BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: RICHARD G. NEUHEISEL, JR., Respondent.	No. 03-145 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Rick Neuheisel, through his attorney, Robert Sulkin and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Brian R. Malarky, Executive Director. The following stipulated facts, conclusions, 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.

Section 1: PROCEDURAL FACTS

1.1. On December 11, 2003, the Executive Ethics Board initiated an investigation based on information alleging that in March 2001 and on other occasions, former University Head Football Coach Rick Neuheisel accepted free transportation for himself and his family members to attend various University and private functions. University supporter, Wayne Gittinger, provided the transportation on his private jet. Mr. Gittinger is a partner at a Seattle-based law firm. He and two members of the Nordstrom family own the private jet.

1.2. The Board is authorized under RCW 34.05.060 to 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.

1.3. Rick Neuheisel understands that if Board staff proves any or all of the alleged violations 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).

1.4. Rick Neuheisel recognizes that the evidence available to the Board staff is such that the Board could conclude that his acceptance of free transportation for himself and his wife violated the Ethics in Public Service Act. The Board recognizes that Mr. Neuheisel asserts a defense under RCW 42.52.010(10) and that he denies any wrongdoing of any kind. 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 set forth below.

1.5. Rick Neuheisel waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides 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.

1.6. If the Board accepts this stipulation, the Board will release and discharge Mr. Neuheisel from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint in this matter, subject to payment of the full amount of, any costs imposed, and compliance with all other terms and conditions of the agreed order. Mr. Neuheisel 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 and agreed order.

1.7. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Mr. Neuheisel and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

1.8. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.9. If the Board rejects this stipulation, or if Mr. Neuheisel does not accept the Board's proposed modification(s), if any, Mr. Neuheisel waives any objection to participation at any subsequent hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2), except James M. Vaché, who has recused himself. Further, Mr. Neuheisel understands and agrees that this proposed stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

Section 2: FINDINGS OF FACT

2.1. At all times material hereto, the University of Washington Athletic Department (ICA) employed Mr. Neuheisel as the Head Football Coach for the University. Mr. Neuheisel's University employment began in January 1999. The University discontinued Mr. Neuheisel's employment in July 2003.

2.2. Mr. Neuheisel's University employment contract provides compensation in the form of spousal travel and an annual travel budget. Paragraph 4(i) of the contract's compensation and benefits section provides, in part, that:

> Travel expenses will be provided for Employee's spouse for all away football games, all post-season events in which the University's football team participates, and two additional business-related trips each fiscal year. ...

2.3. Paragraph 2(f) of Mr. Neuheisel's employment contract, as amended in August 2002, provides that:

> Employee shall, in partnership with the Director, be directly involved in fundraising activities that, as determined by the Director, account for the receipt by the Department of Intercollegiate Athletics of donations totaling a minimum $500,000 per year.

2.4. Wayne Gittinger is a partner in the firm Lane, Powell, Spears, Lubersky in Seattle. Mr. Gittinger and his wife Anne have been substantial supporters of, and financial contributors to, the University of Washington and the ICA for many years. In addition to providing financial support to the University, Mr. Gittinger serves on several University of Washington Law School and ICA-associated boards and commissions, including the Intercollegiate Athletics Camp Committee; Co-Chair, Campaign 2000 – ICA Committee; Vice-Chair, Tyee Board of Advisors; and the Don James Center Board of Advisors. In addition, Mr. Gittinger has served on several University advisory groups, including executive committees that advised the University President in hiring the Athletic Director and the Athletic Director in hiring the Head Football Coach.

2.5. Mr. Gittinger and two members of the Nordstrom family are partners in a private corporation, JBW Aircraft Leasing Company Inc. (JBW). JBW owns a Canadair CL-600-2B16 twin-engine turbo jet aircraft. The aircraft seats ten passengers and two crewmembers. In addition to using JBW's jet for personal travel, JBW leases the jet to the Nordstrom Flight Department for use in travel related to Nordstrom business. In 2003, Nordstrom leased the jet from JBW at a fair market rate of $2,700.00 per hour plus fuel and aircrew costs.

2.6. There appear to be no current contracts or other business agreements between the ICA and Nordstrom or JBW.

2.7. Mr. Neuheisel met Mr. Gittinger briefly on one occasion prior to Mr. Neuheisel's University employment. While considering the University Head Football Coach position and soon after accepting the position, Mr. Neuheisel met with the Gittingers on several occasions while looking for housing in the Seattle area. At around the same time, the Gittingers also met and became friends of the ICA's Director of Football Operations, Jerry Nevin and his spouse. Over the next several months, the Neuheisels, Gittingers, and Nevins developed a close personal friendship, which included extensive private socializing. From 1999 through 2003, the relationship included mutual exchanges of gifts on ceremonial occasions; private meals, social events, overnight stays at each other's homes, and taking trips or vacationing together. On numerous occasions, Ms. Neuheisel, Ms. Gittinger, or Ms. Nevin would meet socially, attend social events together, or attend their children's plays without their spouses. On several occasions, the Gittingers met and socialized with Mr. Neuheisel's parents.

