash. Univ.*, HEU 4279. In the instant case, the  
3 **only dispute is whether the fourth condition of granting a remedial action is met:** “the  
4 employee has worked in one or more positions for more than one thousand fifty hours in any  
5 twelve consecutive month periods since the original hire date.” WAC 251-12-600(1)(b).

6 There is no dispute of the total work hours Sakkarapope had performed since March 21,  
7 1995, but the applications of laws: (i) a definition of a student for temporary employment as  
8 approved by the HEPB, (ii) the initial date of hire, (iii) WAC 251-04-035 before it was made  
9 effective June 12, 2003, and (iv) the term, “any twelve consecutive month periods since the  
10 original hire date” in determining of the work hours in each twelve consecutive month periods.  
11 The facts of law and evidence in the records permit that any reasonable persons should reach to  
12 the ONLY conclusion as presented herein.

13 **(2) The first condition** for granting a remedial action is that the position or positions are  
14 subject to civil service. WAC 251-12-600. The WSU’s Personnel Rule 60.26 indicates that  
15 “Employees appointed to duties included in a classified staff job description for 20 or more hours  
16 per week for six months or longer are classified staff regardless of the source of funds or a  
17 specific termination date.” (Exh. E-1D; CR at 211) The undisputed fact is that Sakkarapope was  
18 assigned to perform a research technician’s job description<sup>8</sup> after Mr. John Pritchett, a research  
19 technician, retired in March 2000. Sakkarapope did not perform a duty as a service worker, but  
20 as a research technician job which is a classified staff job description subject to civil service  
21 laws. Therefore, the facts of evidence in the records of the DOP permit that any reasonable  
22 persons should reach to the ONLY conclusion that both positions at issues, a Service Worker I  
23 and research technician made by the Department of Crop and Soil Sciences from March 21,  
24 1995, through February 21, 2003, are subject to the Temporary Employment Program and civil  
25 service laws. The first condition is met.  
26

<sup>7</sup> A remedial action was granted where an employee’s employment exceeded the 1,050 hour limitation in the other cases, e.g., *Morgan Goldbloom v Bellevue Community College*, HEU 4417 (1,060 hrs), *Phillip Hayward v. Bellevue Community College*, HEU 4251 (1,682.75 hrs), *Earl McCrary v. Univ. of Washington*, HEU 4255 (1,517.75 hrs), and *Tyler Scott Kelsey v. Western Washington Univ.*, HEU 4279 (1,066 hrs); *Schmidt v. Western Wash. Univ.*, HEU 4269.

<sup>8</sup> There is undisputed fact that the Department of Crop and Soil Sciences made the appointments to a Service Worker I position, but the actual work performed was research technician’s duty--a classified staff job description of “Agricultural Research Technologist I,” Class code: 4504, and these positions are subject to civil service laws. (Exhibit E-5, C and E)

1           **(3) The second condition** for granting a remedial action is that a hiring institution has  
2 made an appointment that does not comply with higher education personnel rules. WAC 251-  
12-600. The Director concluded and determined that:

3           While Respondent's "Conditions For Temporary Employment" form contains the  
4 required components identified in WAC 251-19-122, the total notification process  
5 regarding Mr. Sakkarapope's temporary appointments was incomplete. Respondent did  
6 not fully comply with the requirements as it is not evident that Mr. Sakkarapope received  
7 written notification of the conditions of his temporary hourly appointments prior to the  
8 commencement of each appointment and/or upon any subsequent change to the  
9 conditions of the employment. (CR at 152; Director's Order at 15)

10           Respondent is directed to fully inform temporary employees of the conditions of their  
11 employment in accordance with WAC 251-04-122. While it may be difficult to ensure  
12 compliance such as if student status changes during an employment cycle, every effort  
13 should be made to comply with the notification provisions.... Respondent should ensure  
14 that initial appointments falling under the criteria of WAC 251-04-035(2)(a) are  
15 considered for proper tracking of hours." (CR at 154; Director's Order at 17)

16           Where neither party took any exception to these portions of the Director's Conclusion  
17 and Determination, such conclusion and determination is final and binding upon the parties.  
18 WAC 251-12-600(4). Any reasonable persons should reach to the ONLY conclusion from the  
19 facts in the records of the DOP that since March 21, 1995, Sakkarapope was given by the  
20 department and signed the "Conditions For Temporary Employment form ONLY the first, initial  
21 appointment during March 21, through May 15, 1995. (Exhibit E-11; CR at 268) In the  
22 subsequent reappointments, made continuously with no time break, since May 16, 1995, none  
23 was signed by Sakkarapope. Thus, the second condition is met by the Director's Conclusion and  
24 Determination.

25           **(4) The third condition** for granting a remedial action is that an employee has not taken  
26 part in any willful failure to comply with these rules. The DOP had repeatedly set precedents that  
an employer has a burden to comply with the notification provisions:

          The contention that an employee was properly notified of the conditions of his  
employment and was therefore a party to the violation when his hours crossed the 1050-  
hour limit is without merit. This contention presupposes that given proper notification,  
**employees share responsibility for terminating their employment** when their hours  
reach the 1050-hour limit. **This presumption is not valid...** The burden is on respondent  
to properly notify temporary employees of the conditions of the temporary employment  
prior to the beginning of each appointment and upon any changes to the conditions of  
their appointment. When temporary employees are not given proper notification of the

1 conditions of their temporary appointment, the burden should not be upon the employee  
2 to terminate their employment when their hours reach the 1050 hour limit. **Respondent**  
3 **carries the burden for monitoring and terminating temporary employees before**  
4 **they reach the 1050 hour limit.”** *Schmidt v. Western Washington Univ.*, HEU 4269;  
5 *Kelsey v. Western Washington Univ.*, HEU 4279. [Emphasis added]

6 A process of informing employees of changes to temporary appointments is not totally in  
7 compliance with WAC 251-19-122 where the employee does not sign the form to verify receipt  
8 as required by WAC 251-19-122 (2)(h). *Robinson v. WSU*, HEU 4377 (2002). **“Since an**  
9 **employee was not properly informed of the conditions of these appointments, he did not**  
10 **take part in any willful failure to comply with the HEPB rules.”** *McCrary v. Univ. of Wash.*,  
11 HEU 4255; *Hayward v. Bellevue Community College*, HEU 4251; *Kelsey v. Western*  
12 *Wash. Univ.*, Id. [Emphasis added]

13 At the July 13, 2004 hearing, Ms. Stemmene testified that:

14 SAKKARAPOPE: So when the employer did not give this form to employee to sign,  
15 does it mean that employer failed to comply with temp employment provision?

16 STEMMENE: Yes. (CR 383)

17 Indeed, any reasonable persons should reach to the only conclusion that Sakkarapope has  
18 not taken part in any willful failure to comply with these rules. Thus, the third condition is met  
19 by the DOP’s precedents.

20 (5) **The fourth condition** for granting a remedial action is that an employee has worked  
21 in one or more positions for more than one thousand fifty hours in **any** twelve consecutive month  
22 period **since the original hire date**.

23 Counsel Stambaugh did not challenge the fact of law that WAC 251-12-600(1)(b)  
24 dictates that the DOP and the PAB must determine the work hours in all twelve consecutive  
25 month periods **since the original hire date**. Ms. Stambaugh acknowledged her understanding at  
26 the PAB July 13, 2004 hearing that:

...my understanding, and again, from all the remedial action cases that I’ve read, they  
look at the very first beginning date, October 1, 1989, or the date of original hire, and  
that’s the date they use, and I believe that’s how all the institutions that I know  
monitors.....(CR 331)

1 Any reasonable persons should reach to the ONLY conclusion that Sakkarapope's non-  
2 student hours exceeded the 1050 hour limit in the following twelve consecutive month periods  
3 since the original hire date of March 21, 1995<sup>9</sup> (See Exhibit B1-B8):

4 (i) Despite the definition of a student and the hours of works as graduate assistants  
5 outside of a major field of study and all legal questions above, **Sakkarapope had worked 1,090**  
6 **hours non-student hours which exceeded the 1050 in the first twelve consecutive month**  
7 **period of March 21st, 1995 through March 20th, 1996.** Sakkarapope's total non-student work  
8 hours (SHR/HR Y) is obviously the sum of  $55.5+60.5+68.75+68.25+102+97.25+102.75+76.25+$   
9  $110+102.5+90.75+20+30.75+80.75+24=1,090$  hrs.<sup>10</sup> (See Exhibit B-1, E-6) **Sakkarapope's**  
10 **non-student temporary employment first crossed the 1050 hours limit on January 12, 1996.**  
11 **(Exhibit B-1) This fact also shows that Sakkarapope had a permanent status since his non-**  
12 **student work hours was first crossed the 1050 limit on January 12, 1996.** *Robinson v. WSU,*  
13 *Id;* *Williams v. WSU*, HEU 3968 (1994); see Attachment—Temporary Employee Daily Activity  
14 Report for the first half of January, 1996, to determine the exact date the hour crossed the 1050  
15 limit.

16 (ii) With the definition of a student as prescribed in the HEPB's approve procedure and  
17 the Personnel Rule 60.26, Sakkarapope had worked a total of 1,244.5 non-student hours in the  
18 last 12-month consecutive period of March 21st, 2002, through February 24th, 2003. (Exhibit B-  
19 8) Furthermore, Ms. Laurie Stemmene, Respondent's witness, conceded at the July 13, 2004,  
20 hearing that based on the published definition of a student as in Personnel Rule 60.26,  
21 Sakkarapope's total non-student work hours is 1,231; and by including the work hours during the  
22 breaks, the total is 1,297.5 hours, and that "It does exceed 1050." (CR 379-82; 406-8; Exhibit R-  
23 10<sup>11</sup>) By using the definition of a student as described in the HEPB's approved procedure and  
24 the Personnel Rule 60.26, Sakkarapope's work hours in student/non-student classes (SHR/HR Y)  
25 is obviously the sum of  $13.5+15.75+99.50+78+74.25+76.25+89.75+92.25+50.5+39.75+35+$   
26  $50+86.5+40+32+80+40+40+49+50+76+36.5=1,244.50$  hrs. (See Exhibit B-8, E-6) The  
discrepancy of  $1,297.5-1,244.50=53$  comes from that of Respondent used the beginning period

<sup>9</sup> Although there is some error in coding type of hours worked that was not consistent with Sakkarapope's credit enrollment as defined by Personnel Rule 60.26, there is no dispute of the total hours of works as it was printed from the University payroll system and submitted to the DOP by WSU. The coding can be easily verified or settled by a cross-reference to a credit enrollment report—Exhibit E-9.

<sup>10</sup> There is error of coding of type of hours worked in spring 1995 semester where Sakkarapope did not enroll any credit; the work hours should have been coded as non-student work hours.

<sup>11</sup> Respondent uses March 16, a pay cycle period as the beginning of the twelve consecutive month period.

1 of March 16, 2002, instead of the initial date of hire—March 21, 1995, and did not properly  
2 breakdown the work hours between semester breaks and holidays. However, the small  
3 discrepancy does not affect the fact that Sakkarapope's total non-student work hours from March  
4 21, 2002, to the termination date exceeded the 1050 hour limit in the last twelve consecutive  
5 month period.

6 The fact also shows that Respondent has applied the published definition of a student  
7 over a decade and then used it as a basis to terminate Sakkarapope's temporary employment.  
8 Nonetheless, after Sakkarapope requested a remedial action, Respondent, later in the PAB's  
9 proceeding, cooked the book and suggested Sakkarapope's work hours of 403.25 hours during in  
10 the fall 2002 semester should be classified as student exempt. Respondent, Ms. Kruse and Ms.  
11 Lade have full knowledge of the 1990 approved procedure, the so-called "Washington State  
12 University Procedure for Insuring Compliance with HEPB Rules Controlling Student and Non-  
13 Student Temporary Employment," and sit on the document from the beginning at all time.  
14 Respondent, Ms. Kruse and Ms. Lade committed official misconduct. RCW 9A.80.010 It is the  
15 fact of law that Sakkarapope's work hours of 403.25 hours during in the fall 2002 semester,  
16 where he enrolled for 3 credits, **cannot** be classified as student exempt.

17 Further, an application of WAC 251-04-035, which was made effective June 12, 2003, to  
18 classify Sakkarapope's work hours of 363.5 hours (of 403.25 hours) from September 1, 2002, to  
19 the end of fall 2002 semester as student exempt hours is unconstitutional and has no legal  
20 adverse effect on Sakkarapope.

21 (iii) By taking into account for the work hours under graduate assistants (R/T) in the  
22 EECS and CTLT from May 16, 1998, to May 15, 2000, Sakkarapope's non-student work hours  
23 also exceeded the 1,050 hours limits in three additional twelve consecutive month periods: (i)  
24 March 21<sup>st</sup>, 1998 thru March 20<sup>th</sup>, 1999; a non-student work hours total of 1,263.5 hours,  
25 HRY+R/T (Exhibit B-4); (ii) March 21<sup>st</sup>, 1999 thru March 20<sup>th</sup>, 2000; a non-student work hours  
26 total of 1,507.5 hours, HRY+R/T (Exhibit B-5); and (iii) March 21<sup>st</sup>, 2000 thru March 20<sup>th</sup>, 2001;  
a non-student work hours total of 1,188.25 hours, HRY+R/T (Exhibit B-6).

Sakkarapope was not a graduate student of the EECS, the CTLT, and Department of Crop  
and Soil Sciences. None of Sakkarapope's coursework was from these three departments/  
colleges; the works were outside of Sakkarapope's major fields of study. The Graduate Research  
Assistants/Summer Graduate Research Assistant made by the College of Electrical Engineering

1 and Computer Sciences (EECS) and the Center for Teaching and Learning Technology (CTLT)  
2 from May 16, 1998, to May 15, 2000, were NOT exempt under WAC 251-04-040(3)(b) because  
3 the works were NOT directly related to Sakkarapope's major fields of study. These work hours  
4 were subject to the WAC 251-01-415(2), WAC 251-12-600(1), and WAC 251-04-040(6); and  
5 they must be counted toward the 1050 hour limit.

6 Indeed, any reasonable persons should reach to the ONLY conclusion that Sakkarapope's  
7 non-student hours exceeded the limit in five twelve consecutive month periods. Therefore,  
8 where Sakkarapope's four conditions were met under the terms of Rule 60.26 and of the original  
9 approved by the DOP, Mr. Sakkarapope is a person qualified for consideration of remedial action  
10 under WAC 251-12-600.

### 11 **C. Whether A Remedial Action Should Be Offered To Mr. Sakkarapope: Administrative** 12 **Decisions Are Required To Be Consistent**

13 "Remedial Action is intended to afford non-classified persons access to the classified  
14 service through appeal to the Director of the Higher Education Personnel Board when certain  
15 appointment criteria have not been met by an institution." *Tony Jongkol v. University of*  
16 *Washington*, HEU No. 3534 (by Kari Lade); *Harborview Medical Interpreters et. al. v.*  
17 *University of Washington (HMC)*, HEU No. 4283 (by Kris Brophy, July, 2000).

18 It has been a settled standard for offering or granting a remedial action under the DOP. A  
19 remedial action was granted where the four criteria set forth in WAC 251-12-600 for granting  
20 such a request are fulfilled: 1) Respondent made an appointment which did not comply with  
21 HEPB rules; 2) an employee worked in one or more positions for more than one thousand fifty  
22 hours in the twelve consecutive month period; 3) an employee's position is subject to civil  
23 service; 4) an employee was not a party to willful failure to comply with HEPB rules. An  
24 employee became a permanent classified employee on the date he exceeded the one thousand  
25 fifty hour temporary employment limitation. *George H. Robinson v. Washington State*  
26 *University*, HEU No. 4377 (by Kari Lade, February, 2002); *Bill Williams v. Washington State*  
*University*, HEU 3968 (by Kari Lade, December, 1994); *Robert Schmidt v. Western Washington*  
*University*, HEU No. 4269 (by Kris Brophy); *Earl McCrary v. University of Washington*, HEU  
No. 4255 (by Kari Lade, March, 2000); *Phillip Hayward v. Bellevue Community College*, HEU  
No. 4251 (by Kris Brophy, January, 1999); *Tyler Scott Kelsey v. Western Washington University*,

1 HEU No. 4279 (by Kari Lade, July, 2000); *Morgan Goldbloom v Bellevue Community College*,  
2 HEU No. 4417 (by Kris Brophy, May, 2002).

3 Prior to *Sakkarapope* (March, 1993 through September, 2002), there are, at least, five  
4 remedial actions filed against Washington State University. The remedial actions were granted  
5 in two cases:

6 (i) In *Bill Williams v. Washington State University*, HEU 3968 (by Kari Lade, December,  
7 1994), a remedial action was granted where an employee's employment exceeded the one  
8 thousand fifty hour limitation at a total employment of 1,181.85 hours.

9 (ii) In *George H. Robinson v. Washington State University*, HEU 4377 (by Kari Lade,  
10 February, 2002), a remedial action was granted where an employee's employment exceeded the  
11 one thousand fifty hour limitation at a total employment of 1,087 hours.

12 Additionally, a remedial action was granted where an employee's employment exceeded  
13 the one thousand fifty hour limitation in the other following cases:

14 (i) *Morgan Goldbloom v Bellevue Community College*, HEU No. 4417 (by Kris Brophy,  
15 May, 2002) at a total employment of 1,060 hours.

