

3. Respondent subsequently resigned from IDES effective June 30, 2012, one day after the Office of Executive Inspector General for the Agencies of the Illinois Governor (“OEIG”) released the results of an investigation, on June 29, 2012, finding that Respondent had orchestrated an extensive pattern of misconduct involving his and others’ misuse of State resources, on State-compensated time, and then obstructed an OEIG investigation into the matter by intentionally providing materially false and misleading responses to investigators responsible for conducting the inquiry.

4. Respondent periodically reviewed and had knowledge of the IDES Code of Ethics and the IDES Internet Access policy.

5. At all times relevant to the allegations in Petitioner’s Complaint, the IDES Code of Ethics included sections on conducting State business during State-compensated time and the requirement that State resources be used for official State business only.

6. At all times relevant to the allegations in Petitioner’s Complaint, the IDES Code of Ethics also included sections requiring employees to cooperate with investigations conducted by OEIG. The IDES Code of Ethics likewise prohibits State employees from making “knowingly false or misleading oral or written statements concerning matters of official interest.”

7. From August 2008 until August 2010, Respondent was enrolled as a part-time evening student at Benedictine University, from which he received a management degree in 2010.

8. During the period he was enrolled at Benedictine University, Respondent used his State computer, State email account, and IDES employees to assist him with personal schoolwork on State-compensated time. More specifically,

- a. Respondent used his State email account, on State-compensated time, to send emails to another employee’s State email account requesting and receiving assistance with his personal schoolwork;
- b. Respondent submitted his personal schoolwork to another employee on State-compensated time, using State resources, which she corrected and sent back to him on several occasions;
- c. Respondent received assistance from another employee with schoolwork by requesting that the employee print Respondent’s school presentations on IDES equipment;
- d. Respondent emailed school-related documents from his State email account to another employee’s State email account on State-compensated time, seeking assistance with his schoolwork, and asked the employee to print his schoolwork on IDES equipment;

- e. On April 29, 2009, Respondent used his State email account to transmit a school-related presentation to his IDES supervisor, requesting that she “edit [his] paper for corrections.” The supervisor replied from her State email account to Respondent’s State email account with corrections for Respondent’s school-related PowerPoint presentation;
- f. Respondent received assistance from another employee with schoolwork, on State-compensated time, two or three times per week from January to May 2009 for about 40 to 60 minutes each time;
- g. Respondent received assistance from another employee with schoolwork, on State-compensated time, twice during a one week period for approximately one hour each time, using a State computer and State printer;
- h. Respondent sent emails to, and received school-related assistance from, many additional IDES employees, including but not limited to four different employees;
- i. During the period between August 2008 and August 2010, Respondent repeatedly transmitted and received school assignments, and conducted other school-related business involving instructors and fellow students at Benedictine University, using his official State computer and email account.

9. OEIG interviews of several IDES employees who “assisted” Respondent with his personal schoolwork revealed that Respondent’s subordinates felt uncomfortable and pressured into helping him because he was their supervisor, or because they were on probationary status. Respondent’s subordinates explained that they felt they could not risk the consequences of refusing to assist, even though they knew they should not be doing so.

10. Respondent was interviewed on two separate occasions by OEIG investigators in connection with allegations that Respondent misused official State resources during his enrollment as a part-time evening student at Benedictine University.

11. Respondent’s first interview with OEIG investigators took place on April 21, 2011. During this interview,

- a. Respondent falsely denied that he used State equipment, on State-compensated time, to do his schoolwork and falsely denied that his IDES office staff ever assisted him with his schoolwork;
- b. Respondent falsely asserted that another employee merely “volunteered” to assist him with his schoolwork on her lunch break or after work;

- c. Respondent falsely stated that no IDES employees, other than Johnson, had ever assisted him with his schoolwork;
- d. Respondent falsely stated that Rogers may have helped him proofread a paper "one time" in 2010;
- e. Only when Respondent was directly asked about another employee did Respondent admit that the employee had assisted him with schoolwork "a couple times in 2010," by printing presentations for him on IDES equipment or saving presentations for Respondent on a flash drive. Respondent's statement that the employee only assisted him "a couple times in 2010" was false;
- f. Respondent falsely denied that another employee had assisted him with his schoolwork; and
- g. Respondent falsely denied having any interactions about his schoolwork with his IDES supervisor.

