

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████
Respondent.

No. 2018-021

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 April 20, 2018, the Executive Ethics Board (Board) received a complaint alleging that ██████████, Assistant Vice President for Human Resources and Ethics Adviser (AVP HR) with Western Washington University (WWU), may have violated provisions of the Ethics in Public Service Act. The complaint alleged that Ms. Wolfe-Lee may have used her position to secure special privileges for another employee by not complying with standard recruitment practices to hire that employee's sister to fill a position being vacated by that employee.
2. In February 2018, the WWU Office of Internal Audit (OIA) received two anonymous complaints concerning the hiring process for the Wellness Administrator position. The WWU OIA

initiated an investigation as a result of the complaints. That investigation was completed on April 3, 2018 and provided to Board staff.

3. [REDACTED] was hired as the Director of WWU HR and appointed as the WWU Ethics Advisor in 2008. She was promoted to AVP HR in 2012. [REDACTED] told Board staff that she resigned from her position as Ethics Advisor in May 2018, due to the Board's investigation. According to [REDACTED]'s job summary, her responsibilities as AVP HR include "leadership, policy direction, and line management oversight for all university human resource management functions, including unemployment compensation, organizational development, employment and onboarding..."

4. In an email from Antonia Allen (Ms. Allen), Director of the WWU OIA, she states that the report provided to the Board as part of their complaint supports the allegation that [REDACTED] used her position as the AVP HR to initiate the process and complete the hire of her friend's sister. She states that [REDACTED] used her position to inappropriately influence the hiring process by overinflating the importance of the position, making false claims that the position could not be filled by a qualified internal candidate within the desired timeframe and encouraging senior management to approve the direct appointment of an external candidate.

5. The position in question is the Wellness Administrator in the Campus Recreation Department at WWU. The position reports to Adam Leonard (Mr. Leonard), Director of Campus Recreation. Mr. Leonard reports to Kunle Ojikutu (Ms. Ojikutu), Assistant Vice President of Enrollment and Student Services, who in turn reports to Melynda Huskey (Ms. Huskey), Vice President for Enrollment and Student Services.

6. On December 14, 2017, Kaylee Lovelady (Ms. Lovelady) and [REDACTED] met to discuss Ms. Lovelady's decision to resign from her position as Wellness Administrator. Ms. Lovelady

was worried the program would be negatively impacted based on her short notice. During the meeting, [REDACTED] advised Ms. Lovelady that she should tell her supervisor Mr. Leonard.

7. [REDACTED] also explained the different options to hire a new Wellness Administrator; including recruit or utilize the Equal Opportunity Office's Appointment of Opportunity policy. At that time, Ms. Lovelady mentioned that her sister may be available. [REDACTED] told her she would need to discuss that with her supervisor. She didn't see Ms. Lovelady again after the meeting.

8. [REDACTED] said that she provided Ms. Lovelady with the options she and the HR staff provide whenever asked this question. [REDACTED] said she treated Ms. Lovelady as she would any other employee at WWU. If an employee requests an appointment with her, she typically accepts, unless another HR employee is working with them.

9. On December 18, 2017, Ms. Lovelady emailed [REDACTED] indicating she spoke to Mr. Leonard and that he is excited to give her a call and try to get this figured out.

10. On December 19, 2017 at 3:30 pm, [REDACTED] met with Mr. Leonard about replacing Ms. Lovelady including hiring options for a replacement. She provided him with the same information she provided Ms. Lovelady regarding the options to fill the vacancy. Mr. Leonard said Ms. Lovelady informed him that her sister was available. Mr. Leonard said that he already had Ms. Hill's resume for some time, as a result of another position that was expected to be recruited.

11. [REDACTED] said she supported Mr. Leonard's desire to pursue an Appointment of Opportunity. He knew that he must obtain the approvals from his direct supervisor, his Vice President, the Vice Provost of Equal Opportunity and the President's Office. [REDACTED] said she had no authority for and she does not approve any Appointments of Opportunity.