16 (ii) *Phillip Hayward v. Bellevue Community College*, HEU No. 4251 (by Kris Brophy,  
17 January, 1999) at a total employment of 1,682.75 hours.

18 (iii) *Earl McCrary v. University of Washington*, HEU No. 4255 (by Kari Lade, March,  
19 2000) at a total employment of 1,517.75 hours.

20 (iv) *Tyler Scott Kelsey v. Western Washington University*, HEU No. 4279 (by Kari Lade,  
21 July, 2000) at a total employment of 1,066 hours.

22 Where the Director's Determination in *Victor Keith Myers v. University of Washington*,  
23 HEU 4352 (2001) that "the director's authority to grant remedial action is discretionary and is not  
24 required by WAC 251-12-600 if a temporary employee works over 1050 hours," **was**  
25 **overturned** by the PAB in *Victor Keith Myers v. University of Washington*, RULE-01-0038  
26 (2002). The PAB also already interpreted WAC 251-12-600 that the employee is entitled to  
benefits as of the date when his hours exceeded 1050 (e.g., a total of 1078.50):

It is undisputed that Petitioner's hours of temporary work exceeded 1050.....

**Respondent was clearly aware of its duty and responsibility to monitor** Petitioner's  
hours of work **and to comply with the provisions** of the temporary appointment rules.  
For the most part, they successfully did so. However, we are alarmed by **the recurring**  
**pattern of Respondent's employment practices** that kept Petitioner working as a  
"temporary" custodian at the university for over 10 years. Respondent **intentionally**

1 **manipulated Petitioner's hours of work** between temporary and contract employment  
2 **to avoid conferring him with the permanent status and benefits provided to**  
3 **classified state employees.** While prior to April 1999, Respondent may have complied  
4 with the letter of the rules, **the applicable rules do not contain an exception or excuse**  
5 **for Respondent based on substantial compliance.** More so, **the intent of the rules**  
6 **and the highest standards of state human resource practices** lead to inclusion in the  
7 civil service with exclusion being the exception within narrowly defined parameters.  
8 *Victor Keith Myers v. University of Washington*, RULE-01-0038. [Emphasis added].

9 It is required that decisions of administrative agencies must be consistent in their  
10 construction of statutory terms, but did not address the issue of agency remedial action.  
11 *SOLTMAN v. CENTRAL WASH. STATE COLLEGE*, HEPB 311 (1976); *EARWOOD v.*  
12 *CENTRAL WASH. UNI v.*, HEPB 1147 (1980); *VERGEYLE v. DEPARTMENT OF EMPL. SEC.*,  
13 28 Wn. App. 399, 623 P.2d 736 (1981). The Court determined that:

14 **HEPB's discretionary authority to retain an improperly hired employee is**  
15 **supported by WAC 251-12-600.** This rule allows the director of HEPB to confer  
16 permanent status on an employee who has been hired in violation of HEPB rules, and was  
17 not a party to a willful disregard of the rules. Because HEPB has the discretionary  
18 authority to confer permanent status on an employee who has been hired in violation of  
19 HEPB rules, **the Board surely has the discretionary authority to refuse to dismiss**  
20 **that employee.** *STAHL v. UNIVERSITY OF WASHINGTON*, 39 Wn. App. 50, 691 P.2d  
21 972. [Emphasis added]

22 RCW 49.44.160 provides that public employers be prohibited from misclassifying  
23 employees, or "taking other action" to avoid providing or continuing to provide employment-  
24 based benefits to which employees are entitled under state law or "employer policies" or  
25 collective bargaining agreements applicable to the employee's correct classification. Thus, a  
26 remedial action under WAC 251-12-600 is the employee's liberty interest provided under the  
state law where the four criteria are met.

It is an unfair practice for any public employer to: (a) misclassify<sup>12</sup> any employee to  
avoid providing or continuing to provide employment-based benefits; or (b) include any other  
language in a contract with an employee that requires the employee to forgo employment-based  
benefits. RCW 49.44.170(1). An employee deeming himself or herself harmed in violation of

<sup>12</sup> "Misclassify" and "misclassification" means to incorrectly classify or label a long-term public employee as  
"temporary," "leased," "contract," "seasonal," "intermittent," or "part-time," or to use a similar label that does not  
objectively describe the employee's actual work circumstances. RCW 49.44.170(1)(d).

1 RCW 49.44.170(1) may bring a civil action in a court of competent jurisdiction. RCW  
2 49.44.170(3)

3 RCW 41.06.010 declares the general purpose of the chapter that is “to establish for the  
4 state a system of personnel administration based on merit principles and scientific methods  
5 governing the appointment, promotion, transfer, layoff, recruitment, retention, classification and  
6 pay plan, removal, discipline, training and career development, and welfare of its civil  
7 employees, and other incidents of state employment. All appointments and promotions to  
8 positions, and retention therein, in the state service, shall be made on the basis of policies  
9 hereinafter specified.

10 RCW 41.06.133 mandates that the director shall adopt rules, consistent with the purposes  
11 and provisions of this chapter and with the best standards of personnel administration, regarding  
12 the basis and procedures to be followed. Rules adopted under this section by the director shall  
13 provide for local administration and management by the institutions of higher education and  
14 related boards, subject to periodic audit and review by the director.

15 RCW 41.06.130 demands that the director of personnel shall direct and supervise all the  
16 department of personnel's administrative and technical activities in accordance with the  
17 provisions of this chapter and the rules adopted under it. The director of personnel may delegate  
18 to any agency the authority to perform administrative and technical personnel activities if the  
19 agency requests such authority and the director of personnel is satisfied that the agency has the  
20 personnel management capabilities to effectively perform the delegated activities. The director of  
21 personnel shall prescribe standards and guidelines for the performance of delegated activities. If  
22 the director of personnel determines that an agency is not performing delegated activities within  
23 the prescribed standards and guidelines, the director shall withdraw the authority from the  
24 agency to perform such activities.

25 The director's authority to grant remedial action is NOT discretionary, but Sakkarapope's  
26 liberty interest created by WAC 251-12-600 and protected by the constitutions, and he is entitled  
to a permanent status and benefits as of the date when his hours first exceeded 1050 limit. *Myers*  
*v. Univ. of Washington*, HEU 4352. In *Williams and Robinson*, as a standard adopted and applied  
over a decade, the Director granted a remedial action where an employee's employment  
exceeded the 1050 limit, less than in *Sakkarapope*, and under the same rules and procedures. The  
denial of remedial action where the four criteria are met is prohibited under RCW 49.44.160. The

1 Director has statutory duty to enforce the applicable laws and rules it adopted equally across all  
2 employees. The Director shall honor its own rules and standard practice in granting remedial  
3 action. No one shall be subject to a special rule upon its prejudice.

4 In the instant case, the PAB and the DOP denied Sakkarapope's remedial action based on  
5 the **only basis whether the fourth condition of granting a remedial action is met**: "the  
6 employee has worked in one or more positions for more than one thousand fifty hours in any  
7 twelve consecutive month periods since the original hire date." WAC 251-12-600(1)(b). Where  
8 the trial court reversed the PAB's decision, the DOP has no other ground for denying the  
9 remedial action. The undisputed fact is that the four conditions were met in the first twelve  
10 consecutive month period of March 21, 1995 thru March 20, 1996, Sakkarapope's remedial  
11 action should be granted in consistent with the precedents as of the non-student temporary  
12 employment first crossed the 1050 hours limit on January 12, 1996. *Robinson v. WSU*, HEU  
13 4377; *Williams v. WSU*, HEU 3968.

14 WSU has a substantially recurring pattern of failure to comply. Prior to *Sakkarapope*  
15 (March, 1993 through September, 2002), there are, at least, five remedial actions filed against  
16 WSU. The remedial actions were granted in two cases: (i) *Williams* where his total employment  
17 was 1,181.85 hours, and (ii) *Robinson* where his total employment was 1,087 hours. WSU had  
18 been repeatedly directed by the Director to inform temporary employees of changes to the  
19 conditions of their temporary employment in accordance with WAC 251-19-122, and to review  
20 its hourly monitoring procedures to ensure timely and effective communications with  
21 departments to help maintain temporary employees within the required limit. *Williams v. WSU*,  
22 HEU 3968; *Robinson v. WSU*, HEU 4377; *Braden v. WSU*, HEU 4364; *Watkins v. WSU*, HEU  
23 3989.

24 The evidence in the instant case shows that WSU misclassified Sakkarapope's  
25 employment and took "actions to avoid providing or continuing to provide employment-based  
26 benefits" to which Sakkarapope is entitled under state law or WSU's policies. The undisputed  
fact is that the four conditions were met in the first twelve consecutive month period of March  
21, 1995 thru March 20, 1996, Sakkarapope should have been classified as a permanent position  
since January 12, 1996, where the 1050 hours limit was crossed, but WSU maintained the same  
temporary appointment, Service Worker I.

1 Where Sakkarapope was assigned to perform a research technician's job description since  
2 March, 2000, and did not perform a duty as a service worker, but as a research technician job  
3 which is a classified staff job description subject to civil service laws, WSU misclassified  
4 Sakkarapope's employment as temporary employment as Service Worker in violation of RCW  
5 49.44.160. Such misclassification constitutes an unfair practice as defined in RCW 49.44.170.

6 The term, "internal policies," suggested by Counsel Stambaugh is frivolous. The DOP  
7 and the PAB denied a remedial action based on a single cause that is the refusal to abide by the  
8 approved rule and procedure in compliance with WAC 251-19-120(7). With the 1990 approved  
9 procedure, there is no basis to deny Sakkarapope's remedial action request; it is prohibited to  
10 avoid the employment-based benefits provided by the state law. Sakkarapope has defended such  
11 unfair labor practice, misclassification, fraud and misrepresentation by the University's and the  
12 DOP's officials, abuse of process and discretion by the DOP and the PAB. The concealing and  
13 refusing to abide by the approved procedure is frivolous or meritless in the meaning set by the  
14 Supreme Court. *BOARD OF TRUSTEES, Id.* It is inconsistent with the legislative intent.

15 Counsel Stambaugh suggested if the PAB at the July 13, 2004 hearing granted a remedial  
16 action, WSU would terminate Sakkarapope's employment afterward anyway. (PAB Transcript,  
17 CR 321-421) Such statement was prejudicial and discriminated in nature, showing the intention  
18 to violate Sakkarapope's constitutional right to equal treatment and employment opportunity. 42  
19 U.S.C. §2000d et seq. WSU is prohibited to take action to avoid to provide Sakkarapope's  
20 employment-based benefits. RCW 49.44.160.

21 Counsel Stambaugh also intentionally introduced and assisted the witness to use an  
22 unpublished definition of a student which was not warranted by existing authorities to create the  
23 Exhibit R-10 to mislead the PAB, and prejudicially and frivolously suggested the guilt of  
24 Sakkarapope that he would have obligated to terminate his employment prior to the 1050 limit,  
25 inconsistent with the DOP's precedent ruling that it is WSU's burden as an employer. *See*  
26 *Schmidt v. Western Washington Univ.*, HEU 4269; *Kelsey v. Western Washington Univ.*, HEU  
4279. (CP-I 175-213) (PAB Transcript, CR 321-421); *Robinson v. WSU*, HEU 4377; *McCrary*  
*v. Univ. of Wash.*, HEU 4255; *Hayward v. Bellevue Community College*, HEU 4251; *Kelsey v.*  
*Western Wash. Univ.*, *Id.*

With inclusion of the previous sections herein, including the lying and unreasonably  
excusing of the concealing of the 1990 approved procedures in compliance with WAC 251-12-

1 170(7), Sakkarapope's employment benefits has been denied; it is unfair labor practice. Where  
2 the director's authority was delegated to WSU under WAC 251-19-120(7) and WSU is not  
3 performing delegated activities within the prescribed standards and guidelines, the director shall  
4 withdraw the authority from the agency to perform such activities. RCW 41.06.130

5 It is also an undisputed fact that:

6 Please understand that my actions in your employment termination do not in any way  
7 reflect my confidence and in your ability to perform the duties associated with your  
8 employment with me. I also would like to thank you for your excellent working during  
9 these last four years that we have worked together. (CP 397)

10 Where the director has statutory duty to maintain the prescribed personnel standard and is  
11 required to be consistent with its own administrative decisions, precedent rulings, a remedial  
12 action should be offered or granted to Mr. Sakkarapope as to the same where the four criteria for  
13 granting such remedial action are met. Where the solely basis--the fourth criteria--the 1050  
14 hour limit for the DOP's and the PAB's denials of remedial action was reversed by the Court, the  
15 Director has no other basis to deny Sakkarapope's request for remedial action. If there were  
16 another one, why should it be part of the original determination in the first place? The DOP shall  
17 stop any further frivolous proceeding to waste time and other state resources in this regard.

#### 18 IV. CONCLUSION

19 Based on the facts and existing authorities therein above, Respondent and its counsel  
20 chose to conceal and misleadingly manipulate the fact of the DOP's approved procedure in  
21 compliance with WAC 251-19-120(7); and repeatedly refused to abide by its rule and procedure  
22 from day one. Therefore, Appellant requests the Director modify the original FINDINGS,  
23 CONCLUSION, AND DETERMINATION OF THE DIRECTOR entered July 8<sup>th</sup>, 2003, in  
24 compliance with the Thurston County Superior Court's final judgment entered December 22,  
25 2006, and the 1990 approved procedure as well as the other applicable statutes. Such  
26 modification shall be consistent with the facts in the administrative records, the existing  
administrative rules established by the HEPB and the Director and relevant judicial standard set  
forth herein above as well as the highest personnel standard of the State of Washington.

Where the four conditions pursuant WAC 251-12-600 are clearly met in the first twelve  
consecutive month period of Mach 21, 1995 thru March 20, 1996, Sakkarapope's remedial action

1 should be granted as of January 12, 1996. *Robinson v. WSU*, HEU 4377; *Williams v. WSU*, HEU  
2 3968. The Director shall properly confer permanent status, set salary, establish seniority, and  
3 determine benefits accrued from the seniority date as of January 12, 1996, as well as include  
4 other actions the director may require to meet the highest personnel standards. Such action shall  
5 confer permanent status as of research technician since March 2000, including the difference in  
6 wages and incremental compensation since the date of permanent status is set.

7 Respectfully submitted this 12th day of April, 2007,



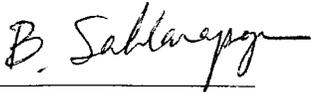
8 Appellant

9 **Attachment**—Temporary Employee Daily Activity Report for the first half of January, 1996.

10  
11  
12 **CERTIFICATE OF SERVICE**

13  
14 I certify that one copy of BRIEF ON REMAND FOR APPELLANT has been served  
15 upon Respondent by first class mail, pre-postage, on this 12th day of April, 2007, to the address:

16 Richard A. Health,  
17 Associate Vice President for Administration and Human Resources,  
18 Washington State University,  
19 139 French Adm. Bldg., Room 432  
20 P.O. Box 641045  
21 Pullman, WA 99164-1045



22 Benjapon Sakkarapope  
23  
24  
25  
26

\$484.50

Day	Number of Units*
1	-
2	8.00
3	8.00
4	8.00
5	8.00
6	-
7	-
8	8.00
9	8.25
10	8.50
11	8.00
12	8.00
13	-
14	-
15	8.00
<b>15-Day Total</b>	<b>80.75</b>
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<b>Second Half Total</b>	

Month/Year 1-96	Project Name (optional) Allan
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**TEMPORARY EMPLOYEE  
DAILY ACTIVITY REPORT**

Washington State University  
Pullman, WA 99164

Complete a new Daily Activity Report each pay period.

**Temporary or part-time employee:** Each workday enter the number of hours worked or pieces completed on this form. This Daily Activity Report is the official accounting of your activity and is used to generate your paycheck. Your department uses this information to complete the Unit Pay Report form which is routed to Payroll Services.

Ask your supervisor for submittal deadlines. You must submit this form by the submittal deadline to be paid on the next payday.

Social Security Number 531-27-2637		Position Number 802101		
Title SERVICE WORKER I		Title Code 9006		
Employee Name (last, first, middle) SAKKARAPOPE, BENJAPON				
Fund	Subfund	Program	Budget	Project
		13C	3019	5851
Units <input checked="" type="checkbox"/> Hour <input type="checkbox"/> Piece		Rate of Pay per Unit \$6.00	Pay Period From 01/01 To 01/15/96	

I certify that this is an accurate report of the hours worked or the pieces completed for the days specified.

X B. Sakkarapope 1/24/96  
Employee's Signature Date

X Dwaine H. Miller 1/24/96  
Supervisor's Signature Date

\* Report minutes as a decimal fraction of one hour.

\$484.50

Day	Number of Units*
1	-
2	8.00
3	8.00
4	8.00
5	8.00
6	-
7	-
8	8.00
9	8.25
10	9.50
11	8.00
12	8.00
13	-
14	-
15	8.00
<b>15-Day Total</b>	<b>80.75</b>
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<b>Second Half Total</b>	

Month/Year 1-96	Project Name (optional) Allan
--------------------	----------------------------------

### TEMPORARY EMPLOYEE DAILY ACTIVITY REPORT

Washington State University  
Pullman, WA 99164

Complete a new Daily Activity Report each pay period.

**Temporary or part-time employee:** Each workday enter the number of hours worked or pieces completed on this form. This Daily Activity Report is the official accounting of your activity and is used to generate your paycheck. Your department uses this information to complete the Unit Pay Report form which is routed to Payroll Services.

