I. PROCEDURAL HISTORY

1.1 On February 20, 2018, the Executive Ethics Board (Board) received a complaint referred by Western Washington University (WWU) alleging that Nancy Nelson (Ms. Nelson), Manager for WWU, may have violated the Ethics in Public Service Act by using state resources for her private benefit and gain.

1.2 On June 14, 2018, the Board found reasonable cause to believe that a violation of the Ethics Act was committed.

1.3 On July 11, 2019 the Executive Ethics Board Staff (Board Staff) and the Respondent filed Stipulated Facts and Conclusions of Law (Stipulation), resolving all issues in the case with the exception of determining the appropriate penalty, if any.

1.4 After due and proper notice, a hearing was held on the appropriate penalty in this matter. The hearing was held at the Board offices at Bristol Court in Olympia, Washington, convening on September 13, 2019. ALJ TJ Martin from the Office of Administrative Hearings conducted the proceedings, and Board Chair Shirley Battan, and members Lisa Marsh and
Anna Dudek Ross were present. Also present was Michelle Carr, Assistant Attorney General, legal advisor to the Board.

1.5 Chad C. Standifer, Assistant Attorney General for Board Staff, was present. The Board’s Executive Director, Kate Reynolds, and other Board Staff members were present.

1.6 Ms. Nelson representing herself, pro se appeared telephonically.

1.7 Board Staff filed Board Staff’s Penalty Brief.

1.8 The proceedings were recorded and open to the public.

1.9 The hearing was adjourned on September 13, 2019.

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

II. findings of fact

2.1 Ms. Nelson was first hired by WWU on November 24, 1997, and was appointed into her current position of Program Manager on February 15, 2002. Ms. Nelson was in her current position for all times pertinent to this investigation.

2.2 On January 5, 2018, Laura Wellington (Ms. Wellington), Ms. Nelson’s direct supervisor, reported to WWU Human Resources (HR) Department that Ms. Nelson should receive formal disciplinary action for misreporting time worked, working from home without authorization, using state resources for personal gain including outside business activities, misuse of work time, and a lack of sound judgement.

2.3 During an interview on August 23, 2017, with WWU HR regarding the issue above, Ms. Nelson disclosed that she had been using her state computer for personal gain, including using it for her outside business activities. Because of Ms. Nelson’s disclosure of personal use HR requested WWU Internal Audit (IA) to conduct a review of Ms. Nelson’s WWU computer hard drive and emails. The scope of IA’s review was limited to electronic data or correspondence related to Ms. Nelson’s outside business and was based on WWU Outlook
emails and computer hard drive data for the period of 2008 to August 2017 with the majority of the activity occurring during the period of 2014-2017. See the details of the IA’s finding below:

- Ms. Nelson’s WWU email account contained over 300 emails related to “Cabi,” an at-home clothing company, which it appears that Ms. Nelson was affiliated with, including as an at-home party host. IA concluded that Ms. Nelson received a personal benefit for hosting at-home parties, including reduced cost for merchandise and credits depending on the amount of sales from her at-home parties. The emails contained invitations to the at-home parties, facilitating the orders of Cabi Merchandise, and communicating with the Cabi Stylist.

- Ms. Nelson’s computer hard drive contained numerous documents related to her outside employment as an English instructor at Bellingham Technical College (BTC). The documents included course materials, syllabi, student assignments, and instructor evaluations.

- Ms. Nelson’s computer hard drive also contained numerous documents related to her outside business as a real estate agent. Documents included photographs, marketing materials, and documents for the purchase and sale of real estate.

- In addition to using her work computer and emails for outside work activities, Ms. Nelson disclosed in the August 23 meeting that she would spend one to two hours of WWU work time to conduct activities related to her employment at BTC.

2.4 On September 21, 2015, Ms. Nelson was approved by WWU for outside employment to teach part-time at BTC. Ms. Nelson has regularly submitted and been approved by WWU to conduct outside employment at BTC with the last approval on January 19, 2017.

2.5 On February 20, 2018, WWU referred their investigation and findings to the Executive Ethics Board to determine if Ms. Nelson violated state ethics laws.

2.6 On February 21, 2018, Board staff requested a copy of Ms. Nelson’s WWU computer hard drive and the last 24 months of her Outlook emails.