12. On December 19, 2017 at 4:40 pm, [REDACTED] emailed Ms. Huskey to advise her that Ms. Lovelady had met with her and was resigning from her position and that she will be "exiting Mid-

February.” [REDACTED] said that the program started in HR and she hired Ms. Lovelady so that was why she wanted to brainstorm ideas with her. [REDACTED] went on to give the following description of her meeting with Mr. Leonard and her support for the idea they discussed, “He has a candidate (female) who applied when the dietician was open (subsequently cancelled) who possesses all the certification that Kaylee has PLUS a much needed dietician certification a well. He would like to submit a critical need appointment (EO-Appointment of Opportunity) rather than conduct a search so Kaylee has time to transition her replacement. This should ensure employees stay committed and revenue from participants continue.”

13. [REDACTED] identified Ms. Hill as Ms. Lovelady’s sister and wrote, “Since Kaylee has no authority to make the decision I see no conflict of interest (ethic concerns).” [REDACTED] told Board staff she did not know Ms. Hill and only knew she was Ms. Lovelady’s sister because she was Ms. Lovelady’s prior supervisor.

14. On January 3, 2018 at 2:55 pm, Mr. Leonard emailed Debby Cwalina (Ms. Cwalina), Class/Compensation Manager HR (Class/Comp) and a direct report to [REDACTED], asking for a job description for the Wellness Administrator position in the Professional Staff Position Description format. [REDACTED] was copied.

15. On January 3, 2018 at 5:04 pm, [REDACTED] emailed Ms. Cwalina and asked her to let her know if she could assist in expediting this request. [REDACTED] said the Class/Comp Manager works directly for her and after seeing Mr. Leonard’s request to obtain a copy of the job description for the Wellness Administrator position, she offered to assist in copying the description. She has an administrative assistant and often asks her to support others.

16. On January 4, 2018 at 7:34 am, Ms. Cwalina emailed Mr. Leonard the Professional Staff Position Description and copied [REDACTED]

17. On January 4, 2018 at 3:02 pm, [REDACTED] emailed Mr. Leonard and advised him that she spoke with Ms. Huskey and she will await the Appointment of Opportunity form.

18. On January 5, 2018, Stephanie Norsby (Ms. Norsby), Employment Administrator HR, emailed Ms. Cwalina that the Request Appointment of Opportunity was approved.

19. On January 8, 2018, [REDACTED] met with Sue Guenter-Schlesinger (Ms. Guenter-Schlesinger), Vice Provost Equal Opportunity/Division, to discuss an "EO Issue."

20. On January 11, 2018 at 7:28 am, [REDACTED] emailed Mr. Leonard and stated, "Looks like all approvals are in place. Debby will evaluate for comp and get back to you."

21. [REDACTED] confirmed that on January 11, 2018, she emailed Mr. Leonard stating "looks like all approvals are in place." She said the OIA report indicates that she said "to let him know that all approvals were in place." She said that is not correct. She has no authority to communicate to Mr. Leonard that all approvals are in place.

22. On January 11, 2018 at 7:38 am, [REDACTED] emailed Ms. Lovelady and said, "Debby will conduct comp analysis this morning (early), submit to chain of command (I'll help move this along) attached to appointment of opportunity and once approved ready to move... I hope all is completed by tomorrow."

23. [REDACTED] confirmed that she emailed Ms. Lovelady and provided her with an update. She said Ms. Lovelady was worried about the lack of notice period and the continued success of the Wellness program. She indicated that as a courtesy, she emailed Ms. Lovelady.

24. On January 11, 2018 at 8:02 am, Ms. Lovelady emailed [REDACTED] thanking her for the update and stating "I feel like the FSWP [Faculty and Staff Wellness Program] has come full circle,

and of course it is back to you helping get things, done, and again, setting the wellness program up for success. I am beyond grateful for the time spent on this.”