Ask your supervisor for submittal deadlines. You must submit this form by the submittal deadline to be paid on the next payday.

Social Security Number 531-27-2637		Position Number 802101		
Title SERVICE WORKER I		Title Code 9006		
Employee Name (last, first, middle) SAKKARAPOPE, BENJAPON				
Fund	Subfund	Program 13C	Budget 3019	Project 5851
Units <input checked="" type="checkbox"/> Hour <input type="checkbox"/> Piece		Rate of Pay per Unit \$6.00	Pay Period From 01/01 To 01/15/96	

I certify that this is an accurate report of the hours worked or the pieces completed for the days specified.

X B. Sakkarapope 1/2/96  
Employee's Signature Date

X Durane H Miller \_\_\_\_\_  
Supervisor's Signature Date

\* Report minutes as a decimal fraction of one hour.



STATE OF WASHINGTON  
DEPARTMENT OF PERSONNEL

DIRECTOR'S REVIEW PROGRAM  
2828 Capitol Blvd., P.O. Box 40911 • Olympia, WA 98504-0911  
(360) 586-1481 • FAX (360) 753-0139

April 17, 2007

Donna Stambaugh  
Office of Attorney General  
1116 W. Riverside Ave.  
Spokane, Washington 99201

RE: Sakkarapope v. WSU—Remand from Thurston County Superior Court

Dear Ms. Stambaugh:

In my February 8, 2007 letter to the parties, both sides were invited to submit simultaneous, written briefs summarizing their responses to the Court's order. On April 13, 2007, we received a response from both you and Mr. Sakkarapope.

I am enclosing a copy of Mr. Sakkarapope's response for your records and sending him a copy of your response as well. If you have any questions regarding this matter, please contact me at (360) 664-2574 or via email at [KarenW@dop.wa.gov](mailto:KarenW@dop.wa.gov).

Sincerely,

Karen Wilcox  
Director's Review Coordinator

c: Benjapon Sakkarapope



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APR 13 2007

Department of Personnel  
Director's Review Program

BEFORE THE DEPARTMENT OF PERSONNEL  
STATE OF WASHINGTON

BENJAPON SAKKARAPOPE,  
Appellant,

v.

WASHINGTON STATE  
UNIVERSITY,

Respondent.

REFERENCE SUPERIOR COURT  
NO. 04-2-02084-8

RESPONDENT'S  
MEMORANDUM IN RESPONSE  
TO REMAND FROM SUPERIOR  
COURT

The State of Washington, Washington State University (WSU), as Respondent, by and through its attorneys, Robert M. McKenna, Attorney General, and Donna J. Stambaugh, Assistant Attorney General, submits the following Memorandum in response to the remanded action from Thurston County Superior Court

**I. PROCEDURAL HISTORY**

Appellant, Benjapon Sakkarapope, was a student and part-time hourly employee at WSU. Mr. Sakkarapope filed a request for remedial action with the Department of Personnel (DOP) on March 7, 2003, contending that "As of February 24, 2003, I have worked more than 1,050 hours in 12 consecutive months since March 16, 2002." He contended that he was therefore entitled to a remedial action. The DOP denied Mr. Sakkarapope's request on July 8, 2003, whereupon he appealed to the Personnel Appeals Board (PAB). The PAB heard Mr. Sakkarapope's appeal on July 13, 2004,

1 and issued Findings of Fact, Conclusions of Law and Order of the Board on October 5,  
2 2004, denying Mr. Sakkarapope's request for remedial action. On or around October  
3 11, 2004, Mr. Sakkarapope filed a Notice of Appeal of the PAB decision with the  
4 Thurston County Superior Court. The Superior Court heard oral argument in this  
5 matter on October 6, 2006, and entered their order on December 22, 2006, directing that  
6 the matter be remanded back to the DOP for further proceedings.

7 In his appeal to the Thurston County Superior Court Mr. Sakkarapope raised a  
8 number of issues for the court to consider including that 1) the PAB erred by taking  
9 additional evidence and conducting a new hearing; 2) the 12-month monitoring period  
10 used by the PAB in determining total hours worked was incorrect; and 3) the  
11 Washington Administrative Code section exempting students from civil service was  
12 repealed for several months during a time period pertinent to these proceedings. The  
13 Superior Court denied Mr. Sakkarapope's appeal of all issues other than the one  
14 involving WSU's internal procedure which is the subject of this remand proceeding.  
15 Those rulings by the Superior Court with regard to those other issues have not been  
16 appealed and therefore the decision surrounding those contentions is final and binding.<sup>1</sup>

17 The fourth contention that Mr. Sakkarapope raised in his petition to Superior  
18 Court is the subject of this remand. Mr. Sakkarapope asserted that since WSU's  
19 internal policy defines a student to be any student that is enrolled for six credit hours or  
20 more, the hours he worked as a temporary employee during the semester when he was  
21 only enrolled for three credit hours should not be counted as student hours; rather,  
22 Mr. Sakkarapope contends, they should be counted toward the 1,050 hour limit making  
23 him eligible for consideration for remedial action.

24  
25  
26 <sup>1</sup> Mr. Sakkarapope did file an appeal relating to the Superior Court order contending that the denial of his  
request for costs, fees and sanctions was in error. That appeal is pending before the Court of Appeals.

1 With respect to the issue of WSU's internal policy, BPPM 60.26, the Superior  
2 Court was troubled that the PAB did not consider more fully this policy in rendering  
3 their decision. To that end, the Superior Court ordered that the decision of the PAB  
4 entered in this matter on October 4, 2004, is reversed, and "This order is remanded back  
5 to the Department of Personnel to determine whether WSU's Business Policies and  
6 Procedures Manual, Personnel Rule 60.26, is part of compliance by WSU with WAC  
7 251-19-120(7), and if so, whether under the terms of Rule 60.26, Mr. Sakkarapope is a  
8 person qualified for consideration of remedial action under WAC 251-12-600, and if so,  
9 to consider whether a remedial action should be offered to Mr. Sakkarapope."

## 11 II. STATEMENT OF FACTS

12 Mr. Sakkarapope was enrolled at WSU as a student during the spring semester of  
13 2002 for 11 credits and during the fall semester of 2002 for three credits. He was not  
14 enrolled as a student during the summer semester of 2002. **Attachment R1** shows the  
15 academic enrollment history from the WSU's Registrar's Office. During the spring  
16 semester of 2003, Mr. Sakkarapope initially enrolled for six credits. Mr. Sakkarapope  
17 was enrolled in WSU's Graduate School but was sent a letter from the graduate school  
18 confirming his dis-enrollment on January 31, 2003. **Attachment R2.** This dis-  
19 enrollment was retroactively applied to the beginning of the spring 2003 semester as  
20 **Attachment R1** shows a withdrawal date of 1/10/03. Mr. Sakkarapope worked a total  
21 of 162 hours from January 16, 2003, through the end of his employment, as shown in  
22 WSU's HEPPS System – Query Payroll Expense for Mr. Sakkarapope. **Attachment**  
23 **R3.**

24 Laurie Stemmene worked as an Employment Coordinator with Student and  
25 Hourly Employment within the Department of Human Resource Services at WSU. She  
26 held that position during the times pertinent to this matter. Ms. Stemmene prepared

1 documents regarding Mr. Sakkarapope's enrollment and the hours he worked both in a  
2 student and a non-student capacity between March 16, 2002, and February 28, 2003.  
3 **Attachment R3**, was prepared by Ms. Stemmene by accessing and querying WSU's  
4 Higher Education Personnel Payroll System (HEPPS) for the applicable 12-month  
5 period, showing hours worked and how those hours were classified and adding  
6 clarifying information.

7 Ms. Stemmene manually added several items to the initial HEPPS queried  
8 document. She drew lines between the semester breaks and added the dates of the  
9 academic calendar showing spring semester from 1/14/-5/10/02, fall semester from  
10 8/26-12/20/02, and the following spring semester from 1/13-5/06/03. The academic  
11 calendar years are also shown in **Attachment R4**, and this information was utilized by  
12 Ms. Stemmene in adding the line breaks to **Attachment R3**. Ms. Stemmene also  
13 added, at the bottom right-hand corner, a summary of the various hours broken down by  
14 category - student, non-student, and so forth - for the monitoring year of 3/16/02 -  
15 3/15/03.

16 For ease of explanation and use in the PAB proceeding, Ms. Stemmene also  
17 added line numbers 1 through 31 and coded the types of employment Mr. Sakkarapope  
18 had during this time period. Student hourly work time was coded manually with the  
19 letter A, graduate assistant work was coded with the letter B, non-student hours were  
20 coded with the letter C, and non-student overtime work was coded with the letter D.  
21 **Attachment R3**.

22 **Attachment R3** shows that during the spring semester from March 16, 2002,  
23 through the end of the semester, May 15, 2002, Mr. Sakkarapope worked as a student  
24 hourly and a graduate assistant, codes A and B. During the summer of 2002,  
25 Mr. Sakkarapope was employed in a non-student capacity, coded with the letter C, and  
26 he also worked 67 hours of overtime - coded with the letter D. During the fall semester

1 of 2002 from August 26, 2002, through December 20, 2002, Mr. Sakkarapope worked  
2 as a student hourly, coded A. During the spring 2003 semester, Mr. Sakkarapope,  
3 although he was initially enrolled as a student, had his time reclassified as a non-  
4 student, coded C, retroactive to the end of the previous semester after his dis-enrollment  
5 became known to Student and Hourly Employment staff.

6 During the PAB hearing, Ms. Stemmene prepared a summary document which  
7 would later be admitted as Respondent's R10, **Attachment R5**. **Attachment R5** was  
8 prepared utilizing the information from the coded **Attachment R3**. It shows the total  
9 of hours worked in each employment category, student, graduate assistant, overtime,  
10 and non-student for each of the four semesters or parts thereof, from March 16, 2002,  
11 through February 24, 2003. **Attachment R5** reveals that during the spring 2002  
12 semester, Mr. Sakkarapope worked 212.25 hours as a student and 172 hours as a  
13 graduate assistant. During the summer of 2002, Mr. Sakkarapope worked 576.25 hours  
14 as a non-student and 67 hours of overtime. During the fall of 2002, Mr. Sakkarapope  
15 worked 403.25 student hours and during the spring 2003 semester his employment was  
16 all eventually coded as non-student in the amount of 251.50 hours. The total non-  
17 student hours as shown on **Attachments R3** and **R5** for the 12-month monitoring  
18 period totaled 827.75.

19 WSU monitors student employment based on a threshold level of enrollment at  
20 six credit hours for a number of reasons. Those reasons include compliance with the  
21 financial aid system in determining financial aid awards, for IRS purposes, and for  
22 Department of Retirement System benefit purposes. WSU's Business and Policies and  
23 Procedures Manual (BPPM) part 60.26. entitled, "Temporary Employment Program,"  
24 describes a student as one who is enrolled for six credit hours or more during fall or  
25 spring semester and for three credit hours during the summer. This policy also describes  
26 other aspects of WSU's temporary employment program, including work-study

1 program, non-student employees, compensation, child labor, benefits, non-temporary  
2 employment, and so forth. This BPPM policy is shown as **Attachment R6**.

3 Pursuant to WAC 251-19-120 (7), which directed each institution to develop for  
4 director approval a procedure which indicates its system for controlling and monitoring  
5 exempt positions identified in RCW 41.06, WSU, in July 1990, sent in their procedure  
6 for monitoring temporary employees to DOP. This procedure, in addition to outlining  
7 detailed monitoring processes, and confirming various areas of responsibilities for  
8 different departments, defined student employees as those who were enrolled for a  
9 minimum of seven credits during the fall and spring semesters and four credits in the  
10 summer. This procedure was not numbered nor was it entitled Business Policies and  
11 Procedures Manual. This procedure and the accompanying correspondence between  
12 WSU and DOP are shown at **Attachment R7**.

13 WSU's BPPM 60.05. is entitled "Employing Non-U.S. Citizens" and states that  
14 WSU may employ a foreign student if the student is authorized to attend WSU and is in  
15 lawful F1 status, which is one of the immigration status codes described in the policy.  
16 **Attachment R8** is a copy of that policy. Mr. Sakkarapope fell out of status upon his  
17 dis-enrollment and was thereupon not legally able to be employed at WSU.  
18 **Attachment R9** is a copy of the PAB transcript showing the testimony of  
19 Mr. Robert Casselman, the International Student Advisor in the Office of the  
20 International Students and Scholars at WSU. Mr. Casselman provided testimony about  
21 Mr. Sakkarapope's F1 immigration status, indicating that when Mr. Sakkarapope was  
22 expelled from WSU in early 2003, he lost his F1 status and was no longer legally able  
23 to work or remain in the United States without first obtaining another status of some  
24 kind. **Attachment R9**, 395-408.

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### III. STATEMENT OF ISSUES

**A. Whether WSU's Business Policies and Procedures Manual is part of compliance by WSU with WAC 251-19-120 (7).**

**B. If WSU's Business Policies and Procedures Manual is part of compliance with WAC 251-19-120 (7), whether under the terms of BPPM 60.26, Mr. Sakkarapope is a person qualified for consideration of remedial action, and if so, whether remedial action should be offered to Mr. Sakkarapope.**

### IV. ARGUMENT

Mr. Sakkarapope's appeal should be rejected and DOP should determine that he is not subject to remedial action. Mr. Sakkarapope's claim is, in essence, based on his belief that any hours he worked as a student at WSU when he was enrolled for less than six credits should be counted as non-student hours and therefore applied toward the 1,050 hour threshold for granting remedial action. Therefore, he asserts that the 403.25 hours he worked during the fall semester of 2002 should not be counted as student hours as he was only enrolled for three credits. WSU correctly asserts that the remedial action regulation contained in WAC 251-12-600 excludes all hours worked as a student and does not limit those hours based on a level of credit enrollment, their own internal policy notwithstanding. It is undisputed that if the 403.25 hours in question are not counted, Mr. Sakkarapope does not meet the threshold to be considered for remedial action.

**A. WSU's Business Policies and Procedures Manual was not a part of compliance with WAC 251-19-120 (7) although an earlier procedure containing a similar definition of "student" was approved by DOP pursuant to this WAC.**

Former WAC 251-19-120 (7) states that "Each institution shall develop for director approval a procedure which indicates its system for controlling and monitoring exempt positions identified in RCW 41.06." There is no evidence that WSU actually

1 submitted its BPPM policy 60.26 to DOP for approval by the director pursuant to this  
2 WAC. The procedure for monitoring exempt employment that was provided to DOP  
3 by WSU in 1990, **Exhibit R7**, included a definition of student that was similar to a  
4 definition that was contained in the BPPM. That definition related to the number of  
5 hours a student needed to be enrolled in order to be considered a student. The 1990  
6 procedure stated that a student was one who was enrolled for seven credits in the spring  
7 and fall semesters and four credits in the summer. The BPPM that was in effect in 2000  
8 defined a student as one who was enrolled for six credit hours in the fall and spring and  
9 three credits in the summer.<sup>2</sup> DOP approved those monitoring procedures in 1990 even  
10 though they contained a definition of a student that was not reflected in the remedial  
11 action rule.

12 There are a number of provisions in the 1990 procedures that are not reflected in  
13 the BPPM, including a detailed rendition of what departments are supposed to do with  
14 certain documents, what copies would go where, what would be reflected on earnings  
15 statements, where certain reports would be sent, what those reports would contain,  
16 which department had responsibility for which role, and so forth. There were also ten  
17 attachments provided to DOP with those procedures as samples of how WSU would  
18 carry out these functions. These attached samples are not included with the BPPM. In  
19 other words, those 1990 procedures reflect the monitoring process that DOP was  
20 concerned about. In short, the BPPM in question, although, it contains some definitions  
21 that are similar to the 1990 procedures that were approved, is not encompassed in the  
22 remedial action WAC. The first question that was presented by the Superior Court for  
23 further consideration by DOP, "If the BPPM 60.26 was part of compliance with WAC  
24 251-19-120 (7)" should be answered in the negative.

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25  
26 <sup>2</sup> WSU's BPPM was revised in July 2005 to reflect updated references to new WAC numbers after WAC  
251 was abolished.

1 **B. Mr. Sakkarapope is not a person qualified for remedial action pursuant**  
2 **to former WAC 251-12-600 and he should not be offered remedial action.**

3 **1. Mr. Sakkarapope Does Not Meet the Conditions in the WAC.**

4 Even if the first issue remanded back for consideration by the Superior Court  
5 was answered in the affirmative, Mr. Sakkarapope should not be granted remedial  
6 action. WAC Title 251 was repealed effective July 1, 2005, when new personnel rules  
7 took effect under WAC Title 357. Former WAC 251-12-600 allowed a part-time  
8 temporary employee whose employment exceeded 1,050 hours in a 12-month period to  
9 petition DOP for permanent status. That former rule read as follows:

10 **WAC 251-12-600 Remedial action.** (1) The director may take remedial  
11 action when it is determined that the following conditions exist.

12 (a) The hiring institution has made an appointment that does not comply  
13 with higher education personnel rules.

14 (b) The employee has worked in one or more positions for more than one  
15 thousand fifty hours in any twelve consecutive month period since the  
16 original hire date or October 1, 1989, whichever is later. (These hours do  
17 not include overtime or work time as described in WAC 251-04-040(3).)

18 (c) The position or positions are subject to civil service.

19 (d) The employee has not taken part in any willful failure to comply with  
20 these rules.