2.7 On March 8, 2018, Board staff made a forensic copy of the hard drive. Using Magnet Forensic, Axiom 1.2 software, Board staff conducted an analysis of the hard drive and emails. See results below:

CABI – Emails – January 30, 2015, through August 3, 2017

Board staff’s review revealed 154 emails sent/received related to Cabi; 65 sent emails and 89 received. The emails contained invitations to at-home parties, facilitating orders of Cabi
merchandise, and communicating with the Cabi Stylist. Ms. Nelson sent two invitations to attend a Cabi at-home party to her supervisor, Ms. Wellington, on October 20, 2016, and April 14, 2017. Ms. Wellington did not respond by email. In addition to Ms. Wellington, nine other WWU employees received the invitations to attend at-home Cabi parties hosted by Ms. Nelson.

**CABI – Internet – July 15, 2013, through August 28, 2017**

Board staff reviewed Ms. Nelson’s internet history found in Internet Explorer (IE) Main History and Internet Explorer 10-11(Main History) for the period mentioned above. The review showed occasional visits to the following Cabi related websites:

- Bethshaw.cabionline.com/consultants;
- Bethshaw.cabionline.com/shows/host-a-show;
- Cabishowmanager.com;
- Cabionline.com.

**Bellingham Technical College – July 15, 2013, through June 6, 2017**

Board staff’s review of Ms. Nelson’s work computer hard drive revealed over 50 documents related to her outside employment at BTC.

- 51 Word documents – related to course materials, syllabi, student assignments, and instructor evaluations.
- 3 Excel spread sheets – BTC Annual schedules and Organization chart.

Board staff also reviewed Ms. Nelson’s internet activity related to BTC for the period of July 15, 2013, through January 1, 2015.

The review showed that Ms. Nelson was using her WWU computer to access her BTC emails using the BTC Outlook Web Application (OWA). Ms. Nelson used the BTC OWA to communicate with her BTC students, BTC co-workers, and to download BTC student assignments using her WWU computer during times she was being paid by WWU.

In addition, Ms. Nelson visited BTC internet sites from her WWU computer. Some of the sites visited are:

- www.btc.edu
- www.btc.edu/staffmail
- www.btc.edu/General/staff/login
In an interview with WWU HR on August 23, 2017, Ms. Nelson indicated that she would spend one to two hours per week of WWU work time to conduct work related to her outside employment with BTC.

**Real Estate – Outside Business – October 24, 2014, through January 26, 2017**

Board staff’s review of Ms. Nelson’s computer hard drive and emails revealed the following evidence related to her outside business activities in real estate:

**Documents**

- 83 PDF documents — seller disclosure forms, MLS full details, inspection notices, invoices from Sterling Realty, etc.
- 2 Word documents — Credit approval and offer letter.
- 10 Excel spread sheets.
- 91 images of interiors of homes and property.

**Internet: August 15, 2013, through July 26, 2016**

Board staff reviewed Ms. Nelson’s internet history found in Internet Explorer (IE) Main History and Internet Explorer 10-11(Main History) for the period mentioned above. The review showed multiple visits to the following related websites:

- www.matrix nwmls.com
- www nwmls.com
- http://mls realist.com

2.8 In addition to the above information, Board staff identified evidence that would indicate that Ms. Nelson was using her state computer resources and time to support the Whatcom Literacy Council (WLC), an outside non-profit organization.

2.9 The WLC is a non-profit organization dedicated to increasing the literacy skill for adults living in Whatcom County. Ms. Nelson is identified on the WLC website as a Board member. WLC Board members are volunteer and non-paid positions.
2.10 A review of Ms. Nelson's WWU emails and hard drive found 105 emails related to WLC (December 6, 2016, through August 14, 2017) and 13 PDF documents related to WLC Board meeting minutes, agenda items, and policies.

2.11 Ms. Nelson indicated in her response to Board staff that her supervisor was aware that she was using the computer for outside business activities and she was never advised by her supervisor that she should not be using state resources for her personal benefit. Ms. Nelson further indicated that she had sent her supervisor an invitation to an at-home Cabi party and her supervisor was present at a party at her house and was never told that she should not be sending out email invitations from the WWU email system.