12. A subsequent search by OEIG investigators of Respondent's email files and attachments revealed that the statements and denials by Respondent referenced above in Paragraphs 11(a)-(g) were false and materially misleading.

13. Respondent knew at the time he made the statements and denials referenced above in Paragraphs 11(a)-(g) that they were false or materially misleading. Respondent made these statements intentionally, in order to obstruct and interfere with OEIG investigators during the course of their investigation.

14. Respondent's second interview with OEIG investigators took place on March 19, 2012. During this second interview,

- a. Respondent was confronted with a schoolwork-related email string dated March 18, 2009, that was sent from his personal email account to another employee's State email account during State-compensated time. (Compl. Ex. 4.) Respondent falsely stated that the email may have been sent by his wife from their home computer. Upon further questioning, Respondent falsely stated that perhaps, just once, he had sent schoolwork from his home computer to another employee's State email account;
- b. Respondent was then confronted with a second email dated March 19, 2009, attached to which was a schoolwork-related PowerPoint presentation that Respondent had transmitted from his State email account to another employee's State email account during State-compensated time. (Compl. Ex. 5.) Only when faced with evidence of his prior lies did Respondent admit that he had also sent this email to the employee requesting additional assistance from her;

- c. When asked whether he had received assistance from another employee in completing his schoolwork, Respondent initially falsely denied that the employee had ever assisted him. Upon further questioning, Respondent admitted that he had asked the employee to use State equipment to print school-related documents for him, and to save various documents on a flash drive. However, when OEIG investigators confronted Respondent with specific evidence that the employee printed school presentations for him, Respondent stated that he could not recall whether he asked the employee to print those specific presentations;
- d. Respondent falsely denied that another employee ever did anything to help him with his personal schoolwork, other than review a math problem at lunchtime, and falsely stated, "I know he never helped me;"
- e. Respondent falsely denied that another employee ever assisted him with his schoolwork assignments or school related internet research;
- f. Respondent falsely stated that he never sent any emails relating to his schoolwork to any IDES employees other than those identified in his interviews, and stated that no IDES employees, other than those previously mentioned had ever assisted him with his schoolwork; and
- g. Respondent falsely denied that he sent any school-related work to Benedictine University using his State computer.

15. A subsequent search by OEIG investigators of Respondent's email files and attachments revealed that the statements and denials by Respondent referenced above in Paragraphs 14(a)-(g) were false and materially misleading.

16. Respondent knew at the time he made the statements and denials referenced above in Paragraphs 14(a)-(g) that they were false or materially misleading. Respondent made these statements intentionally, in order to obstruct and interfere with OEIG investigators during the course of their investigation.

17. The allegations in Petitioner's Complaint and these Stipulations represents Respondent's second violation of the State Officials and Employees Ethics Act (the "Ethics Act"), 5 ILCS 430/1-1 *et. seq.* In 2008 (the "2008 Investigation"), OEIG made findings against Respondent for substantially the same misconduct: conducting personal business on State-compensated time, and then obstructing and interfering with a subsequent OEIG investigation into the truth of the allegations. More particularly, OEIG found that

- a. Respondent misused State time by conducting personal business on state time, and had taken extended lunches and other breaks to conduct such activities without requesting personal leave for the absences;

- b. Respondent falsified his State time records and itineraries to cover his extended absences from the workplace;
- c. Respondent made numerous intentionally false and materially misleading statements and omissions to OEIG investigators about his activities that were later found to be false. Respondent made these false and materially misleading statements and omissions knowingly, with the intent to mislead and obstruct OEIG's investigation into his possible misconduct; and
- d. Respondent's descriptions of the events that were the subject of the 2008 Investigation were specifically inaccurate, and shifted substantially as the interview progressed, as Respondent was confronted with evidence that contradicted his prior statements.

STIPULATED UNDISPUTED CONCLUSIONS
OF LAW AND MIXED QUESTIONS OF LAW AND FACT

18. Pursuant to 5 ILCS 430/20-5(d), the Illinois Executive Ethics Commission (the "Commission") has jurisdiction over "all officers and employees of State agencies" for purposes of any matter arising under or involving the Ethics Act. Consequently, the Commission's authority extends to officers and employees of IDES.