21 (2) Remedial action includes the power to confer permanent status, set  
22 salary, establish seniority, and determine benefits accrued from the  
23 seniority date. Remedial action also includes other actions the director  
24 may require to meet the highest personnel standards.<sup>3</sup>

25 (Emphasis added)

26 As outlined in paragraph (1) above, conferring of permanent status by the  
Director of DOP is not automatic, but rather it is a discretionary decision on behalf of  
DOP. The rule, 251-12-600 (1) (b), detailed that overtime hours or hours as detailed in

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<sup>3</sup> The new WAC addressing remedial action, WAC 357-19-430, which became effective July 1, 2005,  
removed the authority to determine benefits accrued from the seniority date.

1 WAC 251-04-040 (3) are not counted in the 1,050 hour total. WAC 251-04-040, later  
2 replaced, in part, by WAC 251-04-035, discussed classifications, positions, and  
3 employees of higher education institutions/related boards who are exempted from  
4 Chapter 251 WAC, Higher Education Personnel Rules. Paragraph (3) exempted  
5 students employed by the institution in which they are enrolled.

6 WAC rule, 251-12-600, outlined the conditions that must be met before the  
7 director may take remedial action. Notably, those conditions do not refer to or  
8 incorporate institutions' policies or procedures that might relate to or discuss the types  
9 of appointments that are contemplated by the rule. This rule grants authority to the  
10 director to determine compliance with this rule. It does not make mention of  
11 compliance with an institutions internal policy or procedure.

12 Because Mr. Sakkarapope did not work more than 1,050 qualifying hours, as  
13 defined by the WAC, in the 12-month period beginning March 16, 2002, he does not  
14 meet the criteria for consideration of remedial action. In order to qualify for remedial  
15 action, a person must meet the minimum requirements outlined in the remedial action  
16 rule. Because Mr. Sakkarapope did not meet the 1,050 hour requirement, at least one of  
17 the requirements has not been met and remedial action is not appropriate.  
18

## 19 **2. Student Hours vs. WSU's Policy**

20 Mr. Sakkarapope asserts that WSU's policy should prevail over the WAC rule.  
21 As stated earlier, WSU's policy to count someone as a student if they were enrolled for  
22 six credit hours or more was done for a variety of operational reasons, including for  
23 benefit purposes, for tax purposes and for financial aid purposes. However, for  
24 purposes of excluding student hours in determining if the threshold of 1,050 hours had  
25 been met, the six hour limit did not apply. Instead, the relevant WAC applied. The  
26 WAC rule, 251-12-600, indicated that WSU was following the rule in determining if a

1 student's work hours counted toward the 1,050 hour threshold. WSU reasoned that a  
2 student enrolled for any amount of credits would have their work time excluded for  
3 purposes of applying the remedial action rule. In fact, the rule does not specify that  
4 only students enrolled for six or more credits need to have their hours excluded in the  
5 count toward the 1,050 hour total.

6 DOP has previously ruled that an institution's policy regarding how they define  
7 students for enrollment purposes does not change the nature of the remedial action rule  
8 that excludes all hours worked while a student from the 1,050 hour limit. See *Patrick*  
9 *Tabak v. Eastern Washington University*, HEPB No. 3726 (1992), where the director  
10 spelled out that "The rule does not stipulate the amount of credits a student must be  
11 taking or earning to be considered enrolled as a student, it only specifies that the  
12 individual must be enrolled." In similar fashion, WSU's policy of defining a student as  
13 one who is enrolled for six credits is of no significance when considering possible  
14 application of the remedial action rule.

15 While WSU was free to monitor student enrollment for a variety of purposes by  
16 way of a policy that counted students as those enrolled for six credits or more, they  
17 were not free to change the parameters of the rule. In determining if Mr. Sakkarapope  
18 was nearing the 1,050 hour limit, they counted all hours when he was enrolled as a  
19 student, even if he was enrolled for less than six hours. This was in compliance with  
20 the rule regarding student hours and DOP precedent regarding the threshold enrollment  
21 required to be considered a student for application of the remedial action rule. Indeed,  
22 if the situation were reversed and WSU was using, to their advantage and to the  
23 disadvantage of a third party, an internal policy that was in conflict with and less  
24 favorable to that third party than a WAC rule, they would clearly be in violation of the  
25 rule and would be held accountable for that conflict. The rule would take precedence.  
26

1 Further, the WAC does not contain a specific definition of "student." Prior  
2 HEPB precedent indicates that when no definitions are contained in the rules relating to  
3 temporary appointments, they will look to the dictionary for assistance. See *Clarence*  
4 *Hill v. Eastern Washington University*, HEPB No. 1840 (1984). In keeping with this  
5 precedent, we note that the *American Heritage Dictionary*, Second College Edition,  
6 defines a student as "One who attends, a school, college, or university."  
7 Mr. Sakkarapope does not dispute that he attended WSU during the spring and fall of  
8 2002. Therefore, his student hours worked during these two semesters should not be  
9 included in determining if he meets the threshold level of hours worked to be  
10 considered for remedial action. Mr. Sakkarapope's contention that he should be granted  
11 remedial action because WSU's policy grants him that right should be rejected. His  
12 request should be denied.

13 **3. Granting of Remedial Action is Discretionary on the Part of the Director.**

14 Even if WSU's policy is construed to be a part of the former WAC such that his  
15 hours would exceed the 1,050 hour limit, it does not follow that Mr. Sakkarapope is  
16 automatically granted remedial action. On its face, the remedial action rule granted  
17 discretionary authority to the director to grant remedial action. DOP has also  
18 previously indicated that this authority is not mandatory, but rather discretionary. See  
19 *Tyler Scott Kelsey v. Western Washington University*, HEU No. 4279 (2000), wherein  
20 DOP indicated that "The director may exercise discretion on a case-by-case basis to  
21 determine the appropriateness of granting remedial action when the 1,050 hour  
22 limitation has been exceeded." In *Daniel Watkins v. Washington State University*, HEU  
23 No. 3989 (1995), DOP stated that "The director's authority to grant remedial action is  
24 discretionary and is not required by WAC 251-12-600 if a temporary employee works  
25 over the 1,050 hour limit." The Higher Education Personnel Board also ruled in *Louis*  
26 *E. Cobet v. Director, Higher Education Personnel Board*, HEPB No. 374 (1976), that

1 this authority is discretionary in this appeal of the director's denial of remedial action  
2 and said "The board, or director when delegated, must use its discretion on a case by  
3 case basis to determine the appropriateness of granting remedial relief." Accordingly,  
4 it is within the discretion of the director to deny remedial action on a case by case basis  
5 depending on the facts and circumstances. This is one of those cases when, even if  
6 qualified, remedial action should be denied due to Mr. Sakkarapope's inability to be  
7 employed at WSU as a result of his immigration status.

8 **4. The Remedy Mr. Sakkarapope is Seeking is Not Available to Him.**

9 Mr. Sakkarapope is seeking a permanent position at WSU by way of his plea for  
10 remedial action. However, the record is clear that WSU cannot legally employ  
11 Mr. Sakkarapope in his former position or any other at this time. Mr. Sakkarapope has  
12 not been in a legal F1 status for WSU since his dis-enrollment as a student in early  
13 2003. His former F1 status allowed him to work for WSU in a limited capacity while  
14 he was a student. Without his F1 status or some other legal status allowing him to be  
15 employed, WSU cannot place him in a permanent appointment. Accordingly, the  
16 remedy he is seeking is not appropriate or available to him and his request should be  
17 denied.

18 **V. CONCLUSION**

19 For the foregoing reasons, WSU respectfully requests that DOP rule that  
20 Mr. Sakkarapope is not entitled to remedial action and deny his request.

21 DATED this 12<sup>th</sup> day of April 2007.

22 Respectfully submitted,

23 ROBERT M. MCKENNA  
24 Attorney General

*Donna J. Stambaugh*

25 DONNA J. STAMBAUGH, WSBA #18318  
26 Assistant Attorney General  
Attorneys for Respondent

23 I Certify to be true under penalty of perjury  
24 under the laws of the State of Washington that  
25 I delivered/mailed a copy of this document to:  
26 All parties on Apr 12, 2007 at  
Spokane WA  
Signed: Mary C. Miller

Respondent WSU's Attachments  
Sakkarapope v. WSU

- R1) Student Inquiry Student Center Term Information for Benajpon Sakkarapope
- R2) Letter from Dr. Howard Grimes to Benjapon Sakkarapope dated January 31, 2003
- R3) HEPPS System – Query Payroll Expense for Benjapon Sakkarapope for 3/16/02-2/28/03
- R4) List of Academic Dates at WSU
- R5) Chart of Hours worked by Benjapon Sakkarapope in each of 4 catagories from Spring 2002 semester through Spring 2003
- R6) WSU Business Policies and Procedure Manual 60.26
- R7) WSU Procedure For Insuring Compliance With HEPB Rules Controlling Student and Non-Student Temporary Employment and Correspondence between WSU and DOP regarding same - 1990
- R8) WSU Business Policies and Procedures Manual 60.05.
- R9) Transcript before the PAB of testimony of Robert Casselman in Rule 03-0008

SREN7081  
SREN6120

\* STUDENT INQUIRY \*  
STUDENT CENTER TERM INFORMATION

04/03/03

NAME SAKKARAPOPE, BENJAPON  
MAJOR/OPTION/DA

WSU NO  
SOC SEC NO

ENROLLED 931

TERM	YEAR	ACCTR-ID	CLASS	ENRLM	HOURS			WITHDRAW	
					TOTAL	AUDTD	RQSTD	OFCL	REASON
FALL	1992	WSU-P	6 P	2					
SPRING	1993	WSU-P	6	3	11		10	14	
SUMMER	1993	WSU-P	6	3	06			06	
FALL	1993	WSU-P	6	3	14		07	15	
SPRING	1994	WSU-P	6	3	15		12	15	
SUMMER	1994	WSU-P	6	5					O 05 11 1994
FALL	1994	WSU-P	6	3	10		12	15	
SPRING	1995	WSU-P	6	2					
FALL	1995	WSU-P	6	3	10				
SPRING	1996	WSU-P	6	3	10		09	09	
FALL	1996	WSU-P	6	3	13		13	13	
SPRING	1997	WSU-P	6	3	11		11	15	
FALL	1997	WSU-P	6	3	13		13	13	
SPRING	1998	WSU-P	6	3	14			14	
SUMMER	1998	WSU-P	6	5					N 08 05 1998
FALL	1998	WSU-P	6	3	14			14	
SPRING	1999	WSU-P	6	3	13			13	
SUMMER	1999	WSU-P	6	2					
FALL	1999	WSU-P	6	3	14			14	
SPRING	2000	WSU-P	6	3	15			15	
SUMMER	2000	WSU-P	6	2					
FALL	2000	WSU-P	6	3	03			03	
SPRING	2001	WSU-P	6	3	06			06	
SUMMER	2001	WSU-P	6	3	02			02	
FALL	2001	WSU-P	6	3	10	03		10	
SPRING	2002	WSU-P	6	3	11	03		10	
SUMMER	2002	WSU-P	6	2					
FALL	2002	WSU-P	6	3	03			02	
SPRING	2003	WSU-P	6	5				06	O 01 10 2003
SUMMER	2003	WSU-P	6	2					
FALL	2003	WSU-P	6	2					

HOURS:  
TOTAL = Hours completed  
RQSTD = Hours Requested - number of credit hours requested by the student at the time of pre or residual registration  
OFCL = Hours Official - number of credit hours the student was enrolled in as of 10<sup>th</sup> day of classes, which state reporting is based on

January 31, 2003

Benjapon Sakkarapope  
430 NE Oak Street, Apt 2  
Pullman WA 99163

Dear Mr. Sakkarapope:

On December 18, 2002, I granted an extension of the completion date for the Master of Science in Statistics. The extension required that you finish your project, apply for graduation and schedule the defense of your project no later than January 27, 2003. Because you did not satisfy these conditions, you have been dropped from the graduate program at Washington State University. In addition, your enrollment for this spring semester will be terminated immediately.

Sincerely,



Howard D. Grimes  
Interim Dean of the Graduate School

cc: Program in Statistics  
Office of International Students and Scholars

HEPPS System - Query Payroll Expenses

Name: SAKKARAPOPE, BENJAPON  
Status Code and Date: S 02/23/03  
Perm-Temp: T  
Last Paymnt: 02/28/03

-----+-----  
| Selection Criteria: SSN: [REDACTED] Pos. No.: \_\_\_\_\_ |  
| Selection Qualifier: Pay cycle end date from 03 16 02 |  
| | | thru 12 31 50 |  
+-----+-----

Total Hours: 1682.25  
Total Amount: 18607.09  
Total Months: 9.6331

Ern Typ = Earnings Type  
R/T = Graduate Assistant Regular Earnings  
HRV = Non-student Hourly  
HRP = Non-student Hourly PERS  
HOP = Non-student Hourly Overtime  
SHR = Student Hourly

Academic Calendar Dates =  
Spring Semester 01/14-05/10/02  
Fall Semester 08/26-12/20/02  
Spring Semester 01/13-05/06/03

PayCycle	Tr	Ern	Fnd	AP	Pgm	Bdgt	Proj	Ob	Prexp Hrs	Prexp Amt	PayCycle Paid	
03/16-03/31/02	TX	SHR	145	02	13C	3019	5344	01	38.50	A 394.63	033102	1
03/16-03/31/02	AU	R/T	001	01	06M	2104	0330	00	40.00	B 603.75	033102	2
04/01-04/15/02	TX	SHR	145	02	13C	3019	5344	01	48.50	A 497.13	041502	3
04/01-04/15/02	AU	R/T	001	01	06M	2104	0330	00	44.00	B 603.75	041502	4
04/16-04/30/02	TX	SHR	145	01	11D	3019	9527	01	59.50	A 609.88	043002	5
04/16-04/30/02	AU	R/T	001	01	06M	2104	0330	00	44.00	B 603.75	043002	6
05/01-05/10/02	TX	SHR	145	01	11D	3019	9527	01	65.75	A 673.94	051502	7
05/01-05/15/02	AU	R/T	001	01	06M	2104	0330	00	44.00	B 603.75	051502	8
05/11-05/15/02	TX	HRP	145	01	11D	3019	9527	01	15.75	C 161.44	051502	9
05/16-05/31/02	TX	HRP	145	01	11D	3019	9527	01	99.50	C 1019.88	053102	10
06/01-06/15/02	TX	HRP	145	01	11D	3019	9527	01	78.00	C 799.50	061502	11
06/01-06/15/02	TX	HOP	145	01	11D	3019	9527	01	26.75	D 411.42	061502	12
06/16-06/30/02	TX	HRP	145	01	11D	3019	9527	01	74.25	C 761.06	063002	13
07/01-07/15/02	TX	HRP	145	02	13C	3019	6344	01	76.25	C 800.63	071502	14
07/16-07/31/02	TX	HOP	145	02	13C	3019	6344	01	34.75	D 547.31	073102	15
07/16-07/31/02	TX	HRP	145	02	13C	3019	6344	01	89.75	C 942.38	073102	16
08/01-08/15/02	TX	HOP	145	02	13C	3019	6344	01	5.50	D 86.63	081502	17
08/01-08/15/02	TX	HRP	145	02	13C	3019	6344	01	92.25	C 968.63	081502	18
08/16-08/25/02	TX	HRP	145	02	13C	3019	6344	01	50.50	C 530.25	101502	19
08/26-08/31/02	TX	SHR	145	02	13C	3019	6344	01	39.75	A 417.38	101502	20
09/01-09/15/02	TX	SHR	145	02	13C	3019	6344	01	35.00	↓ 367.50	101502	21
10/16-10/31/02	TX	SHR	145	02	13C	3019	5344	01	50.00	↓ 525.00	103102	22
11/01-11/15/02	TX	SHR	145	02	13C	3019	5344	01	86.50	↓ 908.25	111502	23
11/16-11/30/02	TX	SHR	145	02	13C	3019	5344	01	72.00	↓ 756.00	113002	24
12/01-12/15/02	TX	SHR	145	02	13C	3019	5344	01	80.00	↓ 840.00	121502	25
12/16-12/20/02	TX	SHR	145	02	13C	3019	5344	01	40.00	↓ 420.00	123102	26
12/21-12/31/02	TX	HRP	145	02	13C	3019	5344	01	40.00	C 420.00	123102	27
01/01-01/15/03	TX	HRP	145	02	13C	3019	5344	01	49.00	↓ 514.50	011503	28
01/16-01/31/03	TX	HRV	145	02	13C	3019	5344	01	50.00	↓ 525.00	013103	29
02/01-02/15/03	TX	HRV	145	02	13C	3019	5344	01	76.00	↓ 874.00	021503	30
02/16-02/28/03	TX	HRV	145	02	13C	3019	5344	01	36.50	↓ 419.75	022803	31

Summary for monitored year 03/16/02-03/15/03:

Student Hourly =	615.50 hours	A
Graduate Assistant =	172.00 hours	B
Non-Student Hourly =	827.75 hours	C
Non-Student Hourly OT =	67.00 hours	D

