

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

Wayne Au

Respondent.

No. 2021-015

STIPULATED FACTS,  
CONCLUSIONS OF LAW AND  
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Wayne Au 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 26, 2021, the Executive Ethics Board (Board) received a complaint alleging that Wayne Au (Dr. Au), a Professor with the School of Educational Studies (SES) at the University of Washington (UW) Bothell, may have violated the Ethics in Public Service Act by using state resources for personal benefit or gain.

2. On April 26, 2021, Board Staff contacted Dr. Au at his work email address, wayneau@uw.edu, and advised him of the complaint received by the Board. Dr. Au's signature block on his April 26, 2021 email response to Board Staff listed a link to the Rethinking Schools website, with Dr. Au as an editor, along with graphic depictions of the two books, *Teaching for Black Lives* and *A Marxist Education*. Board Staff clicked on the Rethinking

Schools link on Dr. Au's signature block and were taken to the Rethinking Schools website, which listed *Teaching for Black Lives* as one of several "Featured Books." By clicking on the link for the *Teaching for Black Lives* book, the user was taken to a website that included an option to purchase the book for \$29.95.<sup>1</sup>

3. On April 29, 2021, Dr. Au sent a letter to Board Staff stating that "Rethinking Schools Ltd." published *Teaching for Black Lives*. Dr. Au stated in his letter that Rethinking Schools LTD has been a 501(c)(3) nonprofit organization since 1991, that he is a board member for the organization, and that board members are unpaid volunteers. Dr. Au stated he does not earn royalties based on sales of any of his authored, edited, or co-edited books for Rethinking Schools Ltd., and that all profits from sales go to Rethinking Schools Ltd.

4. Board Staff searched for *A Marxist Education* on Amazon.com and found that it was being sold for \$18.23. On June 2, 2021, Board Staff contacted Dr. Au and asked him to explain, among other things, why *A Marxist Education* is listed on Amazon.com. Dr. Au stated that *A Marxist Education* is published by Haymarket Books and is not connected to the non-profit organization Rethinking Schools Ltd.

5. UW provided Board Staff with a copy of Dr. Au's email history. Board Staff reviewed the emails and found at least thirteen (13) related to Board's investigation. A review of Dr. Au's email history by Board Staff revealed the following information:<sup>2</sup>

---

<sup>1</sup> In Board Staff's initial interview with Dr. Au, Board Staff asked Dr. Au if he received any of the proceeds from this book. Dr. Au said "No" all proceeds went to the non-profit.

<sup>2</sup> UW provided Board Staff with copy of Dr. Au's email history. Forensic copies of Dr. Au's email history were created using FTK Imager software and Tableau Read/Write block protection hardware/software. The newly created forensic copies were used to conduct an analysis using Magnet Forensics Axiom 4.2 software.

- December 20, 2012 was the first email Board Staff found that Dr. Au identified himself as the Editor for Rethinking Schools and provided a link for Rethinking Schools on his signature block.
- August 14, 2018 was the first email in which Board Staff found the graphic image for the book *Teaching for Black Lives* on Dr. Au's signature block.<sup>3</sup> Board Staff clicked on the graphic image on that email, which directs the user to the Rethinking Schools website.
- October 16, 2018 was the first email in which Board Staff found the graphic image for the book *A Marxist Education* on Dr. Au's signature block.<sup>4</sup> Board Staff clicked on the graphic image on that email, which directs the user to the Haymarket Books website, which offered the book for 30% off at \$15.40. The link for this book last appears on an email sent by Dr. Au on May 2, 2019.

6. One June 3, 2021, Board Staff provided Dr. Au with the information found in his email history, and asked him to provide the approximate amount that he had been paid for the sale of *A Marxist Education*, along with how many books had been sold. In his response, Dr. Au provided the following information, in pertinent part:

Total publications since 2018: 2,077 copies. \$1,543.54 in royalties. 802 copies went to trade outlets like bookstores and libraries. At least 100 copies were purchased in large quantities by bookstores – likely indicating course adoptions.  
 2019 year: 394 copies sold, \$454.84 in royalties.  
 2020 year: 735 copies sold, \$905.09 in royalties.  
 They didn't send the 2018 data, but the remainder would indicate 2018: 948 copies, \$183 in royalties

7. During the relevant time period, the University of Washington's Personal Use of University Facilities, Computers, and Equipment by University Employees, Administrative Policy

---

<sup>3</sup> *Teaching for Black Lives* was published on April 16, 2018.

<sup>4</sup> *A Marxist Education* was published on June 6, 2018.

Statement (APS) 47.2, 3 (Non-University Activity), A (Prohibited Use of Resources) stated, in pertinent part, the following:

University resources, including facilities, computers, and equipment, may not be used for the following purposes:

- Conducting an outside business or private employment or other activities conducted for private financial gain.
- Supporting, promoting, or soliciting for an outside organization or group unless otherwise provided by law and University policy.
- Assisting an election campaign, promoting or opposing a ballot proposition or initiative, or lobbying the state legislature.
- Advertising and selling for commercial purposes.

...

Personal use of University resources, computers, and equipment for product sales, even though not for remuneration, is not permitted (e.g., online sales or referral links to book publishers or sales houses).

## B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from Use of persons, money or property for private gain. RCW 42.52.160 states:

No state officer or state employee may employ or use any person, money, or property under the officers or employees official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee or another.

WAC 292-110-010 Use of state resources, states, in part:

.....

**(3) Permitted personal use of state resources.** This subsection applies to any use of state resources not included in subsection (2) of this section.

(a) A state officer or employee's use of state resources is de minimis only if each of the following conditions are met:

- (i) There is little or no cost to the state;
- (ii) Any use is brief;
- (iii) Any use occurs infrequently;
- (iv) The use does not interfere with the performance of any state officer's or employee's official duties;
- (v) The use does not compromise the security or integrity of state property, information systems, or software;

- (vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and
- (vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

2. 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, the aggravating factors are that these types of violations significantly reduce the public respect and confidence in state government employees, and the violations were continuous in nature. It is a mitigating factor that according to the President of the University of Washington, notwithstanding their policy, the University's ethics trainings have historically not focused on a faculty member's use of the university's email to promote their own book as being a prohibited use of state resources under the Ethics Act.

### **D. STIPULATION AND AGREED ORDER**

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Dr. Wayne Au 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. Dr. Wayne Au 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. Dr. Wayne Au further agrees that the evidence available to the Board is such that the Board may conclude they 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. Dr. Wayne Au waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or their 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 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. Wayne Au 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 Dr. Wayne Au 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 Dr. Wayne Au 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 Dr. Wayne Au 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, Dr. Wayne Au 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, Wayne Au 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. Dr. Wayne Au agrees to pay a civil penalty in the amount of two-thousand dollars (\$2,000) associated with violations of RCW 42.52. The Board agrees to suspend one-thousand dollars (\$1,000) on the condition that Wayne Au 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 civil penalty in the amount of one-thousand dollars (\$1,000) 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.

### **I. CERTIFICATION**

I, Wayne Au, 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.



4/26/2022

---

Wayne Au  
Respondent

Date

Presented by:



5/3/2022

---

KATE REYNOLDS  
Executive Director

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 13th day of May 2022.

*Approved via Zoom*

Shirley Battan, Chair

*Approved via Zoom*

Jan Jutte, Vice Chair

*Approved*

Gerri Davis, Member

*Approved via Zoom*

Earl Key, Member

\* I, Wayne Au, accept/do not accept (circle one) the proposed modification(s).

\_\_\_\_\_  
Wayne Au, Respondent

\_\_\_\_\_  
Date