19. As an IDES employee, Respondent was subject to the provisions of the Ethics Act, and therefore subject to the jurisdiction of the Commission with respect to matters arising under the Ethics Act. 5 ILCS 430/20-5(d).

20. The "ultimate jurisdictional authority" for IDES officers and employees, including Respondent, is the Governor of the State of Illinois. *Id.* § 1-5 (defining and identifying the "ultimate jurisdictional authority" for various state officers, employees, and the entities for which they work).

21. Petitioner Ricardo Meza is the Executive Inspector General of OEIG, duly appointed by the Governor of the State of Illinois. 5 ILCS 430/20-10.

22. With certain exceptions not relevant here, the Ethics Act provides that OEIG has jurisdiction over "all officers and employees of . . . executive branch State agencies under the jurisdiction of the Executive Ethics Commission," *Id.* § 20-10(c), and authorizes OEIG to investigate allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, violations of the Ethics Act, or violations of other related laws and rules. *Id.*; accord *id.* § 20-20. Consequently, OEIG's authority extends to IDES and its officers and employees.

23. It is the duty of every State employee under OEIG jurisdiction to cooperate in any investigation undertaken pursuant to the Ethics Act. *Id.* § 20-70. "Failure to cooperate includes, but is not limited to, intentional omissions and knowing false statements." *Id.*

24. Failure to cooperate with an investigation of the OEIG is grounds for disciplinary action, up to and including dismissal. *Id.*

25. The Commission may issue appropriate injunctive relief, up to and including discharge of a State employee, for a violation of any section of the Ethics Act. *Id.* § 50-10(a).

26. The Commission may also levy an administrative fine of up to \$5,000 against any person who violates the Ethics Act by intentionally obstructing or interfering with an Ethics Act investigation conducted by OEIG. *Id.* § 50-5(e).

27. On at least April 21, 2011 and March 19, 2012, Respondent knowingly and intentionally made numerous material false statements, misstatements, and omissions during the course of his interviews with OEIG investigators. Respondent made these statements with the intent to obstruct and interfere with OEIG investigators who were conducting an official State investigation into allegations that Respondent had misused State resources.

28. Respondent's statements, omissions, and denials to OEIG investigators about his use of IDES employees to assist him with his schoolwork, like his statements, omissions, and denials about his use of official State resources to prepare and transmit school-related assignments to Benedictine University, were knowingly false and evasive, contained material omissions, and were materially misleading.

29. In falsely denying that he had used IDES employees to assist him with his schoolwork, and in falsely denying that he had used official State resources to prepare and transmit school-related assignments to Benedictine University, Respondent intended to obstruct and interfere with, and did obstruct and interfere with, OEIG's investigation of potential Ethics Act violations in connection with Respondent's enrollment as a part-time evening student at Benedictine University.

STANDARD OF REVIEW

Granting summary disposition in an administrative proceeding is comparable to granting summary judgment under section 2-1005 of the Code of Civil Procedure. *Bloom Tp. High School v. Illinois Commerce Com'n* (1999), 309 Ill. App. 3d 163, 177; 242 Ill. Dec. 892, 903; *Cano v. Village of Dolton* (1993), 250 Ill.App.3d 130, 138; 189 Ill.Dec. 883, 620 N.E.2d 1200. Because of the similarities in the two procedures, it is appropriate to apply the standards applicable to granting summary judgment under section 2-1005 when reviewing a summary determination entered by an administrative agency. See *Cano*, 250 Ill.App.3d at 138, 189 Ill.Dec. 883, 620 N.E.2d 1200.

Summary judgment is appropriate only where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c)

In determining whether a genuine issue as to any material fact exists, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent. A triable issue precluding summary judgment exists where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts. The use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit. However, it is a drastic means of disposing of litigation and, therefore, should be allowed only when the right of the moving party is clear and free from doubt. *Adams v. Northern Illinois Gas Company* (2004), 211 Ill. 2d 32, 43; 284 Ill. Dec. 302, 310.

