BEFORE THE WASHINGTON STATE EXECUTIVE ETHICS BOARD

In the Matter of: BARBARA HEDGES, Respondent.	No. 01-07 STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between BARBARA HEDGES, Respondent, through C. JAMES FRUSH, her counsel and the EXECUTIVE ETHICS BOARD ("Board"), through LINDA A. DALTON, Senior Assistant Attorney General and BRIAN R. MALARKY, Executive Director. The following stipulation will be binding upon the parties only if accepted by the Board.

A. Facts

1. The above-referenced ethics complaint alleges that University of Washington Athletic Director Barbara Hedges, Respondent, violated chapter 42.52 RCW, by using money under her control from the 1999 Holiday Bowl and the 2001 Rose Bowl for the private benefit or gain of another.
2. In 1999, and again in 2000, Ms. Hedges, in her capacity as Athletic Director, instructed employees of the University's Department of Intercollegiate Athletics (ICA) to make arrangements for the University's football team, band, cheerleader staff and ICA staff to travel to the 1999 Holiday Bowl and the 2001 Rose Bowl. The Pacific 10 Conference mandated the University's participation once invitations to the bowl games had been accepted in these two bowl games. Terms for participation by the University were outlined in the 1999 Holiday Bowl Team Manual, 2001 University Participation Manual and the Pacific 10 Conference handbook.

3. In addition, Ms. Hedges approved travel for ICA employees' spouses and children. Ms. Hedges contends that her decision to approve such travel was based on prior University practices and in furtherance of University policies of supporting athletics.
4. Ms. Hedges and football coach Rick Neuheisel's employment contracts specifically authorize the payment of family travel as a condition of their employment. No other employee contracts or University policy have explicitly addressed the family member travel practice used by Ms. Hedges.
5. Board staff does not believe that state travel laws authorize the payment of family travel, unless such travel is for a bona-fide business purpose. Board staff believes, however, that the University has the authority to compensate certain ICA employees in a manner that addresses the significant additional expenses they incur associated with family travel during any post-season University bowl game appearances. Board staff further believes that providing family travel to ICA employees is inappropriate unless the University has adopted specific policies and contracts that address this personal benefit or bona fide business purpose.
6. Only funds specifically provided by the Pacific 10 Conference, the Pasadena Tournament of Roses Committee, or other funds from outside sources, were used to pay for all travel and related expenses associated with the football team, the band, the cheer squad, volunteers, and ICA staff and their spouses or family members who accompanied them.
7. Ms. Hedges did not personally benefit or gain from her approval of travel and related expenses to the 1999 Holiday Bowl and 2000 Rose Bowl.

B. <u>Applicable Law</u>

1. RCW 42.52.160 states:

(1) No state officer or 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.
(2) This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties.

2. RCW 42.52.010(12) states:

"Official duty" means those duties within the specific scope of employment of the state officer or state employee as defined by the officer's or employee's agency or by statute or the state Constitution.

3. 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 other persons.

4. RCW 28B.10.703 states:

The governing boards of each of the state universities, the regional universities, The Evergreen State College, and community colleges in addition to their other duties prescribed by law shall have the power and authority to establish programs for intercollegiate athletic competition. Such competition may include participation as a member of an athletic conference or conferences, in accordance with conference rules.

5. RCW 28B.20.130(2) states:

To employ the president of the university, his or her assistants, members of the faculty, and employees of the institution, who except as otherwise provided by law, shall hold their positions during the pleasure of said board of regents.

C. Conclusions of Law

1. Pursuant to chapter 42.52 RCW, the Board has jurisdiction over the Respondent, Barbara Hedges and over the subject matter of this complaint.

2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein.

3. Settlement of this matter on the terms herein is subject to WAC 292-100-090(2), which states in part:

> The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

D. Resolution

Based on the foregoing, in resolution of the complaint, the parties stipulate that:

1. There are legitimate differences of opinion regarding the interpretation of the applicable laws and whether Ms. Hedges committed a violation of the state ethics law. Ms. Hedges agrees that it is both important and essential to have the University's historical practices related to post season bowl games stated in more explicit terms. Ms. Hedges agrees to establish explicit ICA policies or employee contracts that will avoid disputes over possible violations of the state ethics law in the future. The University has generated specific policies to ensure, if followed, that the University can continue to attend post-season football events in compliance with the state ethics laws. The terms of those policies are attached to and hereby incorporated by reference and made a part of this Stipulation and Order. Ms. Hedges agrees to take all steps necessary to amend the University's policies and employee contracts set forth in Attachment A, consistent with the existing state ethics law.
2. The purpose of the state ethics laws is well served by the University adopting specific policies regarding travel for a bona fide business purpose and compensation of ICA staff for expenses associated with attendance at post-season football events.
3. Had the employee contracts or ICA policies explicitly addressed additional compensation to ICA employees for family travel to post-season football events, such policies and contracts might have prevented allegations of violations of the Ethics in Public Service Act.
4. Under Executive Ethics Board Advisory Opinions Nos. 96-01, 00-05, 00-06, and 01-07 (scheduled to be approved on December 14, 2001) and based on the facts of this particular complaint, in the event this matter were to have proceeded before the Board, the Board may have concluded that her actions in approving the payment of travel and related expenses for non-state employees were a violation of RCW 42.52.070 and RCW 42.52.160.

