

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2016-027

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, ██████████, 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 ██████████, Habilitation Plan Administrator (HPA) 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 his personal benefit and gain and that he was providing confidential health care information of the clients of Rainier School to people on Facebook and through emails.

ORIGINAL

2. [REDACTED] was first hired by the DSHS/DDD in May of 2010 as a HPA. [REDACTED] was so employed for all times pertinent to this investigation.

3. On May 16, 2016, Board staff received a copy of [REDACTED] computer hard drive. 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. The following evidence was found during the Board staff's examination of Mr. [REDACTED] work computer:

Internet History

Facebook

For the period of July 8, 2015 through April 5, 2016, [REDACTED] viewed 62 Facebook profile pages of individuals. A summary of pages viewed by month, year and number of individual profile pages are shown below:

Date	# Pages	# Days
July 2015	6	3
October 2015	7	5
November 2015	16	6
December 2015	3	2
January 29, 2016	5	3
February 2016	3	3
March 2016	20	11
April 2016	2	1
Total	62	34

The chart below shows [REDACTED] Facebook activity by the number of days visited per month for the period of July 7, 2015 through April 5, 2016:

Month/Year	# of days	# possible work Days
July 2015	8	22
September 2015	12	21
October 2015	18	22
November 2015	16	18
December 2015	17	22
January 2016	17	19
February 2016	19	20
March 2016	19	23
April 5, 2016	3	3

Total	112	163

The chart below shows some examples of days with high activity by the amount of time the Facebook site was open with activity¹ for the period of July 7, 2015, through April 13, 2016.

Date	Minutes		Date	Minutes
July 30, 2015	96		February 1, 2016	21
October 20, 2015	80		February 4, 2016	30
October 21, 2015	41		February 16, 2016	101
November 6, 2015	31		February 17, 2016	32
November 10, 2015	20		March 8, 2016	41
November 12, 2015	24		March 10, 2016	61
December 15, 2015	31		March 15, 2016	45
December 31, 2015	37		March 24, 2016	64
January 22, 2016	22		March 28, 2016	46
January 25, 2016	50		March 29, 2016	75
January 28, 2016	39			

In addition to the data above, Board staff found over 2,217 Facebook images located in the temporary internet files for the period of July 7, 2015 through April 13, 2016.

Other Personal Web Sites:

██████████ uses Internet Explorer and Chrome as his internet web browsers. The chart below shows some of ██████████ other non-work related internet activity by the number of days visited for the period of July 7, 2015 through April 13, 2016:

Internet Site	# of visits	# of Days	First visit	Last visit
YouTube	13	12	10/20/15	3/3/16
YouTube Music	7	7	7/27/15	3/22/16
Foxnews.com	40	32	10/15/15	4/4/16
Kironews.com	36	36	10/5/15	4/1/16
King5news.com	26	25	10/20/15	4/1/16
Komonews.com	38	38	7/8/15	4/4/16

As a normal Internet Explorer (IE) process, IE will save the last 25 typed URL's (Uniform Resources Locator) or internet address. The chart below shows these:

¹ Activity means they are signed in and actively using FB to look at pictures, other FB pages of friends, posting, sending and receiving messages.

URL	Last entered date	URL	Last entered date
www.facebook.com/	4/5/16 @ 11:10 am	http://navient.com	1/15/16@6:50 pm
www.komo4.com/	4/4/16 @ 11:08 am	http://thesaurus.com	1/14/16@ 3:00 pm
www.foxnews	4/4/16 @ 8:13 am	www.lendup.com/	12/26/15@ 4:10 pm
www.cnn.com	4/1/16@ 3:56 pm	www.mcdsurvey.com	12/10/15@ 3:44 pm
www.kirotv.com/	4/1/16@ 2:33 pm	www.youtube.com	10/19/15@ 2:02 pm
www.becu.org/	4/1/16@ 11:29 am	http://southwest.com	10/7/15@ 11:38 am
www.peninsulaclarion.com	4/1/16@ 10:17 am	http://reddit.com	9/24/15@ 2:06 pm
http://king5.com/	4/1/16@ 10:04 am	www.pacificgrilltacoma.com	9/23/15@ 3:46 pm
http://expedia.com/	3/31/16@ 12:50 pm	www.cityofpuyallup.org	9/17/15@ 2:32 pm
http://youtube.com/	3/16/16@ 7:27 pm	http://studentloans.gov	9/11/15@ 12:28 pm
www.amtrak.com/	3/16/16@ 9:37 am	http://answers.com/	8/25/15@4:53 pm
www.capitalone.com	2/19/16@ 7:21 pm	http://gmail.com/	8/25/15@ 12:46 pm
access.wa.gov/	2/19/16@ 8:07 am		

The following is the non-work related internet search activity by [REDACTED] for the period July 7, 2015 through April 13, 2016. [REDACTED] used Google, Bing, and YouTube as search engines:

Google Searches – 7 searches, all appear to be non-work related.

Parsed Search Queries (Bing, YouTube) – 824 searches, most appear to be non-work related.

Outlook Email

Board staff reviewed 1,243 outlook emails sent/received by [REDACTED] for the period of November 5, 2015 through April 5, 2016. There was no evidence to support the allegation that [REDACTED] used his state email account for a personal benefit or gain.

5. [REDACTED] stated in a response to Board staff that he has logged onto Facebook in the past to communicate with his wife because of poor cell service at the Rainier School. The poor cell phone issues at Rainier School have been improved and since then he has not had to log on to Facebook using a state computer.

6. [REDACTED] indicated to Board staff that because of the nature of his work as HPA he does not take regular scheduled breaks. In the past during his breaks he would log onto Facebook or to view the news.

7. [REDACTED] further indicated in his response to Board staff that he has, on occasion, accessed Facebook to show fellow employees pictures of his kids, cakes that he had baked, as well as scenic and vacation pictures that he had taken.

8. [REDACTED] indicated to Board staff that he is not issued a cell phone by the state. He does have a personal cell phone that he uses to contact his family and to access his personal email and Facebook account.

9. [REDACTED] indicated in his response to Board staff that he has never released private work related information to anyone that did not have a legal right to have it. Board staff did not find any evidence to the contrary.

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 management position at the time of the violations.

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 he 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 [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 the improper use of public resources, RCW 42.52.160. The Board agrees to suspend one-thousand two-hundred-fifty dollars (\$1,250) on the condition that [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 two-hundred-fifty dollars (\$1,250) 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]
Respondent

3-22-17
Date

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director

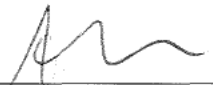
4/3/17
Date

II. ORDER

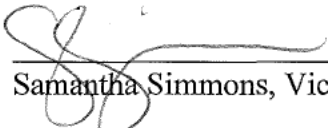
Having reviewed the proposed stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

✓ 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 12th day of May, 2017



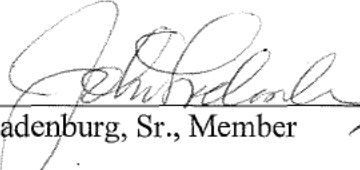
Anna Dudek Ross, Chair



Samantha Simmons, Vice-Chair



Lisa Marsh, Member



John Ladenburg, Sr., Member



Shirley Battan, Member

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

 , Respondent Date