# Academic + Summer Dates

February 12, 1979 to June 8, 1979  
June 18, 1979 to August 10, 1979  
September 24, 1979 to February 1, 1980  
February 11, 1980 to June 6, 1980  
June 16, 1980 to August 8, 1980  
September 22, 1980 to January 31, 1981  
February 9, 1981 to June 5, 1981  
June 22, 1981 to August 14, 1981  
September 21, 1981 to January 29, 1982  
February 8, 1982 to June 4, 1982  
June 21, 1982 to August 13, 1982  
September 20, 1982 to January 28, 1983  
February 7, 1983 to June 3, 1983  
June 20, 1983 to August 12, 1983  
September 19, 1983 to January 27, 1984  
February 6, 1984 to June 1, 1984  
June 11, 1984 to August 3, 1984  
August 27, 1984 to December 21, 1984  
January 14, 1985 to May 10, 1985  
June 11, 1985 to August 2, 1985  
August 26, 1985 to December 20, 1985  
January 13, 1986 to May 9, 1986  
June 10, 1986 to August 2, 1986  
August 25, 1986 to December 19, 1986  
January 12, 1987 to May 8, 1987  
August 24, 1987 to December 18, 1987  
June 9, 1987 to July 31, 1987  
January 11, 1988 to May 6, 1988  
June 10, 1986 to August 2, 1986  
August 25, 1986 to December 19, 1986  
January 12, 1987 to May 8, 1987  
August 24, 1987 to December 18, 1987  
June 9, 1987 to July 31, 1987  
August 22, 1988 to December 16, 1988  
January 9, 1989 to May 5, 1989  
June 13, 1989 to August 4, 1989  
August 28, 1989 to December 22, 1989  
January 15, 1990 to May 11, 1990  
August 27, 1990 to December 21, 1990  
January 14, 1991 to May 10, 1991  
June 10, 1991 to August 2, 1991  
August 26, 1991 to December 20, 1991  
January 13, 1992 to May 8, 1992  
June 8, 1992 to July 31, 1992  
August 24, 1992 to December 18, 1992  
June 9, 1987 to July 31, 1987  
August 22, 1988 to December 16, 1988  
January 9, 1989 to May 5, 1989  
June 13, 1989 to August 4, 1989  
August 28, 1989 to December 22, 1989  
January 15, 1990 to May 11, 1990  
August 27, 1990 to December 21, 1990  
January 14, 1991 to May 10, 1991  
June 10, 1991 to August 2, 1991  
August 26, 1991 to December 20, 1991  
January 13, 1992 to May 8, 1992  
June 8, 1992 to July 31, 1992  
August 24, 1992 to December 18, 1992  
August 24, 1992 to December 18, 1992  
January 11, 1993 to May 7, 1993  
June 7, 1993 to July 30, 1993  
August 23, 1993 to December 17, 1993  
January 10, 1994 to May 6, 1994  
June 6, 1994 to July 29, 1994  
August 29, 1994 to December 23, 1994  
January 16, 1995 to May 12, 1995  
June 12, 1995 to August 4, 1995  
August 28, 1995 to December 22, 1995  
January 16, 1996 to May 10, 1996  
June 10, 1996 to August 2, 1996  
August 26, 1996 to December 20, 1996  
January 13, 1997 to May 9, 1997  
June 9, 1997 to August 1, 1997  
August 25, 1997 to December 19, 1997  
January 12, 1998 to May 8, 1998  
June 8, 1998 to July 31, 1998  
August 24, 1998 to December 18, 1998  
January 11, 1999 to May 7, 1999  
June 7, 1999 to July 30, 1999  
August 23, 1999 to December 17, 1999  
January 10, 2000 to May 5, 2000  
June 5, 2000 to July 28, 2000  
August 28, 2000 to December 22, 2000  
January 16, 2001 to May 11, 2001  
June 11, 2001 to August 3, 2001  
August 27, 2001 to December 21, 2001  
January 14, 2002 to May 10, 2002  
June 10, 2002 to August 2, 2002  
August 26, 2002 to December 20, 2002  
January 13, 2003 to May 9, 2003  
June 9, 2003 to August 1, 2003  
August 25, 2003 to December 19, 2003

Any	Hours				
	enrollment	Student	Grad Assist	Non Student	Overseas
		A	B	C	D
Series 1-8 Spring '02		212. <sup>25</sup>	172	0	0
Series 9-19 Summer '02		0	0	576. <sup>25</sup>	67
Series 20-26 Fall '03 08		403. <sup>25</sup>	0	0	0
Series 27-31 Spring '03		0	0	251. <sup>50</sup>	0
<u>Totals</u>		<u>615.<sup>50</sup></u>	<u>172</u>	<u>827.<sup>75</sup></u>	<u>67</u>
				894. <sup>25</sup>	

## Temporary Employment Program

### OVERVIEW

The University employs temporary employees to meet short-term and intermittent workload needs.

The University hires temporary employees for the following purposes:

- Ongoing part-time work,
- Extra work required for a work load peak,
- To complete a special project, or a cyclic work load; and
- To temporarily fulfill the duties of a classified position during an extended recruiting period.

Temporary employees, as referred to in this section, are also known as hourly, piece work, or time slip employees.

### Limits

The University may only employ temporary workers for a maximum of a specified number of hours in a given period of consecutive months. These limits are provided below for student and nonstudent employees.

#### Consecutive Months Defined

A period of consecutive months begins with the effective date of appointment. The period ends on the day preceding that date any number of months later. (*WAC 251-01-077*)

## STUDENT EMPLOYEES

### Definition of a Student

For purposes of temporary employment, a student is one who is enrolled at WSU for six or more credit hours during fall or spring semesters. During summer session a student is one who is enrolled for three or more credit hours.

Students enrolled for less than six credit hours who receive financial aid are also considered students.

### Replacing Classified Staff

Student temporary employees may not be hired to replace classified employees who are laid off due to lack of funds or lack of work.

Student temporary employees may not be hired to fill a position currently or formerly occupied by a classified employee during the current or prior calendar year or fiscal year. (NOTE: If the prior calendar year started earlier than the prior fiscal year, calendar year is used. If the prior fiscal year started earlier than the prior calendar year, fiscal year is used.)

### Maximum Hours

The law limits student employment to a maximum of 516 hours worked in any six consecutive months, excluding hours worked during the summer and other academic year holiday breaks. (*WAC 251-04-040*)

## Temporary Employment Program

<b>Maximum Hours (cont.)</b>	WSU academic holidays are periods when school is not in session. Academic holidays include time in November, December, January, and March and from semester-end in May to the start of the fall semester in August.
<b>F-1 Status</b>	Foreign students who hold F-1 nonimmigrant status are limited to 20 hours of work per week while school is in session. Contact International Programs for more information.
<b>Exceptions</b>	<p>The following types of students are exempt from the hours limitations:</p> <ul style="list-style-type: none"><li>• Student body officers or student organization jobs such as student officers or student news staff members.</li><li>• Students employed in jobs which are directly related to their major fields of study and which provide training opportunities.</li><li>• Students in formal internship programs which include academic components and work experience. An example is a Computer Science student enrolled in CPT S 490, Work-Study Internship, who is employed by Information Technology as a part of CPT S 490.</li></ul>
<b>Work Study</b>	<p>The work study program pays 75 percent of an employee's gross salary. The employing department pays the remaining 25 percent.</p> <p>If a work-study student's employment exceeds eligibility in terms of gross earnings or dates of eligibility, the employer is required to pay 100 percent of the noneligible wages.</p> <p>Hiring departments may check the HEPPS Administrative Information System or contact the Office of Student Financial Aid for information about workstudy allocations for student employees.</p> <p>Work-study employees cannot be employed on a piece-rate basis.</p>
<b>NONSTUDENT EMPLOYEES</b>	
<b>Maximum Hours</b>	Nonstudent temporary employment is limited to 1,050 hours of employment in any 12-consecutive-month period. (WAC 251-01-415) (See above for a definition of consecutive months.)
<b>Monitoring Begin Date</b>	Start counting hours on the Monitoring Begin Date. The Monitoring Begin Date is always the first day of the pay period in which an appointment begins, i.e., the first or the sixteenth.

## Temporary Employment Program

**More Than One Position** Hours worked in all temporary positions that an employee holds at WSU count toward the total hours worked. If an employee has one temporary employment position and accepts another, the hours from both WSU temporary positions count toward the total hours the employee may work during one year.

**Overtime** Overtime hours are not included in the 1,050 hours.

**Remedial Action** Violations of temporary employment hours limitations can result in remedial action. Remedial action is the awarding of a permanent classified staff position which may include retroactive salary, benefits, and seniority. (*WAC 251-12-600*)

Remedial action may occur when the temporary employee's appointment does not comply with state temporary employment regulations, i.e.:

- The employee works in one or more temporary employment positions for more than 1,050 hours in any 12 consecutive months since the employee's Monitoring Begin Date. (NOTE: Overtime and hours worked as a student are not included in the 1,050 hour limit.)
- The position is subject to the University's civil service system.
- The employee is not part of a willful failure to comply with state regulations.

The employee must file a written request for remedial action with the Personnel Appeals Board within 30 calendar days of the effective date of the alleged violation.

**Notice of Conditions** Employers are required to give all nonstudent temporary employees written notice of the conditions of their employment prior to the commencement of each appointment and/or upon any subsequent change to the conditions of their employment. (*WAC 251-19-122*) See 60.27 for information regarding the Conditions of Employment form.

## COMPENSATION

**Pay** The rate of pay for temporary employees is based on the Temporary Employment Classification and Compensation Plan available in departmental offices and at the Campus Student and Hourly Employment Office (CSHEO).

Temporary employees are paid on a positive pay basis. See 55.26 and 60.61.

PERSONNEL

60.26.4

REV 6-00

Campus Student and Hourly Employment Office

335-1969

BUSINESS POLICIES AND PROCEDURES MANUAL

**Temporary Employment Program**

**Overtime**

Employment of temporary employees is subject to the Fair Labor Standards Act which requires that employees be paid at a rate of one and one-half times their normal rate for work in excess of 40 hours in a single workweek.

**Workweek Defined**

A normal workweek is the period from 12:01 a.m. Sunday to midnight Saturday.

**Benefits**

**Benefits Received**

Nonstudent temporary employees who work 70 hours or more per month for any five months in a 12-month period are eligible for PERS II retirement plan participation and will be required to begin participation.

Nonstudent temporary employees who work half-time or more for six consecutive months receive Public Employee Benefits Board (PEBB) medical, dental, life, and long-term disability insurance coverage at the start of the seventh month. Nonstudent temporary employees must continue to work at least eight hours per month to remain eligible for the WSU premium contribution for PEBB insurance.

NOTE: Departments must pay the cost of PEBB medical, dental, life, and long-term disability insurance and PERS II retirement coverage for qualifying nonstudent temporary employees.

All temporary employees are covered by worker's compensation and unemployment compensation.

**Benefits Not Received**

Temporary employees do not earn sick leave, annual leave, or a personal holiday. They are not paid for holidays.

**CHILD LABOR**

Contact the Campus Student and Hourly Employment Office (CSHEO) to review the position's duties and hours of employment before employing a minor (anyone under 18 years old).

**Parental Consent**

The employing department is responsible for securing parental consent before hiring a minor. The department obtains a Parents/School Authorization for Employment of a Minor form from CSHEO or the State of Washington Department of Labor and Industries. The department completes the top portion of the form and routes it to the minor's parent for authorization. After the parent returns the signed form, the department retains the authorization in the employee's departmental personnel file.

**Age Limit**

WSU units are not to employ anyone under 16 years of age. In unusual circumstances permission to hire 14- and 15-year-old individuals may be granted by CSHEO on an exception basis. Route detailed written exception requests to CSHEO.

## Temporary Employment Program

### NOT TEMPORARY EMPLOYMENT

The following are not to be hired as temporary employment appointments using procedures in 60.26 and 60.27.

#### Classified Staff

Employees selected from eligible lists may be certified by the Human Resource Services Office to replace classified staff employees on leave for more than six months. Temporary appointments made in accordance with this subsection are not limited to the 1,050 hours in any 12 consecutive month period from the original date of hire. (WAC 251-19-120 (2)) See 60.25.

A classified staff employee who is given a formal assignment of the duties and responsibilities of a higher level class for a period of less than six consecutive months. (WAC 251-01-415 (3))

#### Faculty and Administrative/ Professional Employees

Regular appointments to faculty and administrative/professional positions may have an appointment end date but these appointments are not considered temporary employment appointments. See 60.25.25.

#### Other Terms

The following are other employment terms which may be confused with temporary employment appointments as described in 60.26 and 60.27.

#### Probationary/Trial Service

Probationary and trial service appointments are not temporary employment appointments. These employees are completing the training and evaluation period within a permanent classified staff position.

#### Grants and Contracts

Employees appointed to duties included in a classified staff job description for 20 or more hours per week for six months or longer are classified staff regardless of the source of funds or a specific termination date.

#### Assistants

Students with appointments as teaching, research, or staff assistants are not on temporary employment appointments.

#### Faculty Timecard

Faculty and administrative/professional employees who perform duties or services which are clearly beyond what is reasonably expected in the performance of regularly-assigned duties may hold faculty timecard appointments. This type of appointment may also apply to non-WSU employees who are doing faculty-level work. See 60.42.



State of Washington  
**HIGHER  
EDUCATION  
PERSONNEL  
BOARD**

1202 Black Lake Boulevard (FT-11), Olympia, WA 98504

RECEIVED BY:  
AUG 30 1990  
HUMAN RESOURCE SERVICES

August 23, 1990

Dr. Lynda Brown  
Director of Personnel Services  
Office of Staff Personnel  
Washington State University  
Pullman, WA 99164

Dear Lynda:

It is a pleasure to approve Washington State University's revised procedures monitoring and controlling temporary exempt positions.

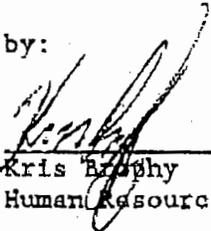
We acknowledge and appreciate your response. Your procedure will be kept on file in our office. If you have any questions, please call Kris Brophy at SCAN 234-3819. Thank you.

Sincerely,

John A. Spitz

Director

by:

  
Kris Brophy  
Human Resource Analyst



# Washington State University

Human Resource Services

Pullman, WA 99164-1014  
509-335-4521

July 23, 1990

Mr. John Spitz  
Director  
Higher Education Personnel Board  
1202 Black Lake Blvd.  
Olympia, WA 98504-3611

Dear John:

Enclosed are the Washington State University procedures for controlling and monitoring temporary employees in accordance with WAC 251-19-120(7). Our computer system has been modified to accommodate the rule changes and phase I of the modification appears to be working well.

The final section of the procedures, Student Spouse Exemption, details how we anticipate dealing with the exemption from the rules for student spouses. Hopefully, this proposal addresses the concerns expressed by your staff so that you may approve our request for an exemption.

Thank you for your consideration of our procedures and our request for exemption for student spouses. Please refer any questions you may have regarding these procedures to Karen Kruse, (509) 335-7468.

Sincerely,

Lynda L. Brown  
Director  
Human Resource Services

kk  
attachments

WASHINGTON STATE UNIVERSITY.

2/7/95

Spoke w/ Bill Smith  
re: "student" definition.  
Q: If we change it, any  
problem? A: They  
seemed to be concerned  
only w/ "exemptions" defined  
for students so, no problem.  
K. Kuen

WASHINGTON STATE UNIVERSITY  
PROCEDURE FOR INSURING COMPLIANCE WITH HEPB RULES  
CONTROLLING STUDENT AND NON-STUDENT TEMPORARY EMPLOYMENT

The following procedure is used to monitor and control the usage of exempt employees defined as student and non-student temporary employees in accordance with WAC 251-01-415 (2) and WAC 251-04-040 (2)(a). Other temporary appointments; i.e., work performed in the absence of an employee on leave for more than six consecutive months following certification from appropriate eligible lists and formal assignment of duties and responsibilities of a higher level class for a period of less than six consecutive months are not monitored under this procedure. [WAC 251-01-415(1) and (3) respectively.]

I. DEFINITIONS

- A. Students. Student employees are enrolled at Washington State University (WSU) for a minimum of seven credits during the fall or spring semesters and four credits during the summer session. They work 516 hours or less in any six consecutive months, exclusive of hours worked in a temporary position(s) during the summer and other breaks in the academic year, provided such employment does not take the place of a classified employee laid off due to lack of funds or lack of work or fill a position currently or formerly occupied by a classified employee during the current or prior calendar or fiscal year, whichever is longer. WAC-251-04-040(2).

Students employed in their major field, in an internship program, as a student body officer or student news staff member, or employed through the work/study program are exempt from the Higher Education Personnel Board law and need not be monitored for compliance. All student employment which is not exempt shall be monitored.

- B. Non-student temporary employees. Persons who are not enrolled at WSU or are enrolled for fewer than seven credits during fall or spring semesters or fewer than four credits during the summer session and who are employed to work 1050 hours or less in any 12 consecutive month period from the original date of hire or October 1, 1989, whichever is later, exclusive of overtime or work time as described in WAC 251-04-040(2).

II. RESPONSIBILITY

The Student Employment Office, which is a section of the Office of Human Resource Services, is the central coordinating office for all non-faculty temporary employment as well as the office responsible for compliance monitoring of this program.

## II. RESPONSIBILITY (cont.)

The hiring departments recruit, screen, select, train, discipline and dismiss all temporary employees. The Office of Financial Aid determines work study eligibility and makes work study allocations. The Payroll Office coordinates input and maintenance of hours worked on the payroll/personnel system.

