

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2017-009

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 March 20, 2017, the Executive Ethics Board (Board) received a complaint alleging that ██████████ Athletic Director at Bellevue College may have violated the Ethics in Public Service Act. The complaint alleged that ██████████ had a conflict of interest and was receiving a special privilege in regards to scheduling the Bellevue College gym for rental use by his outside business interests (sports teams). The complaint further alleged that ██████████ received a special privilege when his nonprofit organization, Friends of Hoop (FOH), was charged a lesser rental rate than other outside nonprofit organizations.

2. [REDACTED] was hired as the Head Basketball Coach at Bellevue College in 2003, part of his duties included gym management. In March 2017, [REDACTED] replaced the retiring Athletic Director. For all times pertinent to this investigation, [REDACTED] was employed as either the Head Basketball Coach or Athletic Director.

3. [REDACTED] current duties include scheduling Bellevue College athletic events and non-Bellevue College athletic events (outside events) that utilize the gym, soccer and softball fields throughout the year.

4. Events staff for Bellevue College book all non-athletic events in the gym after consultation and approval by Athletics Department staff.

5. Board staff determined that rental rates for use of the gym vary depending on whether it is an outside athletic event or non-athletic event. Non-athletic events often involve additional costs such as staff, chairs, tables, food and clean up.

6. The Bellevue College website lists standard rental rates and a nonprofit rate for outside athletic groups. The standard rental rate is \$40.00 per hour (1/3 of the gym) and the nonprofit rate is \$30.00 per hour (1/3 of the gym). Additional charges may apply in cases where the rental is for a weekend basketball tournament rather than just a basketball practice because of added costs for janitorial service and security, for example

7. [REDACTED] has two outside organizations that rent the Bellevue College gym on a regular basis. He is listed as the registered agent for Premier Basketball LLC (Premier Basketball), a for profit company incorporated in 2012. He is also director of a nonprofit organization, Friends of Hoop (FOH). Bellevue College is aware of [REDACTED] affiliations with these outside organizations.

8. Both organizations rented the Bellevue College gym for several years, for basketball practices, camps and tournaments. ██████ told Board staff that FOH has rented the gym since approximately 2003.

9. Premier Basketball rents the gym on a less frequent basis than FOH, typically to hold basketball tournaments or camps that usually run Friday, Saturday and Sunday. Board staff reviewed documentation from the Premier Basketball website and Bellevue College that indicated they have held tournaments and camps at Bellevue College for several years. In 2017, Premier Basketball held three weekend tournaments at Bellevue College: April 21-23, May 19-21 and July 14-16.

10. FOH rents the gym for basketball tryouts and practices for its various teams. Board staff reviewed past FOH practice schedules and determined FOH uses the gym, on average, about twice a week during their season, which runs from approximately September to June/July.

11. The complainant cited a number of issues with the gym reservation and rental process. They alleged a conflict of interest since ██████ was responsible for gym management, including scheduling and invoicing outside athletic activities for Premier Basketball and FOH.

12. ██████ confirmed to Board staff that he has been scheduling and invoicing these events and was not aware it could be a potential ethics violation. ██████ said this began when he came to Bellevue College in 2003 and the Athletic Director never advised him that it was an issue.

13. The events staff for Bellevue College book non-athletic events at campus locations other than the gym using the events calendar. The events calendar allows all staff to view the calendar and see what events are already booked at different facilities.

14. Board staff determined that ██████ would place athletic events into the events calendar as the events were confirmed. Board staff determined that issues arose when ██████ may

be in the process of scheduling future athletic events and that had not yet been placed into the events calendar, which would allow others to see the gym was unavailable.

15. The complaint alleged that because [REDACTED] scheduled athletic events he “held” dates open on a separate athletic calendar that other departments did not have access to view. Some of these events would not be placed on the events calendar. It created a situation where events staff would seek approval to use the gym on a date that appeared open in the events calendar but were told the date was not open due to an athletic event.

16. The complainant cited as an example a situation that occurred in May 2017. Events staff was attempting to book a weekend long event in the gym for a Bellevue College donor. The donor’s preferred weekend was May 19-21. According to the events calendar, events staff believed the weekend was open. Staff told the donor they would need to confirm the date with the Athletics Department. Events staff then learned that weekend was already booked for a Premier Basketball tournament.

17. [REDACTED] told Board staff that he places his gym bookings on the events calendar when they are confirmed. Board staff reviewed a number of emails during the investigation. [REDACTED] sent an email to events staff on December 16, 2016 requesting that three weekend dates, including May 19-21, be placed on the events calendar. He followed up on December 30, 2016 with a second request for the dates to be added to the events calendar. Board staff was unable to determine the cause of confusion over the dates, but the email supported that [REDACTED] requested the dates be added on the calendar several months in advance.

18. During the investigation, Board staff determined there is a high volume of requests for the gym. This creates a schedule that can be in flux with [REDACTED] waiting on confirmation for gym reservations prior to confirming them on the events calendar.