5. Pursuant to RCW 28B.20.250, the University has approved indemnification of Ms. Hedges for all acts performed within the scope of her official duties. The state Executive Ethics Board will be reimbursed the amount of $1,000.00 for costs of investigation associated with this complaint.
6. Ms. Hedges agrees to remain familiar with and in compliance with state ethics laws in the performance of her official duties.

E. <u>Release/Effect of Order</u>

1. If the Board accepts this Stipulation, the Board releases and discharges Barbara Hedges from all ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in this complaint. Barbara Hedges 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 and Order.
2. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other ethics complaints against Barbara Hedges, which may exist or may be filed in the future.
3. If this Stipulation is accepted, this Stipulation and Order will be inadmissible for any purpose in any other proceeding involving Barbara Hedges, the State, and/or third parties aligned with the State.
4. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes and rules.

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F. Certification

I, BARBARA HEDGES, hereby certify that I have read this Stipulation and Order in its entirety; that I have had an opportunity to consult with legal counsel, that I knowingly and voluntarily waive my right to a hearing in this matter; and that I fully understand and voluntarily agree to this Stipulation.

EXECUTED this 7th day of December, 2001.

BARBARA HEDGES
Respondent

C. JAMES FRUSH
Attorney for the Respondent

Stipulated to and presented by:

BRIAN R. MALARKY
Executive Director

LINDA A. DALTON
Senior Assistant Attorney General
Attorney for the Board Staff

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

__X__ ACCEPTED in its entirety;

_____ REJECTED in its entirety;

_____ *MODIFIED. This Stipulation will become the Order of the Board if the following modifications are approved by _____.

_____

_____

DATED this 14 day of October, 2001.

James M. Vaché, Chair

Laquita Fields

Laquita Fields, Vice Chair

Sutapa Basu, Member

Marilee Scarbrough

Marilee Scarbrough, Member

Cheryl A. Rohret

Rev. Cheryl Rohret, Member

I, _____, accept/do not accept (circle one) the proposed modification.

_____ _____

Respondent Date

_____ _____

Attorney for Respondent Date

Attachment A

The University of Washington agrees to take the following actions to facilitate the University's attendance and participation in post-season football events in compliance with the state's ethics laws. The term 'events' as used herein refers to not only the actual bowl game but also includes all surrounding activities such as dinners, fundraisers, alumni activities, and activities sponsored by a bowl committee such as University day at Disneyland. All travel and related expenses to post-season football events for the University delegation will only be paid from funds received from the bowl committees, PAC-10 conference or other outside sources and not from any other University funds.

1. **President's Contract.** The Board of Regents will make the following revision to paragraph 8 of the Presidents appointment letter (copy attached).

   You may elect to bring your spouse and dependent children to all University athletic events, including but not limited to on-campus athletic events, post-season athletic events, and such other events and related activities which you attend or make an appearance at in relation to your duties as President of the University. The University may pay as compensation to you all costs associated with bringing your spouse and dependent children to an event and its related activities, in accordance with the University travel regulations. Expenses paid by the University shall include, but may not be limited to, air fare, other travel costs such as rental car or bus fare, lodging, subsistence and the cost of admission to the game and related activities.

2. **Contract Employees at ICA.** The Intercollegiate Athletic Department (ICA) will not compensate employees for family travel related to post season athletic events unless such compensation is explicitly authorized in an employee contract. In order to facilitate such travel, the Director of Intercollegiate Athletics may add the following term to contracts with Intercollegiate Athletic Department employees:

   Whenever *[insert name of contract employee]* attends a post-season athletic event because his/her team is participating in the event, or because the Director of Intercollegiate Athletics requires his/her attendance, he/she may elect to bring his/her spouse or partner and dependent children to the event and related activities. The University may pay as compensation to *[insert name of contract employee]* all costs associated with bringing his/her spouse or partner and dependent children to an event and its related activities, in accordance with the University travel regulations and where relevant, NCAA and/or PAC 10 Conference regulations. Compensation paid by the University shall not exceed costs associated with bringing his/her spouse or partner and dependent children to the event including but not limited to airfare, other travel costs such as

rental car or bus fare, lodging, subsistence and cost of admission to the game and all related events.

