

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2013-037

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, [REDACTED], and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director, pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation. This stipulation is based on the following:

A. STIPULATED FACTS

1. On October 8, 2013, the Executive Ethics Board (Board) initiated a complaint referred by the State Auditor's Office (SAO) alleging that [REDACTED] Director for the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) at the University of Washington (UW), may have violated the Ethics in Public Service Act by using GEAR UP grant money for her private benefit and gain when she claimed and was reimbursed for travel not related to the program.

2. [REDACTED] was appointed the Director of GEAR UP in 2000 and held that position until her retirement from state service in June 2014.

3. On October 8, 2012, the SAO received an anonymous complaint alleging that Ms. [REDACTED] failed to follow travel regulations when traveling for GEAR UP business and that she secured special privileges for herself and others when traveling on GEAR UP business.

4. Based on the anonymous complaint, the SAO reviewed payroll and travel documents from October 2011 through September 2012 and interviewed GEAR UP staff members.

5. Many of the witnesses interviewed by SAO investigators indicated that Ms. [REDACTED] often traveled with friends or family members and when doing so, she would up-grade her room to a suite. Witnesses also stated that she would contact hotels to determine how many rooms she needed to reserve to get an upgrade and would then invite the necessary number of people to attend the conference in order to receive the upgrade. This would often result in a lower per room rate but higher general conference costs because more people were attending the conference. Another concern raised by witnesses was that [REDACTED] would often arrive a few days before a conference or meeting and then on some occasions stay days after the conference or meeting was over.

6. As a result of the SAO's investigation the UW conducted a three year audit of the GEAR UP program. The audit period examined July 1, 2010 through June 30, 2013. Over the three-year period reviewed, [REDACTED] attended numerous conferences and meetings. Some example are shown below:

Example #1

██████████ was scheduled to attend a GEAR UP conference in San Francisco, California starting the evening of Sunday, July 17, 2011 and ending early afternoon of Wednesday, July 20, 2011. According to the agenda and individuals interviewed by Board staff, the substantive portion of the conference started on the morning of Monday, July 18, 2011.

On Friday, July 15, 2011 at 6:00 a.m., ██████████ departed the Yakima airport to travel to San Francisco, California. She arrived at the San Francisco airport at 9:57 a.m., two days before the start of the conference. ██████████ made arrangements for the UW GEAR UP team to also arrive on Friday, July 15th in order to attend a dinner meeting with other UW GEAR UP team members and UW GEARUP Site Coordinators on the evening of Saturday, July 16th.

Upon arrival, she checked into the Prescott Hotel in San Francisco at \$239.40 per night.

██████████ requested a room upgrade to a suite, which increased the cost of her room by approximately \$50 for six of the seven nights for an additional cost of \$300. The conference hotel, San Francisco Hilton, had a daily room rate of \$236 per night.

On Sunday, July 17th ██████████ attended an all day wine tour with at least three other Toppenish GEAR UP personnel. The cost of the wine tour was \$940.00 and was charged on a state credit card. The trip was organized by Mr. Morales. According to ██████████, Mr. Morales advised them to bring a guest; Mr. Morales denies making that statement. At least two other Toppenish GEAR UP personnel declined the wine tour, indicating that the appearance of such a trip was not good.

The conference ended at 1:30 p.m. on Wednesday, July 20th. [REDACTED] did not return to Yakima until Friday, July 22nd arriving at the Yakima airport at 5:10 p.m. According to travel documents, other Toppenish GEAR UP personnel ended their travel status on Thursday, July 21st. [REDACTED] told Board staff that staying the extra night was personal and not work related.

Total amount reimbursed to [REDACTED] for conference expenses \$2,972.68.

[REDACTED] did not provide documentation to support a business need for the hotel room upgrade, therefore the \$300 cost for the upgrade was deemed unallowable under the grant but UW reimbursed the amount from other UW funding sources. Board staff determined that [REDACTED] niece was also staying in the room. One of the GEAR UP team members told Board staff that [REDACTED] told him that there was no additional cost for her upgrade. The UW audit team concluded that all expenses, other than travel, reimbursed to [REDACTED] for Thursday, July 21st were for her personal benefit and required repayment by her. The total expenses for July 21st were \$276.76 for lodging and \$103 for meals.

In sum, the UW audit determined that \$984.46 was unallowable under the GEAR UP grant and that \$387.67 was for personal benefit.

Thursday, July 21st was a regular work day for [REDACTED]. [REDACTED] told Board staff that the Thursday, July 21st was a personal day. [REDACTED] submitted reimbursement for meal per diem for a total of \$71 for that day. [REDACTED] told Board staff that she was in the process of paying back the UW for that day and other personal

expenses that she submitted reimbursement for which she was not entitled to over the three year audit period.

