

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2017-076

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 December 8, 2017, the Executive Ethics Board (Board) initiated an investigation received from a complaint alleging that ██████████, Executive Assistant to the Vice President of College Services at Everett Community College (EvCC). The complaint alleged that Ms. ██████████ may have violated the Ethics in Public Service Act by using state resources for her private outside business as a proctor for standardized college and professional school admissions and professional licensing tests.
2. ██████████ has worked at EvCC for the past 22 years and for all times pertinent to the investigation she was the Executive Assistant to the Vice President of College Services.

3. College Services includes Auxiliary Services, which oversees Conference Services. Conference Services schedules and sets up rooms rented for use by outside groups, such as ACT (American College Test), LSAT (Law School Admissions Test), and MPRE (Multistate Professional Responsibility Examination).

4. Board staff notified EvCC of the complaint on December 13, 2017. As a result, EvCC initiated an internal investigation into the allegations outlined in the complaint.

5. [REDACTED] told the EvCC investigator that she had been proctoring for the standardized college test and the professional school admissions test since 2000 starting out as a test proctor, test room supervisor and in 2013, she became site supervisor.

6. The site supervisor is responsible for annually scheduling, reviewing rooms and setup details for test dates; recruiting and hiring other test proctors; receiving, securing and distributing test materials; and working as a proctor and supervising other proctors. [REDACTED] received outside compensation for these activities from the different testing groups.

7. During the EvCC internal investigation, [REDACTED] acknowledged that she may have used the EvCC phones on some occasions but that she "usually" used her personal cell phone to make calls related to her private Site Supervisor responsibilities.

8. During the EvCC internal investigation, [REDACTED] acknowledged that she receives email correspondence from the private testing organizations at her EvCC email address.

9. [REDACTED] initially told the EvCC investigator that she would usually recruit other proctors during her lunch and breaks but then later indicated that she did not recruit during work time or on campus and she was approached by interested individuals outside of regular work and away from the campus.

10. Board staff obtained a copy of [REDACTED] work computer hard drive and her college emails. Board staff created a forensic copy to be used for analysis. Board staff used Axiom 1.2.5 software from Magnet Forensics to analyze the copy of [REDACTED] hard drive for internet use, emails, and documents related her outside employment. See findings below:

Internet

ACT (8/16/17 through 12/14/17)

2017	August	September	October	November	December
Visit days/month	1 day	5 days	5 days	9 days	6 days

ACT pages:

- Test Date
- Test Date Payment Details, View only
- Test Date Payment Details
- Supplier Registration and Payment Systems/Sign-in/ACT
- Supplier Registration and Payment
- Search for Individual
- ACT Information for Test Coordinator
- ACT Pay TC

LSAT (10/11/17 through 12/15/17)

2017	October	November	December
Visit days/month	1 day	1 day	2 days

LSAT Pages:

- Test Center Supervisor Honorarium Schedule
- Download LSAT Forms & Materials
- LSAT Supervisor Site FAQ's
- LSAT Supervisor Site Help
- LSAT TAIC Home
- Manage LSAT Test by Date
- Order LSAT Test Materials

Emails (12/1/14 through 12/13/17) – 858 total

- ACT – 216
- LSAT – 610
- MPRE – 32

Documents (7/6/15 through 8/2/17) – 101 total

ACT – 24	LSAT – 47	MPRE – 30	Total – 101
PDF – 9	PDF – 45	PDF – 28	PDF – 82
Excel – 15	Excel – 2	Excel – 1	Excel – 18
		Word – 1	Word – 1

11. [REDACTED] indicated in her response to Board staff that prior to becoming the site coordinator for the ACT, LSAT, and MPRE tests, the previous site coordinator used the college email system to communicate with her and other staff. Therefore, when she became the site coordinator she continued that practice.

12. Email evidence confirmed that [REDACTED] did receive and store ACT, LSAT, and MPRE at EvCC.

13. [REDACTED] indicated in her response to Board staff that the testing organizations require the testing materials be sent to the college and that the contents are verified to insure all needed materials were received within 24 hours.

14. [REDACTED] indicated in her response to Board staff that she did store test materials on the EvCC campus. [REDACTED] further indicated in her response that she would check the testing materials after they arrived at the college but that she would make every effort to check the materials during her lunch or break periods.

15. The LSAT Test Center Supervisor Honorarium Schedule indicates that [REDACTED] received \$180/test with 1-25 testers, \$191/test with 26-40 testers and \$216/test with 41- 80 testers.

16. The LSAT Center Commitment Agreement between LSAT and [REDACTED] for 2017-2018 indicated test dates of September 16, 2017, December 2, 2017, and February 10, 2018.

17. ACT test dates scheduled for EvCC for 2017 and 2018 were September 9, 2017, October 28, 2017, December 17, 2017, February 18, 2018, April 14, 2018, June 9, 2018, and July 14, 2018.

18. Email evidence confirmed that [REDACTED] was using her state email during work hours to communicate with other EvCC staff to coordinate availability to assist during ACT and LSAT testing.

19. Email evidence also confirmed that [REDACTED] used her state email to communicate with EvCC Conference Services to coordinate room set up and scheduling.

20. The normal rental rate for the rooms used in the testing was paid by testing organizations.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing 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.

2. Based on the stipulated facts, [REDACTED] used her position to secure special privileges for herself and others. These activities are in violation of RCW 42.52.070

3. 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.

4. Based on the stipulated facts above, [REDACTED] used state resources for a personal benefit in violation of RCW 42.52.160.

5. 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 and they were continuous in nature.

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. Babette Babich further agrees that the evidence available to the Board is such that the Board may conclude she 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 her 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 Babette Babich 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 four thousand dollars (\$4,000) associated with violations of, RCW 42.52. The Board agrees to suspend two-thousand dollars (\$2,000) 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 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]

9/12/18
Date

Respondent

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director


10/11/18
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 9th day of November, 2018




John Ladenburg, Sr, Chair



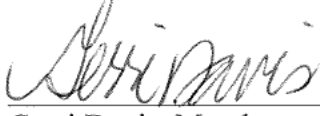
Shirley Battan, Vice-Chair



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 _____