2.8. On at least three occasions, Mr. Neuheisel invited Mr. Gittinger and Mr. Nevin to make up his foursome at an annual golf event held at the Pebble Beach Golf Course in Carmel, California. While Pebble Beach is a public course, attendance at the event was by invitation of a Pacfic-10 Conference Head Coach only. All green fees and accommodations were the responsibility of each invitee. On each of these occasions, the three couples would fly to Carmel on the JBW jet. On at least one occasion, Mr. Neuheisel, Mr. Nevin, and Mr. Gittinger flew on the JBW jet to a golf event near Pittsburgh, Pennsylvania.

2.9. On several occasions between March 2000 and March 2003, Mr. Neuheisel and his spouse traveled with the Gittingers on the JBW jet to a University-sponsored event in Palm

Springs, California called Dog Days in the Desert (Dog Days). The scheduled events included fundraising dinners that benefited the University, including the ICA. While not incorporated into his ICA contract until August 2002, Mr. Neuheisel's official duties included fundraising activity. The Neuheisels' travel to Dog Days met one of the two additional business-related trips in his ICA employment contract.

2.10. Mr. Neuheisel denies any wrongdoing in connection with travel on the JBW jet, and contends that the circumstances surrounding the travel meet the relevant exemption at 42.52.010(10)(a) for gifts made by friends and family.

2.11. Other than travel related to away games or post season games, Ms. Neuheisel's only official travel was the annual Dog Days event. While Ms. Neuheisel occasionally traveled with her spouse on the JBW jet, including yearly trips to the Dog Days events, she never traveled to any other official University-sponsored events on the JBW jet. In addition, the Neuheisel children have never traveled on the JBW jet.

2.12. The Board staff investigation revealed that an informal practice of using privately owned aircraft for travel related to official University or ICA related business was pervasive in the ICA. While Mr. Gittinger invited other ICA staff members to travel on the JBW jet, he only provided free travel for senior ICA staff involved in the football program or development activity. Current University and state travel regulations do not provide for spousal travel unless explicitly provided as compensation under existing employment contracts or agency policy. The University has proposed a policy providing for the University's acceptance and use of donated travel on privately owned aircraft for Board review. This policy was not in effect during all times relevant to the complaint.

2.13. University records indicate that Mr. Neuheisel attended a 1.5 hour ethics training in July 1999. The training included a brief discussion of gifts. At the training, all participants received a listing of permissible gifts under RCW 42.52.150. Mr. Neuheisel does not remember attending the ethics training but does remember diversity training provided by the same instructor that week.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Rick Neuheisel and over the subject matter of this complaint.

3.2. 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.

3.4. The Ethics Act prohibits receipt of any item with a value greater than $50, even if the gift would not be reasonably expected to influence state officers and employees, except for certain specified items. RCW 42.52.150(1) states:

> No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, as defined in RCW 42.52.010, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW 42.52.010. The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

3.5. If Rick Neuheisel accepted free personal or official travel for himself or family members on the JBW jet, then he may have accepted gifts in violation of RCW 42.52.150(1). The established fair market value of travel on the JBW jet is at least $270.00 per hour

($2,700.00/10 seats) and based on Findings or Fact 2.10 through 2.13, Mr. Neuheisel accepted at least seven free trips on the JBW jet.

3.6. RCW 42.52.010(10)(a) provides in relevant part an exemption pertinent in this matter. Specifically, RCW 42.52.010(10)(a) provides that a "Gift" does not include

> Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee.

Section 4: AGREED ORDER

4.1. Mr. Neuheisel denies any wrongdoing and specifically asserts that the exemption for gifts from friends and family at RCW 42.52.010(10)(a) applies in this matter, but acknowledges that the Board could conclude that Mr. Neuheisel's acceptance of free transportation violated RCW 42.52.150(1).

4.2. To avoid further litigation and bring resolution to this matter, Mr. Neuheisel agrees to pay one thousand dollars as reimbursement for reasonable expenses related to this matter. ($1,000). The payments described above are payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order.

CERTIFICATION

I, Rick Neuheisel, hereby certify that I have read this Stipulation and Agreed Order in its entirety. I knowingly and voluntarily waive my right to a hearing in this matter; and I fully understand and voluntary agree to this Stipulation.

_____

Rick Neuheisel Date
Respondent

_____

Robert Sulkin Date
Attorney for Respondent

Stipulated to and presented by:

27 Aug 04

Brian R. Malarky Date
Executive Director

CERTIFICATION

I, Rick Neuheisel, hereby certify that I have read this Stipulation and Agreed Order in its entirety. I knowingly and voluntarily waive my right to a hearing in this matter; and I fully understand and voluntary agree to this Stipulation.

8/30/04

Rick Neuheisel Date
Respondent

8/30/04

Robert Sulkin Date
Attorney for Respondent

Stipulated to and presented by:

27 Aug 04

Brian R. Malarky Date
Executive Director

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;

__X__ MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):

4.2 $5,000 civil penalty; no investigative costs

DATED this 10th day of September 2004.

Marilee Scarbrough, Chair

Paul Zellinsky, Vice Chair

Trish Akana, Member

Evelyn Yenson, Member

*I, Rick Neuheisel, accept/do not accept (circle one) the proposed modification(s).

Rick Neuheisel, Respondent Date

Robert Sulkin Date

Attorney for Respondent