## III. PROCEDURES

- A. University departments analyze their temporary employment needs, establish positions with a Temporary Employment Position Form (attachment 1), and hire accordingly. SEO provides general application forms (attachment 2); and for those instances where a department desires assistance with recruitment, SEO maintains a job posting board in the French Administration Building.
- B. Student and non-student temporary employees are appointed to positions with a Temporary Employment Appointment Form (attachment 3). The form is reviewed and approved by SEO staff. One copy remains in the employee's file in SEO; one copy goes to Payroll where the form is coded and sent on for data entry. One copy remains in the department file and one copy goes to the employee.
- C. Prior to or when the temporary employee begins work, a Conditions for Temporary Employment form (attachment 4) which meets the requirements of the HEPB rule WAC-251-19-122 is completed and signed by the employee and hiring official. WSU requires that this form be completed for all non-student temporary employees, but it is optional for student employees. One copy is filed in SEO; one copy goes to the employee, and one copy remains with the hiring unit.

## IV. MONITORING

Monitoring of non-student temporary employment which is limited to 1050 hours in the 12 consecutive months following the employee's monitoring begin date (MBD) requires notification to employees, departments, and SEO. Monitoring begin date is defined as the employee's original date of hire with WSU or October 1, 1989, whichever is later.

- A. Non-student Temporary Employees are notified of their current number of monitored hours worked each pay period

IV. A. MONITORING (cont.)

on their payroll earnings statement (attachment 5). Once the employee works more than 874 hours, a warning message prints out on the stub (attachment 6) of the earnings statement to alert him/her of the impending 1050 hour limit.

B. Departments receive system generated notices of hours worked by temporary employees in two different ways. The number of hours worked through the preceding pay period appears on the Unit Pay Reports (attachment 7) on which departments record the employee's hours worked for the current pay period. In addition, once the hours for the pay period have been submitted to payroll and input into the system, departmental staff see the current total on the Payroll Expenditure Audit Report (PEAR), attachment 8, which is distributed to departments after payroll calculation but prior to issuance of pay checks.

C. SEO receives reports (attachments 9 & 10) of those employees who received warning notices on their earnings statements as well as a listing of all non-student temporary employees and their cumulative hour balances as of the current pay period. SEO staff call departments whose employees are approaching the 1050 hour limit to confirm that the employee's employment will be terminated before the limit is exceeded.

V. RECORDS MAINTENANCE

Monthly reports of temporary employees and their cumulative hours worked are maintained in SEO. In addition, HEPB staff may access month-to-date hours for non student temporary employees by means of data submitted each month to OFM via the CHIEF tape. (WAC 251-07-100)

This procedure is filed with the Higher Education Personnel Board (HEPB) in accordance with WAC 251-19-120(7) of the HEPB rules.

kkproced  
7/16/90

**TEMPORARY EMPLOYMENT POSITION FORM**

**STUDENT EMPLOYMENT OFFICE  
WASHINGTON STATE UNIVERSITY  
FRENCH ADMINISTRATION 126  
Pullman, WA 99164-1012  
335-7468**

Describe the position attributes using the Temporary Employment Classification Compensation Plan. This form is a requisition for a new temporary position. If the position already exists, do not create a new position. Route the original to the Student Employment Office, mail code 1012.

WSU 1252 GENEX 1140350

Position Title	Title Code (s)	Position Number
Comparable Classified Staff Title	Classified Staff Title Code	Use this position number for subsequent appointments having the same duties.

If this position will be used to fill a classified staff vacancy during the recruiting period, indicate the classified staff title and the position number for which you are recruiting.

Brief Description of Required Duties:

Qualifications Required

Qualifications Preferred

Hours Per Week	Month	Position Begin Date	End Date	Person to Contact	Telephone	Supervisor's Name
Department				Organization Number	Supervisor's Signature	

**TEMPORARY EMPLOYMENT APPLICATION**  
**ATTACHMENT 2**

WASHINGTON STATE UNIVERSITY—OFFICE OF STAFF PERSONNEL  
PULLMAN, WASHINGTON 99164-1018

NAME Last	First	Middle	Date of Birth	Social Security No.	Home Phone	
MAILING ADDRESS No.	Street	City	State	Zip	WBU Student ID No.	Work Phone
Do you have any handicaps or health problems which would interfere with your ability to perform the position for which you are applying? ( ) Yes ( ) No If yes, please explain:			Eligible for Work Study (Check one)	State ( )	STUDENTS ONLY Federal ( ) Institutional ( )	Amount Allocated
LIST SCHOOLS ATTENDED (Begin with High School & include current school)		City & State	Dates (From/To)	Currently enrolled? ( ) Yes ( ) No	Current credit hrs	Graduated ( ) Yes ( ) No
NAME		City & State	Dates (From/To)	Currently enrolled? ( ) Yes ( ) No	Current credit hrs	Graduated ( ) Yes ( ) No
NAME		City & State	Dates (From/To)	Currently enrolled? ( ) Yes ( ) No	Current credit hrs	Graduated ( ) Yes ( ) No
LICENSES, CERTIFICATES, SKILLS List special licenses/certificates you hold (include driver's license). List tools, machines or equipment you are skilled in using, as well as other special skills:						
WORK EXPERIENCE/TRAINING (include references and specify previous WBU employment)						
WBU employs only U.S. citizens and lawfully authorized non-U.S. citizens. All new employees must show employment eligibility verification as required by the U.S. Immigration and Naturalization Service.						

**READ CAREFULLY**

**CERTIFICATE OF APPLICANT:** I hereby certify that all statements made in this application are true and I understand and agree that any false statements on this form shall be considered sufficient cause for rejection of my application or dismissal if I am employed in a temporary position.

**APPLICATIONS MUST BE SIGNED**

WBU 1281 Form 113 5-87

Signature \_\_\_\_\_

Date \_\_\_\_\_

PLEASE INDICATE WORK AVAILABILITY BELOW

APPLICANT complete this section prior to selection								
of hours available ( )	TYPE OF EMPLOYMENT ACCEPTABLE (check all that apply) ( ) Days only ( ) Nights ( ) Weekends ( ) Part-time ( ) Full-time							
(check hours NOT available for work)								
HOUR	SUN	MON	TUE	WED	THU	FRI	SAT	
8 AM								
9 AM								
10 AM								
11 AM								
12								
1 PM								
2 PM								
3 PM								
4 PM								
5 PM								
6 PM								
7 PM								
8 PM								

**EMPLOYEE complete this section after selection**

Check here after completing Form I-9 ( )

U.S. citizen ( ) Yes ( ) No

If NO, citizen of \_\_\_\_\_

Immigration Status \_\_\_\_\_

Fed. Tax Marital Status ( ) Single ( ) Married

Sex ( ) Male ( ) Female

Ethnic Origin (check one)

( ) Asian American/Pacific Islander (1)

( ) Black (2)

( ) Native American/Alaska Native (3)

( ) Hispanic (4)

( ) Caucasian (5)

Handicap (Check one)

( ) No Handicap.

( ) Ambulatory Immobility (1)

( ) Vision (2)

( ) Hearing (3)

( ) Mental/Psychological (4)

( ) Multiple (5)

( ) Developmental (6)

( ) Other/Unknown (9)

Major Field of Study \_\_\_\_\_

**EMPLOYER Completes this Section**

Unit \_\_\_\_\_ Job Title \_\_\_\_\_ Rate of Pay \_\_\_\_\_ Form I-9 ( ) Attached ( ) On File

Start Date \_\_\_\_\_ Est. Hrs. Per Wk. \_\_\_\_\_ Budget Coding \_\_\_\_\_

Title Code \_\_\_\_\_ Position # \_\_\_\_\_ Pos. Status ( ) PE ( ) TE ( ) OE

Working in Major Field ( ) Yes ( ) No Class at WSU ( ) Fr. ( ) Soph. ( ) Jr. ( ) Sr. ( ) Other

WHITE AND YELLOW COPY - STUDENT EMPLOYMENT OFFICE  
 FRENCH 128  
 CAMPUS MALL CODE 1012  
 PHONES 356-7468

PINK COPY - DEPARTMENT  
 GOLDENROD - EMPLOYEE

**CAUTION!** The yellow copy of this form is used for computer data entry. Make corrections legible on the yellow copy or the employee may not be paid on time.

1. SOCIAL SECURITY NO.		2. NAME LAST		3. FIRST		4. MIDDLE		5. SEX M F		6. DATE OF BIRTH MM DD YY		7. ETHNIC ORIGIN		8. DISABILITY													
9. STREET ADDRESS FOR MAILING PAYCHECK OR SALARY STATEMENT												8. HOME PHONE		9. AREA CODE		10. EMPLOYEE TO CONTACT ABOUT THIS APPOINTMENT		11. WORK CO. CODE		12. STATE							
11. SS NO.		12. U.S. CITIZEN		13. HIRE DATE		14. HIRE STATUS		15. WORK AUTH. EXPIRES		16. FILE LOCATION		17. DEPARTMENT		18. POSITION SUPERVISION		19. POSITION NO.		20. POSITION TITLE									
21. TITLE CODE		22. POSITION STATUS		23. WHEN STUDENT		24. WORKING IN MAJOR FIELD		25. WORKING IN FED. STATE		26. FACULTY TIME CARD		27. POSITION BEGIN		28. POSITION END		29. RATE OF PAY		30. PER HOUR PERCENT		31. DEPARTMENT		32. BUDGET		33. PROJECT		34. REMARKS	
35. POSITION BEGIN		36. POSITION END		37. RATE OF PAY		38. PER HOUR PERCENT		39. DEPARTMENT		40. BUDGET		41. PROJECT		42. REMARKS		43. SIGNATURE OF APPOINTING AUTHORITY OR DESIGNEE		44. DATE		45. PERSONNEL		46. DATE		47. FINANCIAL AID		48. DATE	
49. POSITION BEGIN		50. POSITION END		51. RATE OF PAY		52. PER HOUR PERCENT		53. DEPARTMENT		54. BUDGET		55. PROJECT		56. REMARKS		57. SIGNATURE OF APPOINTING AUTHORITY OR DESIGNEE		58. DATE		59. PERSONNEL		60. DATE		61. FINANCIAL AID		62. DATE	

Has the employee read the back of this form and signed the orientation checklist?

# CONDITIONS FOR TEMPORARY EMPLOYMENT

STUDENT EMPLOYMENT OFFICE  
 WASHINGTON STATE UNIVERSITY  
 French Administration 126  
 Pullman, WA 99164-1012  
 Telephone 335-7468

## TO BE COMPLETED BY EMPLOYING DEPARTMENT

Enter all information.

### CURRENT APPOINTMENT

Employee Name:	Social Security Number:	Title:
Department:	Position Number:	Begin Date:
Supervisor:	Work Days:	Hours of Work:
		End Date:
		Pay Rate:

### EMPLOYEE INFORMATION

You have been appointed to a temporary position at Washington State University.

**IF YOU ARE NOT A WSU STUDENT:** Your employment is limited to 1,050 hours (excluding overtime hours) in any 12 consecutive month period measured from the original date of temporary employment or October 1, 1989, whichever is later. If your employment exceeds this limit, you may appeal for permanent status under the Higher Education Personnel Board remedial action rule, WAC251-12-600. You will see your monitored hours each pay period on your WSU Earnings Statement.

**IF YOU ARE A WSU STUDENT (enrolled for seven or more credit hours):** Your employment is limited to 516 hours (including overtime hours) in six consecutive months excluding vacation periods (an average of 19.5 hours per week) unless your work is in your major field of study; in a student body office, a news staff position, or in an approved WSU internship.

Temporary employment is "employment at will." You may be dismissed or rehired as determined by your supervisor. To obtain permanent employment, you must apply at the Human Resource Services Office, 134 French Administration Building, when appropriate eligible lists are open. If you compete and are appointed to a position in the classified service, the salary approved may differ from the salary you receive as a temporary employee. Temporary employees are not eligible for benefits other than workers' compensation.

### TO BE COMPLETED BY THE EMPLOYEE

Are you working now or have you ever worked as a temporary or student employee at Washington State University?  YES  NO

If yes, list department(s), dates of employment and supervisor(s):

Department: \_\_\_\_\_ Employment Dates: \_\_\_\_\_ Supervisor: \_\_\_\_\_

(Attach an additional sheet if necessary.)

I acknowledge that this appointment constitutes temporary employment and that if I am interested in permanent employment in the classified service at WSU, I must apply and compete for a position. I acknowledge that it is my responsibility to immediately notify my supervisor when I work any additional hours elsewhere at the university or when I change status from nonstudent to student or vice versa. I have been informed of and understand the above conditions of employment. I have been given the opportunity to ask questions about my employment. I certify that the list of my temporary employment positions is complete and accurate.

Employee's Signature \_\_\_\_\_ Date \_\_\_\_\_

### TO BE COMPLETED BY THE EMPLOYING OFFICIAL

The preceding terms and conditions of temporary employment have been reviewed with the employee: (Check one.)  Upon hire.  Upon changes in conditions of employment (described above).

Supervisor's Signature \_\_\_\_\_ Date \_\_\_\_\_ Hiring Official's Signature \_\_\_\_\_ Date \_\_\_\_\_

X

Send the white original to the Student Employment Office. Give the yellow copy to the employee. Retain the pink copy in departmental personnel files.

THIS IS A STATEMENT OF YOUR EARNINGS. KEEP FOR YOUR RECORDS.

REDUCTIONS/DEDUCTIONS AND CONTRIBUTIONS		DESCRIPTION	EARNINGS		GROSS PAY	SOCIAL SECURITY NO.
			MONTH	HOURS		
F. INCOME TAX	32 39	HOURLY	122	15 25	124 59	[REDACTED]
MEDICAL AID	52					IRS TAX STATUS
MEDICARE 1.45	1 81					PERCENTAGE-20
TOTAL DED	34 72					YEAR TO DATE
MEDICAL AID	1 07					124 59
MEDICARE 1.45	1 81					124 59
TOTAL CONT	2 88					32 39
		TOTAL GROSS EARNINGS			124 59	
						TEMP EMP HRS 894.35
						CURRENT DISBURSEMENT
						000
						12/31/89
						01/10/90
						781483
		NET PAY			89.87	

NAME  
FRANCES MARIE LAW  
ACCOUNT NO.

ATTACHMENT 6

WSU 1237-CONTR-078-884

HOURS MUST NOT EXCEED 1050 IN 12 MONTHS; SEE YOUR SUPERVISOR  
NEW FEDERAL INCOME TAX TABLES HAVE BEEN IMPLEMENTED  
EFFECTIVE 1-1-90

01/10/90

\*\*\*\*\*89.87

0/000CK 781483

FRANCES MARIE LAW  
[REDACTED]  
PULLMAN, WA

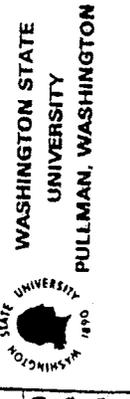
99163

NAME 825166  
 BLOXOM MICHAL O  
 19A 1004 5.00 HR 9002  
 TERMIN. DATE 05/95

NAME 825114  
 BUTTERFIELD ANDREA  
 19A 1004 5.00 HR 9002  
 TERMIN. DATE 09/95

NAME 824326  
 DUNNING SHELLIE L  
 19A 1004 5.00 HR 9002  
 TERMIN. DATE 10/94

NAME 825115  
 HALL MONICA E  
 19A 1004 5.00 HR 9002  
 TERMIN. DATE 09/99



NAME 824324  
 HAILEY BETTY ANN  
 19A 1004 7.25 HR 9002  
 TERMIN. DATE 07/90

NAME 824321  
 JONES WARREN  
 19A 1005 5.00 HR 9009  
 TERMIN. DATE 09/99

NAME 825113  
 ISEMINGER C  
 19A 1004 5.00 HR 8002  
 TERMIN. DATE 09/95

UNIT PAY REPORT  
 WSU 1063-CONTR 051-0279-0308

FOR USE ONLY  
 9001300458

Accumulated Hours

Monitoring Begin Day  
 and Month

3412 SHIGHBRD/TELE  
 IMPORTANT!

This form is read by an optical scanning machine. You must not fold, staple, tear, or paper clip this sheet. Make no marks on it except where instructed.  
 Use only a No. 2 pencil  
 DON'T USE BALLPOINT PENS, COLORED PENCILS, FELT TIPPED PENS, ETC.  
 BLACKEN THE APPROPRIATE CIRCLE COMPLETELY!  
 WRONG! RIGHT!