3. **Faculty, Officers, Professional and Temporary Staff.** The University will amend the appropriate University manual(s), policies and/or regulations to make explicit that the following language shall constitute a part of the employment contract between the University and its Officers, Academic staff, Professional staff, and Temporary staff to whom it is applicable.

1. RCW 28B.10.703 provides the University has the statutory authority to establish programs for intercollegiate athletic competition and participate in athletic conferences. As a member of the PAC-10 Athletic Conference the University is required to participate in post-season bowl games for which it qualifies.

2. The business of the University is education; the carrying on of an athletic program is an important element in the education process. An athletic program is important to the institution and the student body. For college students, athletics offers an opportunity to develop leadership skills, learn teamwork, build self-confidence, and perfect self-discipline. In addition, for many student athletes, physical skills are a passport to college admissions and scholarships.

3. It is important for the University to support student athletes and use athletic events to promote the University. The following shall constitute a part of a program aimed at achieving these goals:

> All University officers, deans, professional staff, temporary employees and faculty, if required by the President, shall attend designated post-season athletic events as part of their official duties and represent the University, engage in development activities for the University, support University athletes, monitor academic welfare and compliance with University, PAC-10, and NCAA regulations, and perform other functions as directed by the President. In consideration of individual's performance of his/her regular duties as well as any additional responsibilities placed on an individual when he/she attends a designated athletic event, he/she may elect to bring his/her spouse or partner and dependent children to the event. The University may pay as compensation all costs associated with bringing a spouse or partner and dependent children to an event and its related activities, in accordance with the University travel regulations and where relevant, NCAA and/or, PAC-10 conference regulations. Compensation paid by the University shall not exceed costs associated with bringing the spouse or partner and

dependent children to the event and related activities including but not limited to airfare, other travel costs such as rental car or bus fare, lodging, subsistence and cost of admission to the game and all related events.

Family travel expenses shall be paid in accord with applicable IRS regulations.

4. **Volunteers.** Whenever the University President or Director of Intercollegiate Athletics believes it is in the best interest of the University to use volunteers to perform functions on behalf of the University at University events, the Director or President will execute an agreement with the volunteer articulating the rights and responsibilities of both parties. A volunteer may be allowed to attend a post-season athletic event and so long as the volunteer provides a service to the University, his or her travel expenses and that of his or her spouse or partner and dependent children will be paid for by the University in a manner similar to those paid for University employees and in compliance with the applicable University policies and where relevant, NCAA and/or PAC 10 Conference regulations.

5. **Regents.** Regents may attend post-season athletic events as part of their official duties and receive travel expenses from the University in compliance with the applicable University and state laws, regulations or policies.

6. **Classified staff.** Classified staff may be required to attend post-season athletic events as part of their official duties. In the event they are required to attend such events, the University shall cover all travel expenses in compliance with the applicable University and the state laws, regulations and policies. Official duties may include attendance at the post-season game and all associated activities.

7. **Elected Officials.** The University President may invite an elected official(s) to make an appearance at post season bowl games and to participate in official bowl game activities. The University understands that state legislators and staff will be selected by their respective bodies and all travel will comply with any guidelines that may be provided by the Legislative Ethics Board. Where authorized, the University may pay travel and related expenses including but not limited to all costs associated with bringing a spouse or partner as part of the official delegation, airfare, other travel costs such as rental car or bus fare, lodging, subsistence and cost of admission to the game and all related events from the University in compliance with the applicable University and the state laws, regulations and policies.

   The Executive Ethics Board does not express an opinion about whether a legislator may accept the University's invitation to attend a post season bowl game or related activities.

8. **Space Available Travel.** There are instances where flights are chartered to provide travel to the site of a bowl game. There are instances where such flights

do not fill based on the University's official delegation, team, band, cheer staff and ICA staff. In the event that the number of individuals traveling in their official capacity on flights chartered for a post-season bowl game attendance exceeds 50% of the available seats and there is evidence that the University was unable to fill the remaining seats due to budget restrictions, or conference rules, the Athletic Director may authorize the use of the unfilled spaces for family members of University employees or officers. Such space available travel shall constitute a de-minimis use of state resources.

9. **Souvenirs and Team Gifts.** In accordance with RCW 41.60.150, the University may award team gifts and other commemorative items from a post-season bowl game to University officers or employees. Under RCW 41.60.150, recognition awards are limited to $200.00. Under RCW 41.60.160, the University President is not eligible for recognition awards. The recognition award limit does not apply to apparel items provided to 1) Intercollegiate Athletics staff as part of their official appearance at the bowl game or related venues or 2) members of the official delegation which are required to be worn as part of their appearance at an official bowl game function or related venues.