██████████ indicated to Board staff that she upgraded the room to a suite because she needed to hold meetings in the room. Board staff was unable to confirm any meetings held in the hotel room during the conference. ██████████ confirmed that her niece accompanied her on this trip and stayed in her room which was upgraded to a suite for an additional \$50 for six of the seven nights. She also confirmed her niece went on the wine tour with the GEAR UP members, but thought that she did so with the permission of Mr. Morales

According to documents reviewed, the price for the wine tour was based on 25 passengers. Mr. Morales told the Board staff that there were not that many GEAR UP staff in attendance so there would not have been any additional cost to the state for her niece's attendance, but that he did not recall whether ██████████ niece went on the wine tour. ██████████ told Board staff that Mr. Morales told everyone who went on the wine tour that they could bring someone. Mr. Morales could not recall making that statement but did say since the tour was to be paid from discretionary funding it would not have been restricted to GEAR UP personnel.

Example #2

On Saturday, September 10, 2011, ██████████ departed the Yakima airport at 6:00 a.m. to attend a National College Access Network (NCAN) conference in St. Louis, Missouri. She arrived in St. Louis at 5:03 p.m. Upon arrival, she checked into The Hilton Hotel (the

conference hotel) in St. Louis at an average cost of \$161.50 per night. The maximum allowable rate for lodging in St. Louis was \$99 per night.

The conference started on Monday, September 12th and ended Wednesday, September 14th at noon. ██████████ departed from the St Louis airport on Wednesday, September 14th at 6:00 p.m. arriving back in Seattle at 8:16 pm.

Upon arrival in Seattle, she checked into the Cedar Brook Lodge at a cost of \$139 per night for a total of \$278. ██████████ stayed in in Seattle for two nights and returned to Yakima at 5:14 p.m. on Friday, September 16th after a leadership meeting in Seattle.

Mr. Morales also attended the conference in St. Louis. Mr. Morales arrived on the morning of Sunday, September 11th and checked into the Hilton Hotel (the conference hotel) at a nightly rate of \$139 above the daily maximum of \$99. The next day, September 12th, Mr. Morales moved from the Hilton to the Millennium Hotel where he stayed from Monday, September 12th through Wednesday, September 14th at a cost of \$109 per night. After the conference, Mr. Morales traveled to Omaha, Nebraska on UW business.

The UW audit team concluded that ██████████ could not show a valid business reason for arriving two days before the start of the conference and deemed the lodging cost of \$163.67 on Saturday, September 10th as an unallowable expense under the GEAR UP grant. The expense was paid by another UW discretionary fund. Additionally, Ms. ██████████ provided no documentation to support paying higher room rates than allowable under OFM guidelines. The UW audit team deemed the higher lodging cost as an

unallowable expense under the GEAR UP grant and the total amount of \$225.98 was paid by another UW discretionary fund.

██████████ stated on her expense report for the conference trip that she arrived back in Seattle around midnight, although records show her flight arrived at 8:16 p.m. Ms. ██████████ also indicated that because of the short turn around to attend a meeting in Seattle on Friday, September 16th she decided to stay in Seattle instead of returning back to Yakima. Email confirmation from the airlines on September 9th indicates that Ms. ██████████ arranged to have her original flight changed. Instead of returning to Yakima on the evening of Wednesday, September 14th, she changed her return flight to Yakima for Friday, September 16th at 5:15 p.m.

The total cost reimbursed to ██████████ for attending the St. Louis conference was \$2,454.24. The UW audit determined that \$509.89 was unallowable under the GEAR UP grant and \$32 was for personal expenses. The UW requested ██████████ repay the \$32.

Example #3

██████████ departed from the Yakima airport on Wednesday, August 1, 2012 at 10:55 a.m. arriving at Sea/Tac at 11:38 a.m. Upon arrival, she picked-up a rental vehicle from Enterprise. ██████████ attended a meeting with Mr. Morales in Seattle on Wednesday, August 1, 2012 from 1:00 p.m. to 2:00 p.m. ██████████ checked into the Silver Cloud Hotel for two nights, to depart on Friday, August 3. The total amount for the hotel was \$452.52.

On Thursday, August 2, 2012, [REDACTED] attended an Engineering Institute Awards Ceremony in Seattle scheduled from 11:00 a.m. to 2:00 p.m.

On Friday, August 3rd, [REDACTED] returned the rental vehicle at 2:48 p.m. for a total cost of \$142.26. She departed Sea/Tac at 5:10 p.m. arriving back in Yakima at 5:50 p.m. The cost of the trip totaled \$1,049.10

[REDACTED] failed to provide an adequate explanation or documentation for paying higher than allowed lodging rates. The allowable rate was \$137. [REDACTED] received reimbursement for \$189 and \$199, respectively, for the two nights, \$114 over the allowable amount. Additionally, no reason was given for not returning to Yakima after the Awards Ceremony on Thursday, August 2nd and no reason was provided for staying in Seattle for most of the day on Friday, August 3rd.

