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**BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD**

In the matter of:

██████████,

Respondent.

EEB NO. 2017-069

OAH NO. 08-2018-AGO-00022

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND FINAL ORDER

**I. PROCEDURAL HISTORY**

1.1 On October 18, 2017, the Executive Ethics Board (Board) received a complaint alleging that the Respondent, ██████████, a faculty member at Grays Harbor College (GHC) may have violated the Ethics in Public Service Act by requiring students to purchase a book, *Everything You Need to Know About College Writing*, that she had co-authored with GHC faculty member ██████████.

1.2 On May 11, 2018, the Board found reasonable cause to believe that a violation of the Ethics Act was committed.

1.3 On January 17, 2019, the Executive Ethics Board Staff (Board Staff) filed a motion for summary judgment.

1.4 After due and proper notice, a hearing was held on Board Staff's motion for summary judgment. The hearing was held at the Board offices at Bristol Court in Olympia, Washington, convening on March 8, 2019. Administrative Law Judge, TJ Martin, from the Office of Administrative Hearings conducted the proceedings. Board Chair John Ladenburg, and

1 members Shirley Battan, Lisa Marsh, Anna Dudek Ross, and Gerri Davis were present. Also  
2 present was Bruce L. Turcott, Assistant Attorney General, legal advisor to the Board.

3 1.5 Chad C. Standifer, Assistant Attorney General, was present presenting the matter  
4 on behalf of Board Staff.

5 1.6 [REDACTED] was represented by attorney Laura Ewan, who appeared  
6 telephonically.

7 1.7 The Board's Executive Director, Kate Reynolds, other Board Staff members, and  
8 members of the public were present.

9 1.8 Board Staff filed the following documents:

- 10
- 11 • Board Staff's Motion for Summary Judgment;
  - 12 • Declaration of David Killeen in Support of Motion for Summary Judgment, with  
13 attached Exhibits 1-7; and
  - 14 • Board Staff's Reply to Respondent's Response to Motion for Summary  
15 Judgment.

16 1.9 [REDACTED] filed the following document:

- 17 • Respondent's Opposition to Board Staff's Motion for Summary Judgment

18 1.10 The proceedings were recorded and open to the public.

19 1.11 The hearing was adjourned on March 8, 2019.

20 Based on the evidence presented, the Board enters the following Findings of Fact,  
21 Conclusions of Law, and Final Order:

## 22 **II. FINDINGS OF FACT**

23 2.1 In July of 2011, [REDACTED] and [REDACTED] entered into an agreement with the  
24 Bedford/St. Martin's Publishing Company (Publisher) to publish an English textbook they had  
25 written, *The Little Black Book of College Writing*. Declaration (Decl.) of David Killeen  
26 (Killeen), ¶4. The textbook was to be used at GHC for the English 095, 101 and 102 courses,  
starting in the fall quarter of 2011 through the spring quarter of 2012. *Id.* The Publisher agreed

1 to pay GHC a ten (10) percent royalty on the net amount received from the sale of the book. *Id.*  
2 This royalty payment went directly to the college and not to [REDACTED] or [REDACTED].  
3 [REDACTED] and [REDACTED] used *The Little Black Book of College Writing* in their classes  
4 starting in the fall quarter of 2011 through the start of the winter quarter, January 2016. *Id.*

5 2.2 In 2012, [REDACTED] and [REDACTED] entered into an Agreement for Publication  
6 with the Publisher for a new book that would eventually be titled, *Everything You Need to Know*  
7 *About College Writing*. The new book was to be a revision of the *Little Black Book of College*  
8 *Writing*. Decl. of Killeen, Ex. 3. According to the agreement, a completed first draft of  
9 *Everything You Need to Know About College Writing* was due by December 28, 2012, and the  
10 final manuscript was due by August 31, 2013. *Id.* at 13. According to the agreement, [REDACTED]  
11 and [REDACTED] were each paid \$10,000 (\$20,000 total) as an advance against royalties. *Id.*  
12 at 12. In addition to the advance, \$5,200 in permission fees was added to the total to be paid off  
13 by the authors before any royalty payments could be made. Decl. of Killeen, ¶5.