ANALYSIS

Respondent stipulated to a series of facts from which the Commission concludes that respondent violated Section 20-70 of the State Officials and Employees Ethics Act (5 ILCS 430/20-70). The parties have agreed to recommend a fine of \$2,500.00. The Commission is not bound to accept this recommendation, but neither does it desire to prolong litigation unnecessarily.

The Ethics Act does not provide any guidance for the Commission to consider when levying a fine. The Commission, however, has adopted rules, found at 2 Ill. Admin. Code 1620.530(b), that outline 14 aggravating and mitigating factors that the Commission may consider in assessing an appropriate fine. These factors include:

- (1) the “nature of the violations.” The underlying misconduct that formed the basis of OEIG’s investigation involved ten of Respondent’s subordinates as well as his Supervisor. Respondent’s subsequent misrepresentations and omissions took place over two lengthy interviews with OEIG investigators in 2011 and 2012. They cannot be described as momentary lapses in judgment. Respondent admits that he affirmatively lied during his interviews with OEIG investigators, and only acknowledged what he absolutely could not deny.
- (3) “the use of title or position.” Several of the subordinates whom Respondent pressed into reviewing or preparing his schoolwork stated that they felt uncomfortable and pressured into helping him because he was their supervisor, or because they were on probationary status. Respondent’s subordinates explained that they felt they could not risk the consequences of refusing to assist, even though they knew they should not be doing so.
- (5) “the extent of a respondent’s intent or knowledge of the facts surrounding the violation.” In 2008, OEIG investigators determined that Respondent had conducted personal business on State-compensated time, and then lied about his misconduct to OEIG investigators responsible for handling OEIG’s inquiry into the matter. Because Respondent subsequently received counseling from IDES for his misconduct, he was well aware in 2011 and 2012 of his obligation to cooperate with OEIG investigators during the course of the instant investigation. Respondent also knew from his prior ethics training that he could not misuse State resources, and that he had a duty to cooperate with OEIG investigators.

- (6) “premeditation.” As in (1) and (5) above, Respondent’s misrepresentations and obstructions were not incidental or accidental. Respondent knowingly lied during the course of the 2008 Investigation, and within a year of receiving corrective counseling, was again misusing State assets to conduct personal business on State-compensated time. And, as before, Respondent again lied during two separate interviews conducted by OEIG investigators during the instant investigation. Respondent has long been aware of his obligation to be truthful and forthcoming with OEIG investigators, and yet has consistently and repeatedly refused to do so.
- (8) “position of authority.” See (3) and (5), above;
- (9) “involvement of others, especially other State employees.” See (1) and (3), above;
- (10) “self-disclosure.” As he did in connection with the 2008 Investigation, Respondent lied during his OEIG interviews during the instant investigation, only admitting what he absolutely could not deny. Respondent did not “self-report” his misconduct. *See, e.g., Meza v. Stermer*, No. 11-EEC-010, p.1 (respondent self-reported his potential Ethics Act violations to OEIG).
- (11) “cooperation.” Section 20-70 of the Ethics Act obligates State employees to cooperate with, and not obstruct, an OEIG investigation. It was Respondent’s failure to cooperate with, and obstruction of an OEIG investigation, that led to Petitioner’s Complaint. To the extent that Respondent has timely accepted responsibility for his conduct, however, and has elected not to raise a meritless challenge to the evidence that overwhelmingly demonstrates his culpability, he should receive, and has received, consideration for this factor, which is reflected in the Parties’ joint recommendation as to an appropriate fine.
- (13) “prior disciplinary record or Ethics Act violation.” As noted above, this is Respondent’s second offense for substantially the same misconduct: conducting personal business on State-compensated time, and then obstructing and interfering with an OEIG investigation into the underlying misconduct; and
- (14) “years of service and type of service with the State.” Respondent had been a State employee for approximately 37 years at the time of his most recent misconduct. He therefore knew from his prior ethics training and disciplinary counseling that he had a duty to cooperate, and not to mislead or obstruct OEIG’s investigation.

WHEREFORE, for the foregoing reasons, petitioner’s motion for summary judgment is granted. The Commission levies an administrative fine of \$2,500.00 against Respondent Clyde Redfield for violation of 5 ILCS 430/20-70. This is a final administrative decision and subject to the Administrative Review Law.