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BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

EXECUTIVE
ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2016-024

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 February 4, 2016, the Executive Ethics Board (Board) received an anonymous complaint alleging that [REDACTED], Developmental Disability Administrator for the Department of Developmental Disabilities (DDD) for the Department of Social and Health Services (DSHS) may have violated the Ethics in Public Service Act by using state resources for her personal benefit and gain and that she was providing confidential health care information of the clients of Rainier School along with twelve of her co-workers.

2. [REDACTED] first started working for the state in 1978. In 2004, she was appointed to her current position as a Developmental Disability Administrator (DDA) and was in that position for all times pertinent to this investigation.

3. Board staff used Internet Evidence Finder (IEFv6.7) to analyze [REDACTED] hard drive for internet use, Outlook email records and documents pertinent to the investigation.

4. Board staff discovered non-work related documents for the Kiwanis Club of Buckley and other non-work related documents that were downloaded to/from [REDACTED] Yahoo email account. [REDACTED] is identified as the club treasurer and editor of the newsletter. The following are examples of documents identified:

Title	Type	Last saved	Downloaded Date/Time	Printed	Time edited
05.2015 Treasurer Report	Word	4/29/15 at 6:56 pm	N/A	9/19/14 at 1:14 pm	18 minutes
08.2015 Treasurer Report	Word	8/3/15 at 3:03 pm	8/3/15 at 10:47 am	8/3/15 at 3:03 pm	278 minutes
09.2015 Treasurer Report	Word	9/18/15 at 7:22 pm	9/21/15 at 7:38 am	9/19/14 at 1:14 pm	25 minutes
10.2015 Treasurer Report	Word	11/1/15 at 5:58 pm	11/2/15 at 7:54 am	9/19/14 at 1:14 pm	23 minutes
2015 December Buckley Kiwanis Newsletter	Word	12/4/15 at 12:01 pm	12/4/14 at 12:00 pm	12/4/15 at 12:01 pm	97 minutes
2015 September Buckley Kiwanis Newsletter(1)	Word	8/31/15 at 5:34 pm	8/31/15 at 3:24 pm	1/31/15 at 2:22 pm	
2015 September Buckley Kiwanis Newsletter(2)	Word	8/31/15 at 5:34 pm	9/1/15 at 1:05 pm	1/31/15 at 2:22 pm	
2015 September Buckley Kiwanis Newsletter	Word	9/1/15 at 1:06 pm	8/31/15 at 9:15 am	9/1/15 at 1:06 pm	160 minutes
2016 January Buckley Kiwanis Newsletter	Word	1/4/16 at 6:27 am	1/4/16 at 9:17 am	7/1/14 at 6:09 pm	37 minutes
2016 February Buckley Kiwanis Newsletter	PDF	1/31/16 at 9:43 pm	2/4/16 at 9:14 am	6/23/14 at	
2015 December 2015 Kiwanis Newsletter	PDF	12/4/15 at 12:01 pm	N/A	8/20/14 at 2:57pm	
2015 September Buckley Kiwanis Newsletter	PDF	9/1/15 at 1:06 pm	N/A		

Invoice 3337 BuckleyKiwanis 2015	PDF	9/16/15 at 10:17 am	9/16/15 at 9:48 am	
Welcome aaa	Word	9/23/15 at 8:23 pm	9/24/15 at 7:46 am	1 minute
Dear Marikay	Word	12/26/15 at 5:57 pm	12/28/15 at 7:53 am	54 minutes

Internet History

██████████ uses Internet Explorer (IE) and Chrome as her internet browsers.

Yahoo/ Yahoo .mail

For the period of November 2, 2015 through April 5, 2016, ██████████ used the Yahoo search engine to visit a variety of web sites, i.e., shopping, banking, information, news, entertainment, and Yahoo mail, an internet email service. A summary of visits by month and year are shown below:

Month/Year	# of days	# possible work Days
November 2015	16	18
December 2015	14	23
January 2016	11	19
February 2016	14	20
March 2016	16	23
April 2016	3	3
Total	70	106

Some of the internet sites browsed with a date of last visit are shown below:

Internet Site	# of visits	# of Days	First visit	Last visit
Amazon	21	21	11/12/15	4/5/16
Facebook	20	19	8/24/15	3/18/16
Allrecipes.com	20	17	11/2/15	11/19//15
Homecooking.com	23	23	7/8/15	4/5/16
Login.live.com	8	7	11/16/15	3/3116
WSECU.com	9	8	7/7/15	12/5/15

The following is the non-work related internet search activity for the period of February 16, 2014 through May 5, 2016. ██████████ used Google, Bing, and Yahoo as search engines.

