

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2017-046

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 August 25, 2017 the Executive Ethics Board (Board) received an anonymous complaint alleging that ██████████, Manager of Federal Funding for Title IV-E, Department of Social Health Services (DSHS)/Children's Administration (CA) may have violated the Ethics in Public Service Act when he used state time and resources to conduct out of state Title IV-E peer reviews, for a federal contractor, JBS International (JBS) under the Federal Title IV-E program. The complaint further alleged that in addition to receiving his state salary, ██████████ was compensated by JBS for the peer reviews.

2. The United States Children's Bureau (Children's Bureau) is a federal agency organized under the United States Department of Health and Human Services Administration. The Children's Bureau's operations involve improving child abuse prevention, foster care and adoption.

3. Title IV-E Foster Care Program funds are awarded to all 50 states, the District of Columbia, Puerto Rico and federally recognized Indian Tribes, to assist with costs of foster care maintenance programs, administrative expenses to manage the program, and training for staff, foster parents and certain private agency staff.

4. In 2000, the Children's Bureau established new requirements and initiated an interstate peer review system for monitoring Title IV-E programs for compliance. Reviewers examine child and provider case records, as well as payment documentation, to validate the accuracy of a state agency's Title IV-E reimbursement claims of foster care payments. Reviews also detail strengths and weaknesses of a state's program and identify any technical assistance needed for program improvement. Reviews typically take 3-4 days to complete.

5. JBS, located in Bethesda Maryland, is the federally contracted vendor with the Children's Bureau to oversee Title IV-E reviews. States are divided into regions. Region 10 includes Washington, Idaho, Oregon and Alaska.

6. [REDACTED] completed the training program by JBS to become a Title IV-E peer reviewer in 2000/2001. He serves the Region 10 area.

7. [REDACTED] told Board staff that when he first began working for JBS in 2001, he was using vacation leave when he conducted reviews. In 2010, he discussed performing the peer reviews on state time with his supervisor, Dan Ashby (Mr. Ashby), Chief of Finance and Accounting.

8. [REDACTED] told Board staff that Mr. Ashby agreed that the training and knowledge he received from the peer review process was a benefit to the State of Washington in preparing for their

own Title IV-E reviews. In addition to the knowledge [REDACTED] gained, he shared that information by training DSHS staff to ensure compliance with federal regulations.

9. Board staff spoke with Mr. Ashby who confirmed that [REDACTED] had discussed the outside employment with JBS with him. He confirmed he had allowed [REDACTED] to use state time to conduct the reviews. This was justified because the work [REDACTED] was performing for JBS was directly related to his job duties. The training and knowledge [REDACTED] received from participating with an interstate team of reviewers benefited the agency and ensured their agency was better prepared to be in compliance during their own Title IV-E reviews.

10. Mr. Ashby said he was aware that JBS reimbursed [REDACTED] for his travel costs and expenses but he was not aware that [REDACTED] was receiving payment from JBS for the review work. He said if he had been aware, he would have advised him it was not allowed. Mr. Ashby also told Board staff he considered [REDACTED] a conscientious employee who understood his job well and worked very hard.

11. Board staff reviewed the JBS website and determined between 2002 and 2010 there were seven (7) peer reviews involving Region 10 states where [REDACTED] participated. Additionally, [REDACTED] told Board staff that because he is bilingual in Spanish, JBS asked him and he participated in a Title IV-E review in Puerto Rico in 2007.

12. [REDACTED] told Board staff that he was paid \$200 per day by JBS, however when he first began working for them he believed it was less than that, perhaps \$125-\$150 per day. Board staff reviewed the JBS website and viewed their honorarium voucher for reviewers, which indicated the current rate is \$200.00 per day.

13. For purposes of this investigation, Board staff reviewed evaluations completed within the last five years. [REDACTED] last Title IV-E review for JBS was in 2015. [REDACTED] completed the following reviews in the last five years.

- 2015: Alaska Review, November 16-20.
- 2014: Oregon Review, July 14-18.
- 2013: Idaho Review, April 22-26.

14. [REDACTED] told Board staff that he was not aware that he was committing an ethics violation until a 2017 internal investigation regarding another Children's Administration (CA) employee. During that investigation he was interviewed and based on those interviews, he reviewed RCW 42.52 and determined that he was in violation.

15. [REDACTED] told Board staff that based on his research he determined in May 2017, that he was in violation regarding his outside compensation from JBS. [REDACTED] said upon learning he was in violation he informed both his immediate supervisor, Shannon Mathis (Ms. Mathis) and the Appointing Authority for CA. [REDACTED] said he has taken action to ensure he uses vacation leave for further outside reviews.

16. [REDACTED] told Board staff that had he known he would have previously used vacation leave. He said that over the past several years he often loses vacation time because his balance exceeds the allowable amount of 240 hours.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from receiving compensation for official duties or nonperformance.

RCW 42.52.110 states:

No state officer or state employee may, directly or indirectly ask for or give or receive or agree to receive any compensation, gift, reward, or gratuity from a source for performing or omitting or deferring the performance of any official duty, unless otherwise authorized by law except: (1) The state of Washington.

2. Based on the stipulated facts above, [REDACTED] received compensation for outside employment with JBS while performing his official state duties in violation of 42.52.110.

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. It is an aggravating factor that for some of the time that the violations occurred, Mr. Ensley was in a supervisory position.

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 four thousand dollars (\$4,000) for the violations associated with RCW 42.52. The Board agrees to suspend two thousand dollars (\$2,000) on the condition that Robert Ensley 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 two thousand dollars (\$2,000) 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

4/16/2018
Date

Presented by:

K. Reynolds

Kate Reynolds
Executive Director

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;

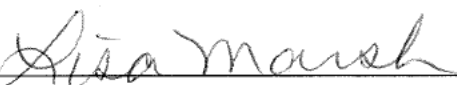
MODIFIED. This stipulation will become the order of the Board if the


Respondent approves* the following modification(s):


DATED this 11th day of May, 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