14 2.3. On September 30, 2015, Laurie Clary (Ms. Clary), the Vice President of  
15 Instruction (VPI) for GHC, sent an email to [REDACTED] and [REDACTED] requiring them to  
16 attend a meeting to discuss faculty members using their own textbook in the classes they teach.  
17 Decl. of Killeen, ¶6. [REDACTED] did not make the October 5, 2015 meeting with Ms. Clary  
18 but received an email from [REDACTED] outlining the discussion. Decl. of Killeen, Ex. 4. That  
19 email states, in part:

20 We finally decided that we might need to tinker with language in the contract and/or  
21 board policies to make it clearer in the long-term, but basically as long as the book is  
22 valid for the course (meaning there's no reason it could be disapproved by a department  
23 or division) it's fine to use our book and earn our royalties. As a safeguard for now,  
24 I'm going to send Laurie an email with a copy to you that simply informs her that we're  
25 planning to use EYNTKACW in our classes next quarter and she'll send back an email  
26 approving our choice. That apparently covers us.

24 2.4 At 3:20 pm on October 5, 2015, Ms. Clary sent an email to [REDACTED] and [REDACTED]  
25 [REDACTED] providing confirmation of her approval for the use of their textbook, *Everything You*

1 *Need to Know About College Writing*, in the English 095, 101, and 102 courses. Decl. of  
2 Killeen, Ex. 5.

3 2.5 *Everything You Need to Know About College Writing* was published in mid-  
4 December 2015 with a 2016 copyright. [REDACTED] and [REDACTED] started requiring students  
5 to buy their book in the winter quarter beginning January 2016. Decl. of Killeen, ¶8.

6 2.6 Royalty statements provided by [REDACTED] and [REDACTED] show the initial  
7 advance of \$10,000 each (\$20,000 total) and the additional Permission Fees of \$2,600 each  
8 (\$5,200 total). Decl. of Killeen, Ex. 6. Both [REDACTED] and [REDACTED] confirmed to Board  
9 Staff that they received the advance of \$10,000 each. The royalty statement ending October  
10 2016 shows that a total of 1,784 copies (paperback and electronic copies) of the book were sold  
11 reducing the amount of the advance to \$16,028.34 (\$8,041.17 each). *Id.* at 4–5.

12 2.7 According the GHC Bookstore, 198 copies of the textbook were sold to GHC  
13 students. Decl. of Killeen, Ex. 7.

### 14 III. CONCLUSIONS OF LAW

15 3.1 The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1),  
16 which authorizes the Board to enforce the Ethics Act with respect to employees in the executive  
17 branch of state government. The Board has jurisdiction over [REDACTED], whose actions  
18 occurred while she was a state employee. The complaint was filed in accordance with  
19 RCW 42.52.410, the Board found reasonable cause pursuant to RCW 42.52.420, and an  
20 adjudicative proceeding was conducted pursuant to RCW 42.52.430 and 42.52.500. All the  
21 required procedural notices have been provided.

22 3.2 WAC 10-08-135<sup>1</sup> provides that a motion for summary judgment may be granted  
23 and an order issued if the written record shows that there is no genuine issue as to any material  
24 fact and that the moving party is entitled to judgment as a matter of law. The object of summary  
25 judgment is to avoid a useless trial. *Hudesman v. Foley*, 73 Wn.2d 880, 886, 441 P.2d 532

26 <sup>1</sup> The Board has adopted the model rules of procedures, chapter 10-08 WAC. WAC 292-100-006.

1 (1968). Summary judgment is proper if (1) there is no genuine issue of material fact, (2)  
2 reasonable persons could reach but one conclusion, and (3) the moving party is entitled to  
3 judgment as a matter of law. *Ellis v. City of Seattle*, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000);  
4 CR 56(c).

5 3.3 The facts of this matter are not in dispute, rendering summary judgment  
6 appropriate. There is no factual dispute concerning ██████████ having used a textbook she had  
7 co-authored for classes she taught at GHC, causing GHC students to purchase copies of that  
8 textbook for use in class. In ██████████'s Answer to the Reasonable Cause Determination,  
9 ██████████ admitted to all of the pertinent facts in this matter. Decl. of Killeen, Ex. 2.