19. Board staff spoke with several Bellevue College administrative staff who were aware of the complaint and stated they have been working for a number of months to address and clarify the event scheduling process. Additionally, they are taking steps to address the incompatible responsibilities [REDACTED] has with gym management. Michael Kaptik (Mr. Kaptik), Dean of Student Life, will be providing closer oversight of the scheduling. Mr. Kaptik believes that many of the scheduling issues could be improved through better communication between events and athletics. Mr. Kaptik indicated there are legitimate reasons for having tentative dates for events that are not immediately entered into the events calendar. Recently an MOU was established between athletics and events staff that will clarify many of the scheduling concerns that have been raised.

20. Bellevue College is also in the process of changing their event scheduling software. The new software streamlines scheduling and eliminates a number of issues that allowed the user to change or delete reservations, set pricing, generate invoices and track payments.

21. [REDACTED] will also no longer be involved in scheduling events that involve FOH or Premier Basketball. Bellevue College will ensure that scheduling for these events has third party oversight. Events staff will confirm events and approve needed resources and the finance office will invoice all event charges.

22. The complaint also alleged that [REDACTED] received a special privilege when FOH paid a reduced rate for using the gym compared to what other organizations were being charged.

23. [REDACTED] told Board staff that when FOH began using the gym in 2003 they paid the same rate as other organizations, which at the time was \$25.00 per hour. [REDACTED] thought sometime in 2010 the nonprofit rental rates were increased to \$30.00 per hour by the Athletic Director. [REDACTED] said the Athletic Director at the time told him that FOH and Northwest Volleyball would not be subject to the rate increase. Instead, they would be grandfathered in at the old rental rate. The justification was

based on these groups having rented the gym more regularly and for a much longer period than other groups. [REDACTED] said he was not aware this was a potential ethics violation.

24. Board staff reviewed documentation provided by Bellevue College that indicated in 2015, they conducted an internal review of gym rentals. The review identified the incompatible responsibilities [REDACTED] had as gym manager (scheduling, invoicing for events) for Bellevue College Athletics and his position as Director for FOH. Additionally, the review determined that FOH, as well as some other outside organizations, paid a rental rate of \$25.00 per hour for gym use, which was less than the \$30.00 per hour nonprofit advertised rate.

25. The reviewer noted that a similar situation had occurred at another local community college that resulted in two audit findings; a finding for a lack of internal controls over operating activities and a finding for unauthorized use of state resources.

26. The reviewer recommended that internal controls be strengthened over gym facility rentals by separating the incompatible responsibilities of gym management and scheduling. The reviewer also recommended that to ensure all activity has been properly booked and invoiced in EMS, scheduling should be managed by a third party, or at minimum there should be regular evaluation of rates and activities by the internal control accountant.

27. Documentation provided by Bellevue College indicates that shortly after the review concluded in March 2015, FOH began paying the advertised rate of \$30.00 per hour. [REDACTED] told Board staff that the Athletic Director told him that all outside organizations needed to be charged the same rate going forward. He did not recall any further explanation.

28. Board staff spoke with Bill O'Connor (Mr. O'Connor) retired Athletic Director at Bellevue College. He confirmed that when the nonprofit rental rate was increased to \$30.00 per hour he allowed FOH and Northwest Volleyball to continue to rent at the \$25.00 per hour rate. He said the rents

received from gym rental were an important source of revenue for the Athletics Department. Both groups had been using the gym much longer than other outside groups and could use it at times when it was much less likely to be needed for other events, typically Monday-Thursday evenings. Additionally these groups could use one of the courts simultaneously while the Bellevue College basketball teams were practicing on another court.

29. Mr. O'Connor told Board staff that when he was told that all outside groups would need to pay the same advertised rate going forward, the grandfathered rate for FOH and Northwest Volleyball was stopped. He could not recall who he had spoken with at the time, but thought it was someone from the Finance Department.

30. Mr. O'Connor told board staff that he had some scheduling issues with events staff during his time at Bellevue College. Events staff also use rent proceeds to fund their department. He was of the opinion that each year they made requests to schedule more events in the gym, which contributed to some of the scheduling issues.

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 (conflict of interest). 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. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from receiving 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.

3. Based on the stipulated facts above, [REDACTED] was allowed to schedule and invoice his outside organizations for gym use at Bellevue College in conflict with the proper discharge of his official duties in violation of RCW 42.52.020. Additionally, [REDACTED] received a special privilege when his outside organizations were allowed to pay a lesser rental rate for Bellevue College's facility rentals than the listed Bellevue College rental rate for non-profit organizations in violation of RCW 42.52.070.

4. 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. It is a mitigating factor that Bellevue College was aware of the conflicting duties of [REDACTED]'s gym management responsibilities and the scheduling/invoicing of his outside organizations. It is also a mitigating factor that Mr. Eggers received permission for the reduced rental rate his outside organizations were paying.

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 of one thousand five hundred dollars (\$1,500) for the violations associated with RCW 42.52. The Board agrees to suspend seven hundred fifty dollars (\$750) 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 civil penalty in the amount of seven hundred and fifty dollars (\$750) 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]

12-27-17

Date

Respondent

Presented by:

K. Reynolds

Kate Reynolds
Executive Director

1/3/18

Date

III. 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 January, 2018




John Ladenburg, Sr., Chair



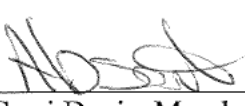
Shirley Battan, Vice-Chair



Lisa Marsh, Member



Anna Dudek Ross, Member



Gerri Davis, Member

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

[REDACTED], Respondent Date _____