Google Searches – 32 searches, 3 appear to be work related.

Parsed Search Queries (Yahoo, Bing) – 125 searches, at least eight appear to be work related.

Outlook Email

Board staff reviewed 3,147 Outlook emails sent/received by ██████████ for the period of June 9, 2015 through April 5, 2016. Board staff identified only three emails sent/received by ██████████ that appeared to be personal in nature. Two of the three had attachments that were scanned using a state scanner. Two of the three emails had attachments related to the Kiwanis Club of Buckley, one of which was scanned.

In addition to the Outlook emails, 25 Yahoo webmail fragments were located for the period of June 1, 2015 through March 28, 2016.

Removable Drive

A review of ██████████'s hard drive revealed that on at least eight occasions she conducted personal work using a portable drive identified as "Travel Drive." The dates and times are shown below:

<u>Linked Path</u>	<u>Last modified date/time</u>
H:\2kiwanis\documents k	11/13/2011 02:56:12 PM
H:\2kiwanis\documents k\OFFICERS AND BOARD MEMBERS.docx	09/03/2014 05:30:38 PM
H:\Book 3.docx	07/20/2015 11:41:36 AM
H:\Kiwanis Newsletter Summer edition.doc	06/2/2015 07:57:06 PM
H:\09.2015 Treasurer report.docx	09/13/2015 05:44:38 PM
H:\02.2016 treasurer report.docx	02/08/2016 06:05:08 PM
H:\seth\Seth D ██████████ 2015 Tax Return.pdf	02/09/2016 07:19:02 PM
H:\██████████ ██████████ 2015 Tax Return.pdf	01/24/2016 08:45:28 PM

5. ██████████ indicated in her response to Board staff that she has a personal Facebook account and that she visited Facebook at work to help keep updated on any opportunities for recreational activities for her clients. She further indicated that she may use it to read articles related to Autism or Prader Willis Syndrome and also looked at the Governor's Facebook page. She added that when going to Facebook she would see personal information but that she had not gone there specifically for that reason.

6. [REDACTED] indicated to Board staff that she has a Yahoo account and would go to that site for the same reasons she indicated regarding her Facebook visits. She indicated that she might visit her Yahoo account once a week or once every two weeks. Each visit would be for two or three minutes.

7. [REDACTED] also indicated in her response to Board staff that she was a member of the Kiwanis Club that did a food drive for the Combined Fund Drive last year and she communicated with the heads of the food banks in two cities.

8. [REDACTED] further indicated in her response to Board staff that she does not use a personal cell phone while at the Rainier School and that she has never brought any other computer devices to work.

B. CONCLUSIONS OF LAW

1. 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.

2. Based on the stipulated facts above, [REDACTED] used state resources for a personal benefit in violation of RCW 42.52.160.

3. 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, it is an aggravating factor these types of violations significantly reduce the public respect and confidence in state government employees they were continuous in nature, and [REDACTED] was in a supervisory position at the time.

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 his 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 Nancy Moriarty 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 three thousand dollars (\$3,000) associated with the improper use of public resources, RCW 42.52.160. The Board agrees to suspend one-thousand, five-hundred dollars (\$1,500) on the condition [REDACTED] complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

12. The non-suspended portion of the civil penalty in the amount of one-thousand five-hundred dollars (\$1,500) 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.

I would need at least 8 months to pay the \$1,500.

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]
Respondent

2/20/17
Date

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director

2/27/17
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

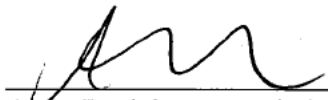
Stipulation is

ACCEPTED in its entirety;

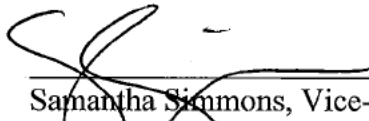
REJECTED in its entirety;

MODIFIED. This stipulation will become the order of the Board if the Respondent approves* the following modification(s):


DATED this 24th day of March, 2017



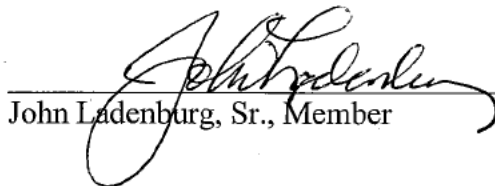
Anna Dudek Ross, Chair



Samantha Simmons, Vice-Chair



Lisa Marsh, Member



John Ladenburg, Sr., Member

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

_____, Respondent Date