10 3.4 Under RCW 42.52.430(5), a violation of the Ethics in Public Service Act must  
11 be established by a preponderance of the evidence.

12 3.5 State employees may not engage in activities incompatible with public duties,  
13 under RCW 42.52.020, which states:

14 No state employee may have an interest, financial or otherwise, direct or indirect,  
15 or engage in a business or transaction or professional activity, or incur an  
16 obligation of any nature, that is in conflict with the proper discharge of the state  
17 officer's or state employee's official duties.

17 3.6 State employees may not have financial interests in transactions under  
18 their supervision, under RCW 42.52.030(1), which states:

19 No state officer or state employee, except as provided in subsection (2) of this  
20 section, may be beneficially interested, directly or indirectly, in a contract, sale,  
21 lease, purchase, or grant that may be made by, through, or is under the  
22 supervision of the officer or employee, in whole or in part, or accept, directly or  
23 indirectly, any compensation, gratuity, or reward from any other person  
24 beneficially interested in the contract, sale, lease, purchase, or grant.

23 3.7 State employees may not use their positions to secure special privileges for  
24 themselves, under RCW 42.52.070, which states:

25 Except as required to perform duties within the scope of employment, no state  
26 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.

1           3.8     Based on the above Findings of Fact, the Board concludes that [REDACTED], by a  
2 preponderance of the evidence, violated RCW 42.52.030(1). Pursuant to the contract between  
3 herself and the publisher relating to *Everything You Need to Know About College Writing*, every  
4 copy of the textbook sold brought her closer to receiving royalty payments as the amount owed  
5 to the Publisher decreased. Regardless of whether textbook sales ultimately were sufficient to  
6 trigger royalty payments to [REDACTED], her financial interest at the time was a tangible one based  
7 on the potential for such payments. Due to having a personal financial interest, [REDACTED] had  
8 a duty to ensure that she was not a decision maker with respect to the use of her textbook by  
9 GHC students.

10           3.9     Based on the above Findings of Fact, the Board also concludes that [REDACTED],  
11 by a preponderance of the evidence, violated RCW 42.52.070. Through her position with the  
12 college, [REDACTED] secured a special privilege for herself in the form of textbook sales that  
13 personally benefitted her. At a minimum, [REDACTED] use of her own textbook created an  
14 appearance that she was exploiting her position for personal gain. In fact, [REDACTED] received  
15 a complaint from a student questioning the ethical ramifications of requiring students to purchase  
16 her textbook. Decl. of Killeen, Ex. 1 at 5.

17           3.10    Based on the above Findings of Fact, the Board concludes that [REDACTED], by a  
18 preponderance of the evidence, did not violate RCW 42.52.020. The text was an updated edition  
19 of a book previously being used by GHC. The selection of an updated edition of the same text  
20 did not conflict with the proper discharge of her official GHC faculty member duties.

21           3.11    [REDACTED] argued that her supervisor's approval of the use of her textbook  
22 nullifies her violations of the Ethics Act. Such approval is, at most, a mitigating factor that may  
23 be considered by the Board when determining an appropriate penalty for a violation.  
24 WAC 292-120-030(4)(c). [REDACTED] and her colleague, [REDACTED], made the decision to use  
25 their textbook. There was no objective selection process that sought to ensure [REDACTED] could  
26 not unduly influence the ultimate decision. When ethics questions were raised, [REDACTED] met

1 with Ms. Clary and received an email approving the use of textbook the same day. [REDACTED]  
2 email to [REDACTED] describing her meeting with Ms. Clary, was sent the same day approval  
3 was obtained. Decl. of Killeen, Ex. 4. Based on the content of this email, it does not appear  
4 [REDACTED] viewed her conduct as raising ethical concerns.

5 3.12 Under RCW 42.52.480, the Board may impose a civil penalty of up to \$5,000 per  
6 violation or three times the economic value of anything received or sought in violation of the  
7 Ethics Act, whichever is greater.

8 3.13 In determining the appropriate sanction, including the amount of any civil penalty,  
9 the Board determined, under WAC 292-120-030(2)(a) and (e), that the violations were  
10 continuing in nature and tended to reduce public respect for or confidence in state government  
11 or state government officers or employees.