25. On January 11, 2018 at 9:02 am, Ms. Cwalina emailed Ms. Hill’s Appointment of Opportunity form with the compensation letter for the position and the market range for the position to Mr. Leonard. Mr. Leonard responded that he was in total agreement.

26. On January 11, 2018 at 9:54 am, Ms. Cwalina submitted the completed electronically signed Appointment of Opportunity form to Ms. Norsby. The form was subsequently approved by Ms. Norsby, Mr. Leonard and L.K. Langley (Mr. Langley), Manager Equal Opportunity Programs.

27. ██████████ said on January 11, 2018, she was copied in an email from Mr. Leonard to Ms. Cwalina in which he stated “I’m in total agreement.” The email was in regards to the compensation letter for the Wellness Administrator position. While she is copied on compensation emails, ██████████ said she is not involved in the “years in position” placement. She was informed because she notified Ms. Cwalina that an Appointment of Opportunity may be coming through. This is not unusual when she is involved in an HR related event. ██████████ said she did not have any direct decision making authority for Ms. Hill’s compensation.

28. On January 17, 2018 at 1:30 pm, a conference call was organized by Ms. Guenter-Schlesinger with ██████████ and Ms. Huskey. Ms. Guenter-Schlesinger advised Board staff that she scheduled the conference call to follow-up and continue to ask questions about the need for the appointment. She said she had concerns about the appointment, including that usually there is some discussion, email, or phone call to her from the hiring authority and also from the relevant Vice President or Dean before Appointment of Opportunity forms are submitted to her. In addition, she had questions about the justification. Ms. Guenter-Schlesinger said that in conversations prior to the conference call, she had asked ██████████ why she was so involved with this search; ██████████ indicated that

it was because the Wellness program and the position of Wellness Administrator was “her baby,” that she had developed this position initially and was invested in it. [REDACTED] told her that the Critical Need Hire was being requested because the Wellness Program would suffer a negative fiscal impact if there was a delay in having a new Wellness Administrator come on board.

29. Ms. Guenter-Schlesinger said it was not clear to her what level of support there was from Ms. Huskey, so she scheduled the conference call. During the conference call, [REDACTED] reiterated the need for a “seamless transition” and Ms. Huskey expressed her support. Ms. Guenter-Schlesinger said she called [REDACTED] later and expressed her concern about a possible conflict of interest, or at least the perception of it. Ms. Wolfe-Lee said she did not have any concerns. Ms. Guenter-Schlesinger said that since [REDACTED] served as the University’s Ethics Adviser, she wanted to be sure that she felt comfortable with this. [REDACTED] re-confirmed that she did. Ms. Guenter-Schlesinger said she very much regrets and is sorry for signing off on this Appointment of Opportunity request, given that she had numerous initial and continuing concerns. She tried to balance this with respecting Ms. Huskey’s decision to move forward. She said that in the future she will not approve it regardless of a Vice-President or Dean’s request/support. She said she will forward it directly to the President of the University, instead of Ms. Sandoval, who, it was her understanding, was signing for the President, since the Appointment of Opportunity policy was implemented in 2005.

30. [REDACTED] told Board staff that as she recalled, the conference call was in regards to calls from faculty who wanted to understand why the position was not posted for recruitment. [REDACTED] said it was business as usual for her so she did not feel a need to document all of her conversations around this appointment.

31. On January 17, 2018 at 4:33 pm, Ms. Lovelady emailed [REDACTED], stating at the beginning of the email that she hoped the meeting went well.

32. On January 17, 2018 at 6:24, pm, [REDACTED] emailed Ms. Lovelady and wrote "All approved!!!" She went on to say "I personally thank you for just being the amazing woman you are! I have been blessed in having you in my life journey!"