Report prepared by  
 [Signature]

Phone No. or Profs ID

PROGRAM	PROJECT	NO. OF UNITS WORKED	DATE	TITLE	TERMIN. DATE
19A	1004	5.00	HR	9002	05/95
19A	1004	5.00	HR	9002	09/95
19A	1004	5.00	HR	9002	10/94
19A	1004	7.25	HR	9002	07/90
19A	1005	5.00	HR	9009	09/99
19A	1004	5.00	HR	8002	09/95

RPT: 12/31/89  
 RUN: 01/07/90  
 CHK: 01/10/90-RGZ

WASHINGTON STATE UNIVERSITY  
 PAYROLL/PERSONNEL SYSTEM - PAYROLL  
 PAYROLL EXPENDITURE AUDIT REPORT

PPPR4031-01  
 PAGE 266

ATTACHMENT 8

BUDGET 2420

PAYROLL EXPENSES FOR ZOOLOGY-SHARON

ZIP 4229  
 PAGE 1

PART 1: APPOINTED/SALARIED EMPLOYEES

NAME	SOC	SEC	NO	CLASS	POS	NO	E/T	P/T	FND	AP	PGM	PRCJ	CYCLE	END	HR/PC	STF	MON	P/R	EXP
CRANE JOHN W	0280	042172	RG	001	01	C6C	0001	12/31/89	20.000				1250	441.13					
FILARSKI KRISTEN B	9941	042429	R/T	001	01	C6C	0001	12/31/89	20.000				1250	167.75					
OLIVER SYLVIA A	9903	069577	R/T	145	01	11H	0209	12/31/89	40.000				2500	433.00					
SUB-TOTAL																			

PART 2: TEMPORARY EMPLOYMENT PROGRAM AND OTHER POSITIVE PAY EMPLOYMENT

NAME	SOC	SEC	NO	CLASS	TEMP ID	K/T	P/T	FND	AP	PGM	PROJ	CYCLE	END	HR/PC	STF	MON	P/R	EXP
HOSICK ANNA ELISE	8011	813120	HRY	145	02	13L	0202	12/01/89	2.000			12/15/89	2.000	0115	10.00			
HOSICK ANNA ELISE	8011	813120	HRY	145	02	13L	0202	12/01/89	3.750			12/31/89	3.750	0216	18.75			
SMITH PAUL ROBERT	9711	805332	SMS	145	01	11V	0214	12/31/89	9.600			1250.00	627.13	0552	60.10			
HISANGA DARIN K	9811	823793	FMS	046	02	17A	8084	12/31/89	2.400			1322.00	14.40	0138	103.25			
SUB-TOTAL																		

TOTAL EXPENDITURE FOR BUDGET 2420

I CERTIFY THAT THIS EXPENDITURE IS IN ACCORDANCE WITH APPROVED DOCUMENTS WITH EXCEPTIONS NOTED.

(AUTHORIZED SIGNATURE)

NOTE CORRECTIONS SIGN AND RETURN TOP COPY NO LATER THAN NOON ON PAYDAY TO PAYROLL, RM 2336, FRENCH ADMIN. MAIL CODE 1025. (509) 335-9575.

work study fund for the semester.

monitoring began date

work study fund money semester-to-date work study earnings equals the semester WS balance.

Rpt: 06/20/90  
Run: 06/20/90

## WASHINGTON STATE UNIVERSITY

PPER0803-02  
Page 1

## PAYROLL/PERSONNEL SYSTEM - EMPLOYEE RECORDS

## NON-STUDENT TEMPORARY EMPLOYMENT ROSTER - WARNINGS

SSN	NAME	M-B-D	HRS YTD	HRS MTD
	ADAMEK, SCOTT		1028.00	.00
	ALLYN, DALE A		1050.00	.00
	BEAN, SYNDI RENE A		983.50	40.00
	BIDLE, STACY L		962.35	52.00
	BOYER, TROY MORRIES		1010.24	.00
	BURTON, LUCY GREER		913.00	62.00
	CANDANOZA, E		976.50	.00
	CROWE, KEVIN CLAYTON		955.70	.00
	DAVIS, GAIL		1050.00	.00
	DILLSI, TARIK T		898.71	258.86
	DODGE, LARRY V		887.00	.00
	ELLSWORTH, REBECCA		897.65	.00
	EMERSON, DAWN		1005.00	.00
	FRIES, SUSAN LYNN		1009.71	.00
	GASH, J MONTE		950.90	40.85
	GEIER, HANS T		952.00	128.00
	GILLIS, JANICE F		1049.00	.00
	GREGOR, TAMI JO		885.50	.00
	GREGORY, PAUL S		1050.00	.00
	HATHAWAY, SANDRA D		1046.00	59.00
	HENNIS, NIGEL L		979.99	.00
	HINCHEY, DIANNE L		900.00	.00
	HOLICK, DEANNA C		993.50	45.75
	HUGHES, LENOIS E		1004.50	.00
	IRANDOUST, MAHNAZ		998.63	.00
	JOHNSON, GARY W		1050.00	.00
	KADIR, SORKEL M		926.00	80.00
	KAISER, JANICE M		1050.00	.00
	KEATING, MICHAEL D		1049.75	.00
	KEEL, KRISTINA A		931.50	40.00
	KEGLEY, KRISTI JO		1049.00	.00
	KEITHLEY, BRIAN L		943.00	.00
	KUSMENOGLU, ISIN		1047.00	.00
	LAKEY, DARREN J		999.50	88.00
	MCGAHAN, KATHRYN J		940.00	.00
	MILTENBERGER, MICHELLE		888.00	.00
	MINEHART, GARY P		1018.22	.00
	MOHEBBI, SIROUS		1044.00	.00
	NEHLS, RITA M		875.25	.00
	NELSON, MARK R		1050.00	.00
	NILSON, CHRISTOPHER		1045.00	.00
	PEARSON, PHYLLIS M		1049.25	.00
	PHELPS, WILLIAM B		893.00	.00
	REDAL, KARI MARIE		1004.50	.00
	RHOADES, DREXEL		1004.00	.00
	ROSS, KAREN J		927.54	20.90
	SCHAFFER, VICKI A		967.25	43.25
	SCHAUMBERG, TERRIE		947.00	88.00
	SHANNON, NICOLE		942.74	37.75
	SUN, WUHUA		1049.90	.00

Rpt: 06/20/90  
Run: 06/20/90

## WASHINGTON STATE UNIVERSITY

PPER0803-01  
Page 1

## PAYROLL/PERSONNEL SYSTEM - EMPLOYEE RECORDS

## NON-STUDENT TEMPORARY EMPLOYMENT ROSTER

SSN	NAME	M-B-D	HRS YTD	HRS MTD
	ABBAS, RICHAT		197.50	.00
	ABBEY, JOANN M		39.82	.00
	ABBOTT, JASON E		249.01	72.00
	ACKERSON, JEFFREY S		200.00	88.00
	ACUFF, ELAINE M		35.00	20.00
	ADAMEK, SCOTT		1028.00	.00
	ADAMS, RHONDA A		57.50	.00
	ADDO, ESTHER		145.44	50.44
	ADHI, TRI P		591.00	88.00
	ADKINS, VIVIAN H		32.50	.00
	AGER, PATRICIA LEE		16.00	16.00
	AHERN, DEBORAH A		3.00	.00
	AHMEDULLAH, HOOR B		360.90	.00
	AHSON, MAZHAR		188.00	.00
	AHYO, KELLCEY M		15.00	.00
	AICHELE, LAURA ANN		112.00	48.00
	AKINS, DOROTHY J		53.90	12.60
	AKINS, VALERIE L		2.50	.00
	ALDERMAN, CAROL ANN		461.75	.00
	ALDRICH, JOANN C		440.00	24.00
	ALEXIE, SHERMAN J		89.81	.00
	ALFORD, EDWARD C		528.00	.00
	ALISCH, REID S		51.00	.00
	ALLAIRE, BECKY SUE		180.75	91.50
	ALLEGRI, TED H		144.00	.00
	ALLEN, CAULENE M		19.00	.00
	ALLEN, CLAUDIA G		185.00	27.00
	ALLEN, DENISE SUE		64.00	64.00
	ALLISON, DEBBIE K		149.00	61.50
	ALLWINE, ROCHELLE		132.00	.00
	ALLYN, DALE A		1050.00	.00
	ALTENHOFEN, JOHN P		82.50	.00
	ALVAREZ, JESUS G		387.50	60.50
	ALVIN, BARBARA L		131.00	.00
	ALZOLA, DONNA D		185.10	.00
	AMES, JANETTE K		701.50	40.50
	AMSBARY, H R		35.00	.00
	ANDERSON, BETTY M		173.50	.00
	ANDERSON, HELEN L		30.75	.00
	ANDERSON, JAMI A		30.00	.00
	ANDERSON, JASON M		17.50	.00
	ANDERSON, KATHERINE		71.75	.00
	ANDERSON, KEITH C		80.00	80.00
	ANDERSON, MARK D		186.50	.00
	ANDERSON, RAUL M		50.00	.00
	ANDERSON, RICHARD E		49.50	.00
	ANDERSON, SHAWN D		64.00	64.00
	ANDERSON, STEPHEN ALLEN		88.00	.00
	ANDERSON, TREVA L		488.50	17.00
	ANDERSON, VERNON L		209.00	.00

## Employing Non-U.S. Citizens

### IMMIGRATION STATUS

The U. S. Immigration and Naturalization Service (INS) assigns an immigration status to each alien residing in the United States.

Except for permanent residents/immigrants, most aliens who have employment authorization can be employed on a temporary basis *only*.

### ASSISTANCE

Contact the Office of International Programs (IP) prior to employing an alien.

- IP evaluates the alien's circumstance to determine any employment restrictions or resolve employment questions prior to WSU employment.
- IP and hiring departments jointly complete the INS forms and, if applicable, U.S. Department of Labor (DOL) application materials.
- IP signs INS and DOL forms regarding nonimmigrant employment on behalf of WSU. Processing Employment Eligibility Verification (I-9) forms is an exception (see 60.04).

### IMMIGRATION CODES

Following is a list of immigration status codes and general restrictions on employment. Departments enter the following codes on Personnel Action forms (see 60.25) and Temporary Employment Appointment forms (see 60.27).

**B1: Visitor for Business**

WSU cannot employ an alien holding B1 status.

**IM: Permanent Resident/Immigrant**

WSU may employ a permanent resident/immigrant on a permanent or temporary basis.

**F1: Student**

A foreign student may be employed by WSU if the student is authorized to attend WSU and is in lawful F1 status.

The student must be a full-time WSU student.

- An undergraduate must be enrolled for 12 credits each semester.
- A graduate student must be enrolled for 10 credits each semester.

Hours of employment may not exceed 20 hours per week while school is in session. During vacations, employment can be full-time under certain conditions.

The employment of a foreign student cannot displace a U.S. worker. This rule does not apply to a teaching or research assistant.

1 MR. MORGEN: Please state your name and spell your last name for the record.

2 ROBERT CASSLEMAN: Robert C-A-S-S-L-E-M-A-N.

3 MR. MORGEN: Thank you, Mr. Cassleman. My name is Gerry Morgen. I'm Vice Chair  
4 of Washington State Personnel Appeals Board. To my right is Maria Aponte, Sr. Assistant to the  
5 Board. You have been asked to appear today to give testimony on behalf of the Respondent in the  
6 matter before the Board, State of Washington. You will be asked questions first by Assistant  
7 Attorney General Donna Stambaugh, followed by questions from Mr. Benjapon Sakkarapope. I  
8 may have questions when they're done. Microphones are for recording purposes only, not  
9 amplification so I would appreciate loud, verbal responses to all questions. Thank you. Ms.  
10 Stambaugh, your witness.

11 DONNA STAMBAUGH: Thank you. Mr. Cassleman, could you tell us your current  
12 position?

13 ROBERT CASSLEMAN: International Student Advisor in the Office of International  
14 Students and Scholars at Washington State University.

15 DONNA STAMBAUGH: Okay. And how long have you held that position?

16 ROBERT CASSLEMAN: About four and a half years, four and three quarter years.

17 DONNA STAMBAUGH: Where were you before that?

18 ROBERT CASSLEMAN: With the Pullman School District and before that various  
19 positions here at WSU.

20 DONNA STAMBAUGH: In your roll as International Student Advisor, can you tell us a  
21 little bit about your duties?

22 ROBERT CASSLEMAN: Yes. We're mainly assigned the task of assisting students with  
23 complying with their student immigration regulations and helping the University to comply with its  
24 responsibilities to host international students, non-immigrant international students.

25 DONNA STAMBAUGH: You deal strictly with international students?

26 ROBERT CASSLEMAN: Yes.

1 DONNA STAMBAUGH: Okay. Are you familiar with the requirements for students to  
2 work in this country and to be students?

3 ROBERT CASSLEMAN: I have a good understanding of that.

4 DONNA STAMBAUGH: Are you familiar with federal requirements?

5 ROBERT CASSLEMAN: Yes.

6 DONNA STAMBAUGH: Are there State requirements?

7 ROBERT CASSLEMAN: We're mainly charged with interpreting federal requirements.

8 DONNA STAMBAUGH: All right. Can you tell us if you know Mr. Sakkarapope?

9 ROBERT CASSLEMAN: I do.

10 DONNA STAMBAUGH: And how do you know him?

11 ROBERT CASSLEMAN: As an advisor.

12 DONNA STAMBAUGH: His advisor?

13 ROBERT CASSLEMAN: I'm one of three advisors and I could just say that Ben had come  
14 on at least a couple of occasions in the past for advisement.

15 DONNA STAMBAUGH: Okay. And are you familiar with his student status?

16 ROBERT CASSLEMAN: I think, yes.

17 DONNA STAMBAUGH: Can you tell us what allowed him to come from this country and  
18 work?

19 ROBERT CASSLEMAN: Well I, Ben's first enrollment predates me, so I can't give you a  
20 great detail on that. And I think at the point where I was approached by him, he was a masters  
21 student in statistics and then at the point in late 2002 or the first month of 2003, he was notified that  
22 his program was dropped or he was no longer eligible to continue in his academic program.

23 DONNA STAMBAUGH: Okay. And what immigration status did he have, if you know?

24 ROBERT CASSLEMAN: He was an F1 student and at the point that.

25 DONNA STAMBAUGH: Can I stop you there and tell us what an F1?  
26

1 ROBERT CASSLEMAN: An F1 is, okay, there is a lot of immigration categories and, if I  
2 can go a little bit further and say people use the terms "visa status" and "immigration status" kind of  
3 interchangeably. Just for clarification, a visa is a stamp that students would have on their passport  
4 that is a permission to enter the US. It's granted by the Department of State at consulates outside  
5 the US only. It's kind of like a ticket in that it has a specific expiration and it may be good for  
6 multiple entries or one or two entries, but it depends on the treaty that the country has with the US.  
7 When a student is in an immigration status when they are admitted to the US, another department  
8 takes over and that's the Department of Homeland Security, so they grant an immigration status to  
9 this person and the difference here and kind of the importance I'm getting at is that this is more like  
10 an analogy with a membership in a club. In other words, it's not a tangible thing. One has to  
11 maintain their membership by, or their immigration status, in this case, by maintaining full  
12 enrollment in school. That's kind of the primary objective of this immigration status and so an F1 is  
13 typified by full enrollment during regular academic sessions.

14 DONNA STAMBAUGH: And what is full enrollment considered?

15 ROBERT CASSLEMAN: Full enrollment for a graduate student at this institution is ten  
16 credits.

17 DONNA STAMBAUGH: Is that consistent with the federal requirements for F1 status?

18 ROBERT CASSLEMAN: Yes. Institutions have some leeway (unintelligible) but it's,  
19 there may be another university that has nine. Washington State, our policy has been ten. The  
20 policy established was ten credits. And there are few exceptions to that case, but, when a person  
21 ends their enrollment or they no longer have, they're no longer enrolled as a student at a university,  
22 then they wouldn't have a status in the US.

23 DONNA STAMBAUGH: What would that mean?

24 ROBERT CASSLEMAN: Well, that would mean that they should depart the US or seek  
25 another immigration status so they would be lawfully present in the US.  
26

1 DONNA STAMBAUGH: Okay. Thank you. Along with an F1 status, is there an ability to  
2 work?

3 ROBERT CASSLEMAN: Yes. It's inherent in the F1 status for certain kinds of work and  
4 that's limited to on-campus only, up to 20 hours per week during regular sessions and so our regular  
5 sessions are Fall semester, Spring semester, and it could be full time when school is not in session  
6 or during vacation programs. And, again, there are fee exceptions to that case, but generally  
7 speaking, off-campus employment is not allowed except with specific authorization.

8 DONNA STAMBAUGH: Okay. Thank you. Could you turn to R-7 in the booklet there?  
9 Are you familiar with this document?

10 ROBERT CASSLEMAN: Yes. This is WSU's Procedures Manual.

11 DONNA STAMBAUGH: Specifically, there is an F1 over on the left. Can you tell us  
12 about that?

13 ROBERT CASSLEMAN: Okay. (unintelligible) is authorized to attend WSU in lawful  
14 status. And so, again, it lists here the minimum required credit hours, in the case of an  
15 undergraduate, 12, a graduate student for 10 credits.

16 DONNA STAMBAUGH: Is that consistent with federal law?

17 ROBERT CASSLEMAN: Yes.

18 DONNA STAMBAUGH: All right. Thank you. I ask that R7 be admitted.

19 MR. MORGEN: Mr. Sakkarapope?

20 BENJAPON SAKKARAPOPE: I would like to add evidence because this one is a letter  
21 from the witness himself to me.

22 MR. MORGEN: Well, right now, we're just dealing with the policy, and whether or not  
23 that's the formal, official policy and whether you are willing to stipulate to its admission. Now you  
24 may have questions of this witness on cross-examination, but right now, the AG has just offered the  
25 policy into evidence.

26 BENJAPON SAKKARAPOPE: Okay. (unintelligible) asking to admit this evidence, right?

1 MR. MORGEN: Right.

2 BENJAPON SAKKARAPOPE: Okay. (unintelligible) on the record.

3 MR. MORGEN: Okay. R7 is admitted.

4 DONNA STAMBAUGH: And just a few more questions, Mr. Cassleman. If you turn to  
5 R5. Do you recognize this document?

6 ROBERT CASSLEMAN: Yes.

7 DONNA STAMBAUGH: And I note there is a cc to Office of International Students and  
8 Scholars. Is that your office?

9 ROBERT CASSLEMAN: Yes.

10 DONNA STAMBAUGH: Okay. You recall receiving this document?

11 ROBERT CASSLEMAN: Yes.

12 DONNA STAMBAUGH: And what would you do with this after you get it, if anything?

13 ROBERT CASSLEMAN: Notify the student that they are not, that they are at the point that  
14 they are dropped from the program, that they're no longer in status and that they should depart the  
15 US as soon as possible.

