

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2016-030

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 Planner with 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. Additionally, the complaint alleged that he, along with twelve of his co-workers, was providing confidential health care information of the clients of Rainier School to people on Facebook and through emails.

2. [REDACTED] was first hired by the DSHS/DDD in March of 2010 as a Habilitation Planner. [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

YouTube Videos

[REDACTED] viewed 229 non-work related YouTube videos from July 7, 2015 through April 13, 2016. On Monday, November 16, 2015, [REDACTED] viewed 30 non-work related YouTube videos from 5:45 pm to 7:24 pm. A summary of visits by month, year, and number of videos viewed is shown below:

<u>Date</u>	<u># Videos</u>	<u># Days</u>
July 2015	94	13
November 16, 2015	30	1
December 31, 2015	3	1
January 2016	19	5
February 2016	8	3
March 2016	89	11
April 2016	16	5
Total	259	39

Facebook

For the period of July 7, 2015 through April 13, 2016, [REDACTED] viewed 97 Facebook profile pages of individuals. A summary of pages viewed by month, year, and number of individual profile pages viewed is shown below:

<u>Date</u>	<u># Pages</u>	<u># Days</u>
July 2015	36 (30 on 7/17)	3

November 2015	6	2
January 29, 2016	1	1
February 2016	6	5
March 2016	32	10
April 2016	16	2
Total	97	23

The chart below shows ██████████ Facebook activity by the number of days visited per month for the period of July 7, 2015, through April 13, 2016.

<u>Month/Year</u>	<u># of days</u>	<u># possible work days</u>
July 2015	16	22
November 2015	5	18
January 2016	8	19
February 2016	15	20
March 2016	18	23
April 2016	8	21
Total	70	123

The chart below shows some examples of days with high activity by the amount of time the Facebook site was open with activity ¹ for the period of July 7, 2015, through April 13, 2016.

<u>Date</u>	<u>Minutes</u>	<u>Date</u>	<u>Minutes</u>
July 17, 2015	88	March 10, 2016	59
July 20, 2015	61	March 14, 2016	49
July 23, 2015	45	March 16, 2016	43
July 27, 2015	22	March 17, 2016	48
November 16, 2015	112	March 19, 2016	196
January 24, 2016	97	March 28, 2016	93
January 29, 2016	30	April 1, 2016	43
February 17, 2016	29	April 7, 2016	27
February 23, 2016	44	April 12, 2016	24
February 24, 2016	56	April 13, 2016	31
March 7, 2016	76		

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

In addition to the data above, Board staff located over 1,200 Facebook images in [REDACTED] temporary internet files for the period of July 7, 2015 through April 13, 2016.

Other Personal Web-Sites

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

<u>Internet Site</u>	<u># of visits</u>	<u># of Days</u>	<u>First visit</u>	<u>Last visit</u>
Amazon	14	14	7/13/15	4/6/16
Cagesideseats.com ²	20	17	7/23/15	4/13/16
ign.com ³	23	23	7/8/15	4/5/16
Yahoo ⁴	31	31	7/7/15	4/13/16
Yahoo Games	9	8	7/7/15	12/5/15

Non-work related internet search activity by [REDACTED] for the period July 7, 2015 through April 13, 2016:

Google Searches – 103 searches, 9 appear to be work related and 94 appear to be non-work related.

Parsed Search Queries (Yahoo, Facebook, YouTube) – 72 searches, none appear to be work related.

Outlook Email

Board staff reviewed 3,413 outlook emails sent/received by [REDACTED] for the period of February 6, 2014 through April 13, 2016. Board staff identified 170 emails sent/received by [REDACTED] that appear to be personal in nature.

² Professional Wrestling Site.

³ Video gaming site.

⁴ Yahoo – news, shopping, entertainment

5. [REDACTED] indicated in a response to Board staff that he has a personal Facebook account and that he uses Facebook at work to ensure his staff is not abusing authorized/unauthorized leave. He further indicated that he might use it as a research tool while investigating internal complaints.

6. [REDACTED] reported to Board staff that there was a period of time when his daughter was born, about 15 months ago, that he would share pictures of his daughter to his co-workers through Facebook.

7. [REDACTED] indicated to Board staff that he would have clients that were on his caseload visit him in his office. He would often play music videos and cartoons for them, as they did not have computer access in their respective houses.

8. [REDACTED] indicated in a response to Board staff that he would on occasion work over the weekend and the evening hours as a member of the Behavior Response Team. He indicated that there were times that when his pager went off to respond to an incident he would not log off the before responded to the call. He further indicated to Board staff that these times were outside of normal business hours and that he was on-call waiting for his pager to go off.

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.

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] [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] [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, two-hundred and fifty dollars (\$2,500) associated with the improper use of public resources, RCW 42.52.160. The Board agrees to suspend one-thousand two-hundred and 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

4/17/17
Date

Presented by:

L. Reynolds
KATE REYNOLDS
Executive Director

4/18/17
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;

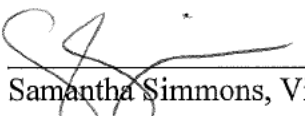
REJECTED in its entirety;

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