33. [REDACTED] confirmed that on January 17, 2018, she communicated to Ms. Lovelady that all was approved, based on Mr. Leonard's response that he was in agreement and the understanding from the VP, ESS and the AVP, EO that they were supportive. She said this was an error on her part. She did not go on to inform Ms. Lovelady there were other approvers. She wanted to provide some piece of mind. She said if Mr. Leonard, the AVP Health/Counseling, VP, ESS and the AVP, EO were supportive she felt confident it would be approved. She said again that this was an error on her part.

34. On January 19, 2018, Mr. Leonard emailed Ms. Guenter-Schlesinger the interview summary for Ms. Hill's interview by the search committee. That interview was conducted on January 19, 2018.

35. On January 22, 2018, the Request Appointment of Opportunity for Ms. Hill was electronically signed and approved by Mr. Leonard, Ms. Guenter-Schlesinger and Ms. Huskey.

36. On January 23, 2018, the Request Appointment of Opportunity for Ms. Hill was electronically signed and approved by Ms. Ojikutu, Barbara Sandoval (Ms. Sandoval), Assistant to the President, and locked by Ms. Norsby.

37. [REDACTED] said that the Request Appointment of Opportunity was approved by all the required individuals. [REDACTED] stated that she does not sign the approval form. She said once the form is routed and approved it is sent to the Employment Administrator in HR to ensure signatures are

present and the form is locked. She said it was sometime later that it came to her attention that Health and Human Development faculty were upset with the placement of Ms. Hill.

38. [REDACTED] advised Board staff that her intent in facilitating the Wellness Administrator position was due to the benefit of the program to employees. She maintained that it was not about Ms. Lovelady but was about the wellness program. [REDACTED] said that she had a copy of the OIA report and provided a written response to the OIA investigation.

39. [REDACTED] stated she hired Ms. Lovelady in December 13, 2010. Ms. Lovelady reported to [REDACTED] who was the Director of HR at the time. Ms. Lovelady was reassigned to the Campus Recreation Department on July 1, 2015, remaining the Wellness Administrator and taking the program with her. Ms. Lovelady terminated employment with Campus Recreation on March 1, 2018. She was on leave from February 16, 2018, until her termination date.

40. [REDACTED] said Ms. Lovelady was not a personal friend, but that she held her in high regard as a successful professional at WWU.

41. [REDACTED] said as a result of this investigation and in discussions with the President, Sabah Randhawa (Mr. Randhawa), he thought it best to remove her from the role of Ethics Advisor for the University. [REDACTED] said she requested to be removed permanently. She said the Director for Internal Audit is now the Ethics Advisor.

42. [REDACTED] said that as the AVP HR she is customer focused and works to respond timely and accurately on issues. She "moves along" many documents when there are delays. She may contact a director to inquire about a delay in a personnel action form or contact a supervisor if position review forms are delayed. She may ask if they have questions or simply remind them that it is important to move documents through the system to ensure they are timely.

43. [REDACTED] confirmed that she received a letter of reprimand from the President as a result of this appointment. She said there were other aspects to this case outside of ethics. Discussions focused on the “optics” and the letter indicated she “may” have violated an ethics law.

44. [REDACTED] said the OIA report states “only the AVP HR had the authority and responsibilities necessary to cause this inappropriate, unauthorized appointment.” [REDACTED] said this is not a true statement. She has no authority to authorize this appointment and does not believe she caused this appointment.

45. In an emailed response to Board staff, Mr. Leonard said that he didn’t feel [REDACTED] used her influence to hire Ms. Hill. He indicated that as director, he created a search committee to conduct a recruitment for the Wellness Administrator position. He said that Ms. Lovelady brought Ms. Hill’s name, credentials and experience to their attention.

46. Mr. Leonard said that Campus Services employees were on the Interview/Search committee that interviewed Ms. Hill. Based on that search committee’s recommendation for hire, Ms. Hill was presented to the Human Resources and Equal Opportunity Office.