12 3.14 It is a mitigating factor that [REDACTED] received permission to use her textbook.  
13 Otherwise, no mitigating factors are present here. *See* WAC 292-120-030(4). [REDACTED] points  
14 to other factors as supporting a lesser penalty, including that: her conduct was unintentional; she  
15 was not attempting to conceal the violations; she was not uncooperative with Board Staff; she  
16 has not been found to have committed prior violations of the Ethics Act; and that she did not  
17 have significant official, managerial, or supervisory responsibility. Pursuant to the Board's rules,  
18 these factors, if present, constitute aggravating circumstances under WAC 292-120-030 but their  
19 absence does not support a mitigation of the penalty amount under WAC 292-120-030(4).

#### 20 IV. FINAL ORDER

21 4.1 The Board Staff's motion for summary judgment is GRANTED.

22 4.2 Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby  
23 ORDERED that [REDACTED] is assessed a total monetary civil penalty of \$1,500, calculated as  
24 follows:

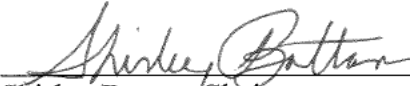
25 4.2.1 For [REDACTED]'s violation of RCW 42.52.030(1), the Board imposes a  
26 \$750 penalty.

1 4.2.2 For [REDACTED]'s violation of RCW 42.52.070, the Board imposes a \$750  
2 penalty.

3 4.3 The total amount of \$1,500 is payable in full within 90 days of the effective date  
4 of this order.

5 DATED this 17 day of April 2019.

6 WASHINGTON STATE EXECUTIVE ETHICS BOARD  
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9 \_\_\_\_\_  
Shirley Battan, Chair

1 **APPEAL RIGHTS**

2 **RECONSIDERATION OF FINAL ORDER – BOARD**

3 Any party may ask the Executive Ethics Board to reconsider a Final Order. The request  
4 must be in writing and must include the specific grounds or reasons for the request. The request  
5 must be delivered to Board office within 10 days after the postmark date of this order.

6 The Board is deemed to have denied the request for reconsideration if, within 20 days  
7 from the date the request is filed, the Board does not either dispose of the petition or serve the  
8 parties with written notice specifying the date by which it will act on the petition.  
9 RCW 34.05.470.

10 The Respondent is not required to ask the Board to reconsider the Final Order before  
11 seeking judicial review by a superior court. RCW 34.05.470.

12 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

13 A Final Order issued by the Executive Ethics Board is subject to judicial review under  
14 the Administrative Procedure Act, chapter 34.05 RCW. See RCW 42.52.440. The procedures  
15 are provided in RCW 34.05.510 - .598.

16 The petition for judicial review must be filed with the superior court and served on the  
17 Board and any other parties within 30 days of the date that the Board serves this Final Order on  
18 the parties. RCW 34.05.542(2). Service is defined in RCW 34.05.542(4) as the date of mailing  
19 or personal service.

20 A petition for review must set forth:

- 21 (1) The name and mailing address of the petitioner;  
22 (2) The name and mailing address of the petitioner’s attorney, if any;  
23 (3) The name and mailing address of the agency whose action is at issue;  
24 (4) Identification of the agency action at issue, together with a duplicate copy, summary,  
25 or brief description of the agency action;  
26

- 1 (5) Identification of persons who were parties in any adjudicative proceedings that led to  
2 the agency action;
- 3 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;
- 4 (7) The petitioner's reasons for believing that relief should be granted; and
- 5 (8) A request for relief, specifying the type and extent of relief requested.  
6 RCW 34.05.546.

7 **ENFORCEMENT OF FINAL ORDERS**

8 If there is no timely request for reconsideration, this is the Final Order of the Board. The  
9 Respondent is legally obligated to pay any penalty assessed.

10 The Board will seek to enforce a Final Order in superior court and recover legal costs  
11 and attorney's fees if the penalty remains unpaid and no petition for judicial review has been  
12 timely filed under chapter 34.05 RCW. This action will be taken without further order by the  
13 Board.