2.12 Ms. Wellington indicated in her response to Board staff that she was not aware of the extent of the personal use by Ms. Nelson until the IA investigation of her hard drive and emails but she was aware of a few instances.

2.13 Ms. Wellington also indicated in her response that on one occasion, in late 2015, she allowed Ms. Nelson to use the state computer to look up some houses that she was interested in looking at.

III. CONCLUSIONS OF LAW

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

3.2 The Ethics Act governs the conduct of state officers and employees. Under RCW 42.52.430(5), a violation must be established by a preponderance of the evidence.
3.3 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.

3.4 Based on the above stated stipulated Findings of Fact, the Board concludes that Ms. Nelson, by a preponderance of the evidence, violated RCW 42.52.160(1) by using state resources for her personal benefit. Ms. Nelson also stipulated to having violated this statutory provision.

3.5 Under RCW 42.52.480, the Board may impose a civil penalty of up to $5,000 per violation or three times the economic value of anything received or sought in violation of the Ethics Act, whichever is greater. The Board concludes that a $4,000 penalty is appropriate for Ms. Nelson’s violations of RCW 42.52.160(1). The factors discussed below support this penalty.

3.6 In determining the appropriate sanction, it is appropriate for the Board to review the nature of the violation, as well as the aggravating circumstances and mitigating factors set forth in WAC 292-120-030. Ms. Nelson’s violations were continuing in nature and tend to significantly reduce public respect for or in state government or state government officers or employees. WAC 292-120-030(2)(a), (e). In mitigation, Ms. Nelson acknowledged violations of RCW 42.52.160(1) by entering into the Stipulation. See WAC 292-120-030(4)(e).

3.7 During the hearing, Ms. Nelson argued that her penalty should be the same as that of another former WWU employee who received a $250 fine. However, that individual’s case involved violations of RCW 42.52.070(1), not RCW 42.52.160(1). Contrary to Ms. Nelson’s arguments, a $4,000 penalty is consistent with penalties imposed by the Board in similar cases. For example, in Case No. 2017-076, an Everett Community College employee violated RCW 42.52.160(1) by using state resources for her private business as a proctor for standardized college and professional school admissions and professional licensing tests. A $4,000 penalty was imposed by the Board, with $2,000 suspended based on the Respondent’s future compliance.
with the Ethics Act. In Case No. 2017-005, the former Dean and Professor of Pediatric Dentistry
at the University of Washington School of Dentistry violated RCW 42.52.160(1) when he used
state resources for his private benefit and gain by using state resources for his outside business
interests. A $6,000 penalty was imposed, with $2,000 suspended based on the Respondent’s
future compliance with the Ethics Act. Similar to the Respondents in those matters, Ms. Nelson
consistently used her state computer to support her outside interests.

3.8 While a portion of the penalty was suspended in both of the above-referenced
matters, both involved settlements agreed to by the parties and approved by the Board. In
addition, this matter appears to involve more egregious conduct by the Respondent. This includes
Ms. Nelson’s admission that she spent one to two hours of work time per week on her BCU
outside employment. No suspension of the penalty is warranted here.

IV. FINAL ORDER

4.1 Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby
ordered that Nancy Nelson is assessed a total monetary civil penalty of $4,000 based on her
violations of RCW 42.52.160(1).

4.2 The total amount of $4,000 is payable in full within 90 days of the effective date
of this order.

DATED this 10th day of October 2019.

WASHINGTON STATE EXECUTIVE ETHICS BOARD

Shirley Battan, Chair
APPEAL RIGHTS

RECONSIDERATION OF FINAL ORDER – BOARD

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

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

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

FURTHER APPEAL RIGHTS – SUPERIOR COURT

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

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

A petition for review must set forth:

(1) The name and mailing address of the petitioner;

(2) The name and mailing address of the petitioner’s attorney, if any;

(3) The name and mailing address of the agency whose action is at issue;

(4) Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action;
(5) Identification of persons who were parties in any adjudicative proceedings that led to the agency action;

(6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;

(7) The petitioner's reasons for believing that relief should be granted; and

(8) A request for relief, specifying the type and extent of relief requested.

RCW 34.05.546.

ENFORCEMENT OF FINAL ORDERS

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

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