16 DONNA STAMBAUGH: And do you recall if you did that in this case?

17 ROBERT CASSLEMAN: I believe I notified, myself or my supervisor, Mary  
18 (unintelligible), notified Ben that he was no longer maintaining status and that he should depart or  
19 certainly seek advisement from our office and at that point I, Ben never came to discuss what the  
20 implications were and I believe I asked him on at least one occasion to come to the office and  
21 discuss his situation, what options he had at that point.

22 DONNA STAMBAUGH: Okay. Thank you. Just one final question. I believe, just for  
23 clarification, the ability for him to work was tied to his student status. Is that.

24 ROBERT CASSLEMAN: Right.

25 DONNA STAMBAUGH: And, basically his membership, so to speak, or his status is gone  
26 because of this disenrollment?

1 ROBERT CASSLEMAN: As an F1, I have no evidence that he is currently an F1 student.  
2 He certainly wouldn't be at Washington State and so his ability to work as an F1 at Washington  
3 State is not available to him.

4 DONNA STAMBAUGH: Okay. Thank you. That's all.

5 MR. MORGEN: Mr. Sakkarapope.

6 BENJAPON SAKKARAPOPE: I would like to admit to evidence witness personal notes  
7 and another one is this letter that December 5, 2002 sent to me. I want to ask some questions  
8 related to that one.

9 MR. MORGEN: You're going to need to share a copy of it with Ms. Stambaugh first. No.  
10 First with Ms. Stambaugh. Let her review it.

11 DONNA STAMBAUGH: Do you have copies for me?

12 BENJAPON SAKKARAPOPE: Yes.

13 DONNA STAMBAUGH: Thank you.

14 MR. MORGEN: Three pages?

15 BENJAPON SAKKARAPOPE: I would like.

16 MR. MORGEN: Not, wait a second.

17 DONNA STAMBAUGH: I'd like to have some foundation before. He's asking for these to  
18 be admitted before he questions the witness? Is that.

19 MR. MORGEN: Yes. Maybe you can ask this witness a few questions to lay some  
20 foundation for these documents. Whether he's seen them, whether he wrote them, etc., and then  
21 offer their admission.

22 BENJAPON SAKKARAPOPE: Cassleman, did you send this memo to Mr. Sakkarapope  
23 on December 5, 2002?

24 ROBERT CASSLEMAN: Yes.

25 BENJAPON SAKKARAPOPE: And attachment, November 25?

26 ROBERT CASSLEMAN: I can say that I had seen this November 25<sup>th</sup> memorandum.

1 BENJAPON SAKKARAPOPE: When did you see that memorandum?

2 ROBERT CASSLEMAN: The November 25<sup>th</sup> memo? I assume, I can't say, there's not  
3 even a, it's not directed to our office specifically, but I'm sure that I have seen this in the past.

4 BENJAPON SAKKARAPOPE: What do you understand from that memo?

5 ROBERT CASSLEMAN: What I understood from this memo is that your completion, as to  
6 your completion dates on this. That's how I read this. The graduate school has a policy that  
7 establishes a maximum amount of time to complete a degree, so, the way I read that is that you were  
8 passed the maximum time to complete your degree.

9 BENJAPON SAKKARAPOPE: Was that true that Benjapon Sakkarapope has been passed  
10 his completion date (unintelligible) since Summer of 2001?

11 ROBERT CASSLEMAN: Well, I, as I indicated in my December 5<sup>th</sup> letter to you, was that  
12 that's the graduate school's question and that you should seek clarification on your graduate status,  
13 Ben, at that point, and that I couldn't answer that question, that's a question for the graduate school  
14 to answer.

15 BENJAPON SAKKARAPOPE: The (unintelligible) status. Was that true?

16 ROBERT CASSLEMAN: I'm sorry, the second sentence in which memo you're talking  
17 about? The 25<sup>th</sup>?

18 BENJAPON SAKKARAPOPE: Yes, the same memo.

19 ROBERT CASSLEMAN: Okay. He's officially out of status and he is not making  
20 adequate progress towards a degree. Well, I don't know what he's referring to on the status issue,  
21 but, the way I read that is that you weren't making adequate progress toward your graduate degree.

22 BENJAPON SAKKARAPOPE: I'm talking about the first sentence (unintelligible) of  
23 status. Is that true?

24 ROBERT CASSLEMAN: At that point, I don't know. If your, what your status, again,  
25 that's why I asked you to clarify what your enrollment status was with the graduate school, so I  
26 don't know. And there was another. So that's pretty much, I guess, but what I'm telling you is that

1 I don't know whether Howard Grimes is making this, that statement on the discussion. I can  
2 remember graduate school asking well what happens when a student, if they're not eligible to be  
3 enrolled? And I would say they're out of status. It's possible it was following a discussion like that  
4 that we would indicates where a student's, and I get questions like this occasionally in the case that  
5 a student does this or that, what's their immigration status. I assume that.

6 BENJAPON SAKKARAPOPE: Did you remember Mr. Sakkarapope left the country for  
7 his father-in-law funeral?

8 ROBERT CASSLEMAN: Yes.

9 BENJAPON SAKKARAPOPE: When was that?

10 ROBERT CASSLEMAN: That was in the Fall semester of 2002, I believe. Might have  
11 been October or September. I issued an I20 to return.

12 BENJAPON SAKKARAPOPE: Yes. And at that time, was Sakkarapope (unintelligible)  
13 status?

14 ROBERT CASSLEMAN: At which time, I need you to be specific.

15 BENJAPON SAKKARAPOPE: I'm talking about September, October, 2002.

16 ROBERT CASSLEMAN: I don't have all my notes here, but my recollection is that the  
17 reason you needed an I20 to come back into the US was that you had failed to apply for a program  
18 extension in time and that you were out of status and I told you that it would be possible that  
19 students are eligible after they fall out of status to re-enter and begin a new F1 status and I believe  
20 that was the case and that I issued an I20 so that you could go home and attend to your family  
21 affairs and come back later that semester.

22 BENJAPON SAKKARAPOPE: Is that your opinion or from INS authority?

23 ROBERT CASSLEMAN: I'm just giving you my recollection of what happened, Ben. I  
24 don't confer status on people, I just know that once you're admitted in a status in the US that as  
25 long as you are maintaining the requirements as an F1 that you would be in status.

26 BENJAPON SAKKARAPOPE: Let me make.

1 ROBERT CASSLEMAN: I recall that full attendance was a requirement, Ben. Were you  
2 enrolled full time after you came back from Thailand?

3 BENJAPON SAKKARAPOPE: No. I want you to answer my question. I asked the  
4 question whether during the time September, October, 2002, whether Sakkarapope was out of status  
5 at that time.

6 ROBERT CASSLEMAN: I believe at the time that you left the US, you were out of F1  
7 status.

8 BENJAPON SAKKARAPOPE: Is that just your belief, right? It's not INS determination,  
9 right?

10 ROBERT CASSLEMAN: Again, Ben, I'm just rephrasing or restating regulations, F1  
11 regulations. That you missed a deadline and therefore you failed to maintain status and so you  
12 would have been out of status and that was the reason why I issued you an I20 to come back into the  
13 US and regain F2 status.

14 BENJAPON SAKKARAPOPE: Who is authorized to (unintelligible) immigration law?

15 ROBERT CASSLEMAN: Well, the immigration services, of course, I just look at the  
16 regulations and advise students.

17 BENJAPON SAKKARAPOPE: Are you authorized person to interpret immigration law?

18 ROBERT CASSLEMAN: I have been certified as a designated school official here at  
19 Washington Status University, Ben.

20 BENJAPON SAKKARAPOPE: Is that the same?

21 ROBERT CASSLEMAN: Well, it, I'm not clear on what, I guess I'm not clear on what  
22 you're asking me.

23 BENJAPON SAKKARAPOPE: No. I am asking.

24 MR. MORGEN: I need to interrupt here, and try to determine where we're going with this.  
25 As I mentioned earlier, I've got a very limited scope to review. And I'm looking at hours worked  
26

1 from March 16, 2002 to February 24, or whatever the date was, 2003. Help me out to relevance of  
2 your status prior to that time or subsequent to that time.

3 BENJAPON SAKKARAPOPE: Your Honor, because the counsel introduce this witness,  
4 which I believe from the original is not relevant to (unintelligible) that the Board decide and at this  
5 point the Board allow the witness to testify about my immigration status, my immigration  
6 qualification. So I want to know whether the witness has authority to (unintelligible) to say whether  
7 I'm out of status or not to interpret whatever the counsel asks opinion. Is it just opinion or whether  
8 it has any legal establishment in this proceeding.

9 MR. MORGEN: But how does your status help me with determining whether you had 1050  
10 non-student hours in the year before the Board?

11 BENJAPON SAKKARAPOPE: Your Honor, that's what my position at beginning.  
12 Objection to witness testimony.

13 MR. MORGEN: And if you remember correctly, I told you at the time that your objection  
14 was premature because I had no idea what the witness was going to testify to and advise you to  
15 renew your objection at the time he started to testify to issues you thought were irrelevant and there  
16 was no objection during his testimony. Now I've allowed this whole series of questions about your  
17 status and I'm going to allow a few more, but you've got to time some relevance to it. It's got to be  
18 something that helps me get to your non-student hours work in that year, period. And what I  
19 assume will be an argument that even if I find that you did exceed, I can't put you into a position,  
20 but your status prior March 16, 2002 is outside of the window we're looking at. So, I'm going to  
21 allow you a few more questions, but you're going to need to start tying it together for me as to it's  
22 relevance.

23 BENJAPON SAKKARAPOPE: Yes, because this memo, November 25, related to  
24 (unintelligible) decision, on that terminate my student status at the end of Fall, 2002.

25 MR. MORGEN: As I told you early on in this hearing, the termination of your student  
26 status is not an issue I'm going to deal with. That's not an issue I'm empowered to deal with. I'm

1 empowered to make a determination as to your hours worked and whether or not that should be a  
2 full time classified position on the date that you filed the remedial action request.

3 BENJAPON SAKKARAPOPE: Let me clarify. Because I believe that determination is  
4 important here because it's related to the allocation of hours, whether it's for student hours or for  
5 non-student hours. So (unintelligible) what we're talking about.

6 MR. MORGEN: I agree. But the issue I'm looking at is, were you over the 1050 hour  
7 threshold when they terminated your employment? If I determine that you were, then I have the  
8 authority to grant you status back to March 16 of 2002. If you weren't over the 1050 hours, then  
9 nothing changes and so the basis of the termination, the underlying basis is really not relevant  
10 unless I determine that you crossed the 1050 hour threshold. So we need to draw our questions into  
11 how it's going to help me make the determination on the 1050 hours. Because if I determine that  
12 you worked more than 1050 qualifying hours, the bottom line is the termination would be  
13 inappropriate regardless of any other reason. But I'm not going to make a determination as to the  
14 underlying basis for the termination other than the 1050 hours. It's the only issue before me.

15 BENJAPON SAKKARAPOPE: I still have confused, Your Honor, because (unintelligible)  
16 because when the (unintelligible) dropped me from the program, from student, that mean I'm not  
17 student, I'm out of status.

18 MR. MORGEN: There is nothing I can do about that.

19 BENJAPON SAKKARAPOPE: No, no. That's get back to the point the official  
20 (unintelligible) from the school that after that the work hours constituted non-student hours so that's  
21 what I'm trying to establish here, to tell the Board what's going on here and where the  
22 (unintelligible) actually dropped me from public system. That's what I'm trying to (unintelligible)

23  
24 MR. MORGEN: Which is the January 10<sup>th</sup> date?

25 BENJAPON SAKKARAPOPE: It's more than that. It has something (unintelligible) to tell  
26 the Board.

1 MR. MORGEN: Well then, you need to get to that, but not back into 2002, because your  
2 own documents establish that you were carrying 11 credits in the Spring of 2002.

3 BENJAPON SAKKARAPOPE: Yes, but, and then after I filed the paper, right, I discover  
4 document from (unintelligible) filed with the court it shows that (unintelligible) should only drop  
5 me from the system effective on December 20, 2002.

6 MR. MORGEN: Well, then let's get to that. December 20, 2002 if you have a document  
7 that establishes that and this witness knows anything about it, let's get it into the record. But going  
8 back prior to that is not going to help me at all. So, if you think that they say you were dropped  
9 January 10<sup>th</sup> and you have a document and this witness can help explain it that you were dropped  
10 December 10<sup>th</sup>, or some other date, then we need to get to that point.

11 BENJAPON SAKKARAPOPE: Okay.

12 MR. MORGEN: Okay.

13 BENJAPON SAKKARAPOPE: I want to because admit another two papers.

14 DONNA STAMBAUGH: I might just add that this exhibit shows non-student hours after  
15 12/20/02.

16 MR. MORGEN: Everything after 12/20/02.

17 BENJAPON SAKKARAPOPE: Second.

18 MR. MORGEN: Exhibit R1.

19 DONNA STAMBAUGH: It's not counted as student hours anyway.

20 MR. MORGEN: Is all counted as non-student hours. R1.

21 BENJAPON SAKKARAPOPE: R1. (unintelligible)

22 MR. MORGEN: The bottom section shows 12/21 on.

23 BENJAPON SAKKARAPOPE: (unintelligible)

24 MR. MORGEN: Is all non-student hours, so 12/21 to termination date is already in the  
25 record as qualifying hours.

26 BENJAPON SAKKARAPOPE: It's already non-student.

1 MR. MORGEN: It's already non-student. So whatever your status was, whether it was  
2 January 10<sup>th</sup> or whether it was December 20<sup>th</sup>, you're already given credit for non-student hours  
3 back to 12/20 for all hours worked according to this document that's already in the record.

4 BENJAPON SAKKARAPOPE: So I, I'm confused here.

5 DONNA STAMBAUGH: The document that Ms. Stemmene prepared shows non-student  
6 hours after 12/20/03.

7 BENJAPON SAKKARAPOPE: It's okay.

8 MR. MORGEN: That 40, 49, 50, 76, 36, 50 are all non-student hours.

9 BENJAPON SAKKARAPOPE: So I still (unintelligible)

10 DONNA STAMBAUGH: I believe she testified that she went back and changed it after the  
11 disenrollment.

12 MR. MORGEN: Which was in 8, second page of 8. She went back and gave you credit for  
13 those as non-student hours, not to January 10<sup>th</sup>, but clear back to December 20. It's already there.  
14 So the remaining real hours in question are that third block of hours. And that's the issue of six  
15 hours full time student or any hours. That appears to me to be the remaining issue of hours. The  
16 disenrollment, you've been given credit for. The vacation periods, you've been given credit for. So  
17 the only hours at odds are August 26<sup>th</sup> through 12/20 of '02, and whether those should be non-  
18 student hours or student hours because you were only carrying three hours and your argument the  
19 definition of student is six hours, the University's argument appears to be any hours makes it  
20 student employment, your argument is you've got to be carrying six hours to be considered a  
21 student for student employment. That's the issue I'm going to be left with, from what I've  
22 narrowed things down to.

23 BENJAPON SAKKARAPOPE: So that mean that there is no dispute.

24 MR. MORGEN: There is no dispute in anything after 12/20, 12/21 on is all non-student.

25 BENJAPON SAKKARAPOPE: All non-student. That's qualified hours from that.

26 MR. MORGEN: 40, 49, 50, 76, 36, 50.

1 BENJAPON SAKKARAPOPE: All right. I.

2 DONNA STAMBAUGH: There is no dispute on the first two sections.

3 MR. MORGEN: No dispute on the first two sections.

4 BENJAPON SAKKARAPOPE: So this come to only one (unintelligible) any hours, any  
5 enrollment (unintelligible)

6 MR. MORGEN: The issue I think that it's coming down to is August 26 of '02 through  
7 12/20 of '02 where you were carrying three hours, your argument is the University's definition says  
8 you gotta be six hours, more than six hours to be a student. And so you couldn't possibly have been  
9 a student employee if you weren't a student, carrying less than three hours. And the University's  
10 argument that any hours constitutes student employment.

11 BENJAPON SAKKARAPOPE: Okay.

12 MR. MORGEN: That's the legal argument I'm going to be left with. Anything else is  
13 going to be very irrelevant. That's what we're boiled down to and those hours would be enough  
14 added to the 827.75 to put it well over the 1050 threshold.

15 BENJAPON SAKKARAPOPE: Okay. Because we don't have any dispute (unintelligible)  
16 cross-examining the witness further because it's not relevant to the issue.

17 MR. MORGEN: Ms. Stambaugh, anything further.

18 DONNA STAMBAUGH: No.

19 MR. MORGEN: Any reason why this witness may not be excused?

20 DONNA STAMBAUGH: No.

21 MR. MORGEN: You're excused. We thank you. Respondent have any additional  
22 witnesses?

23 DONNA STAMBAUGH: No.

24 MR. MORGEN: Why don't we take a short break, then we go to closing arguments.

25 DONNA STAMBAUGH: Did you want these back?

26 BENJAPON SAKKARAPOPE: Yes.