47. Board staff were provided a copy of the summary of the interview done by the interview committee. The committee consisted of Caitlin Sommers, Ron Arnolt and Kip Leonitti; all Campus Service employees. All three recommended Ms. Hill for employment with the Campus Recreation team. Only Ms. Hill was interviewed for the Wellness Administrator position.

48. In an emailed response to Board staff, Ms. Huskey said that in one of her regular meetings with [REDACTED] mentioned that a position in her area, the Wellness Administrator, was falling vacant, and that the employee provided wellness services for many employees through her position at the Recreation Center. [REDACTED] explained that there was a candidate who was highly qualified for the position and could begin immediately, thus minimizing loss of services, and that there

was a process which allow for a direct appointment. She did say there was an urgency about filling the position for the sake of the employees who use the candidate's services. Sometime later, she received an electronic form to approve the hiring of Ms. Hill, as she does for all hires in the Division of Enrollment and Student Services. Ms. Huskey said she approved the appointment.

49. Ms. Huskey told Board staff that it was her understanding that [REDACTED] knew Ms. Hill and she believed her to be qualified candidate for the position [REDACTED] brought the direct appointment process to her attention so that she would not be surprised to see the appointment form come through her queue.

50. Ms. Huskey identified Rich Van Den Hul (Mr. Van Den Hul), Vice President for Business and Financial Affairs, as the individual [REDACTED] reports to.

51. In an emailed response to Board staff, Mr. Van Den Hul said he did not recall being aware of [REDACTED] involvement in the hiring of Ms. Hill during the hiring process. He said it is not unusual for [REDACTED] to be quite involved in facilitating the filling of a position. He said she has organized her department so that she is the point of contact for Extended Education and she often oversees and facilitates the hiring of critical positions.

52. Mr. Van Den Hul said that he did not know if he could describe what would be [REDACTED]'s normal involvement in the hiring process. Mr. Van Den Hul said when he has an important hire he relies on [REDACTED] to facilitate the hiring process, often serving as the chair of the hiring committee. He said he knows that it is not unusual for her to advise hiring authorities and supervisors of their options for filling the positions and then facilitating the hiring process working with the hiring officials and her staff to do so.

53. Mr. Van Den Hul said that [REDACTED] is passionate about the Wellness Program as she sees it as an important service to employees. Several years ago, she took over the Wellness Program and working with Ms. Lovelady, turned it into an award-winning program.

54. Sabah Randhawa (Mr. Randhawa), has been President of WWU since April 2016. In an emailed response to Board staff, Mr. Randhawa said that he thinks the appointment of Ms. Lovelady was an ethics violation. He said that [REDACTED] expressed remorse when he presented her with his letter of reprimand. Mr. Randhawa said irrespective of whether [REDACTED] considers it an ethics violation, she does take responsibility for the hiring decision and she expressed remorse on facilitating the decision and she recognizes the negative perceptions that the outcome has created in the minds of some faculty and staff with regard to HR practices.

55. In regards to Ms. Sandoval signing for him on the appointment of Ms. Lovelady, Mr. Randhawa said that this has been a practice in the past, where Ms. Sandoval was delegated this responsibility. He said going forward; critical needs appointments would require approval from the President or the Provost.

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 above, [REDACTED] secured special privileges for Darcie Hill (Ms. Hill), the sister of an employee by using her position to influence the hiring of Ms. Hill to fill a position being vacated by that employee in violation of RCW 42.52.070.

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. In the matter at hand, it is a mitigating factor that the violation by [REDACTED] was unintentional.

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 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 [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 in the amount of two-hundred, fifty dollars (\$250) associated with violations of RCW 42.52.

12. The civil penalty in the amount of two-hundred, fifty dollars (\$250) 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]

9/6/18
Date

Respondent

Presented by:

K. Reynolds

KATE REYNOLDS
Executive Director

9/11/18

Date