7. After the conclusion of a trip, [REDACTED] would provide copies of receipts, flight itineraries, and any other documents related to the trip to her administrative assistant to complete a request for reimbursement of meal per diem and personal funds used for an official purpose. [REDACTED] would then check the report for accuracy before submitting the expense report to her supervisor, Mr. Morales, for approval. Once Mr. Morales approved the expense report it is forwarded to OMA&D fiscal for final approval and payment

8. [REDACTED] administrative assistant told investigators that [REDACTED] did not tell her what meals to claim so she made the determination based on hours in travel status and/or any other documents that showed which meals were included at conferences. According to the

administrative assistant, [REDACTED] always reviewed the final expense report for accuracy before signature and submission.

9. The UW audit concluded [REDACTED] and other GEAR UP staff received reimbursement for meal per diem and mileage that should not have been reimbursed. The audit also revealed that the OMA&D fiscal office was providing GEAR UP administrative staff with incorrect guidance in regards to mileage and meal per diem resulting in inappropriate submission and approval of funds to [REDACTED] and other staff. [REDACTED] and GEAR UP staff has been asked by the UW to repay any reimbursements they received in which they were not entitled. Most of the improper reimbursements were for meal per diem and mileage to and from the Yakima airport.

10. The state of Washington holds the UW accountable for the administration of all travel funds in accordance with state regulations and whatever internal rules the UW may establish to assure the proper use of such funds. Accordingly, expenditures of grant and contract funds for travel are subject to the same regulations as expenditures from state general funds, except where specifically noted. The UW audit revealed that from July 1, 2010 through June 30, 2013, [REDACTED] was reimbursed for unallowable individual expenses of \$9,245. These expenses were mostly deemed unallowable because of the lack of proper documentation, i.e., the need to arrive two days before the start of a conference and exceptions to paying higher than allowable lodging cost. This amount was paid by other UW discretionary accounts. The audit also revealed that [REDACTED] received reimbursement for unallowable personal expenses of \$1,573.

11. The UW has asked that [REDACTED] repay the \$1,573 deemed as personal expenses. [REDACTED] told Board staff that she is in the process of paying the requested amount back to the UW.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from conducting activities incompatible with their public duty. RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity; or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

2. Based on the stipulated facts above, [REDACTED] conducted activities in compatible with her official duty in violation of RCW 42.52.020.

3. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing special privileges. RCW 42.52.070 states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

4. Based on the stipulated facts above, [REDACTED] provided and received a special privilege in violation of RCW 42.52.070.

5. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) states:

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

6. Based on the stipulated facts above, [REDACTED] used state resources for a personal benefit in violation of RCW 42.52.160 and WAC 292-110-010.

7. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

C. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, the aggravating factors are, [REDACTED] was in a supervisory position within the UW; these types of violations significantly reduce the public respect and confidence in state government employees, and [REDACTED] benefitted financially because of these violations. It is a mitigating factor that [REDACTED] and other Gear UP staff members were told by their supervisor, Mr. Morales that they could bring guests on the San Francisco wine tour, she is no longer employed by the state, and that she is paying \$1,573 back to the UW for reimbursed funds she was not entitled to.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] and over the subject matter of this complaint.

2. Under RCW 34.05.060, the Board can establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the

Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

3. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

4. [REDACTED] agrees that if any or all of the alleged violations were proven at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

5. [REDACTED] further agrees that the evidence available to the Board is such that the Board may conclude she violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order.

6. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or her acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2).

7. If the Board accepts this stipulation, the Board agrees to release and discharge [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the stipulation. [REDACTED] in turn agrees to release and discharge the Board, its officers,

agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between [REDACTED] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. No other claims of alleged violations are pending against [REDACTED] at this time.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if [REDACTED] does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, [REDACTED] waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. [REDACTED] agrees to pay a civil penalty in the amount of two thousand, five hundred dollars (\$2,500) associated with a violation of the RCW's mentioned above.

12. The civil penalty of two thousand, five hundred dollars (\$2,500.00) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

II. CERTIFICATION

I, [REDACTED], hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter and if the Board accepts the stipulation, I understand that I will receive a signed copy.

[REDACTED]

7-6-15

Date

Respondent

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director

7/14/15

Date

II. ORDER

Having reviewed the proposed stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

✓

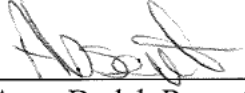
ACCEPTED in its entirety;


REJECTED in its entirety;

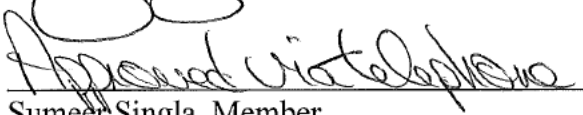
MODIFIED. This stipulation will become the order of the Board if the

Respondent approves* the following modification(s):

DATED this 11th day of September 2015


Anna Dudek Ross, Chair


Samantha Simmons, Vice Chair


Sumeer Singla, Member


Lisa Marsh, Member

* I, , accept/do not accept (circle one) the proposed modification(s).

 , Respondent Date