BEFORE THE WASHINGTON STATE EXECUTIVE ETHICS BOARD

In the Matter of: Jorge Gilbert, Respondent.	Docket No. 2010-EEB-0002 Complaint No. 09-054 FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

I. PROCEDURAL HISTORY

1.1 This case was commenced by a complaint issued by the Board on September 11, 2009, after receipt of a referral from the Office of the State Auditor (Auditor) alleging that Jorge Gilbert, then an employee with the Evergreen State College (TESC), may have misappropriated public funds, entered into contracts on behalf of TESC with a company owned by his family members, received financial gain from his position with the college and used state resources to benefit himself and his family members.

1.2 On July 10, 2010, the Board found reasonable cause to believe that a violation of Chapter 42.52 RCW occurred. A hearing was scheduled, with an Administrative Law Judge (ALJ) presiding pursuant to RCW 42.52.500.

1.3 On March 11, 2011, after due and proper notice, a hearing was held in the above-entitled matter before the Executive Ethics Board (Board). The case had been set for hearing pursuant to a telephonic prehearing conference held on December 28, 2010 in which all parties participated. An additional status conference was held by telephone on February

17, 2011, but Mr. Gilbert did not appear. No orders were issued as a result of that status conference.

1.4 Prior to the hearing, Mr. Gilbert sent a letter to the Administrative Law Judge dated February 28, 2011, and received by the Office of Administrative Hearings on March 4, 2011, requesting a continuance on the basis of health issues, the same reason he gave when he previously requested a continuance of the December 28, 2010 prehearing conference. On March 4, 2011, the Administrative Law Judge wrote a letter to Mr. Gilbert, advising him that the request for continuance was received too close to the hearing date to address it in advance of the hearing, but provided Mr. Gilbert with a toll free telephone number and WebEx passcode by which he could call to participate in the hearing. The letter further advised Mr. Gilbert that a failure to participate in any stage of the proceedings may result in a default order being entered against him.

1.5 The hearing was held at the Board offices at Capital Court in Olympia Washington on March 11, 2011, convening at 9 AM. Administrative Law Judge Thomas Rack from the Office of Administrative Hearings conducted the proceedings, and Board members Chair Michael Connelly, Vice Chair Matthew Williams, III, members Neil Gorrell, and Linnaea Jablonski were present. Also present was Mary M. Tennyson, Senior Assistant Attorney General, legal advisor to the Board.

1.6 Board Staff was represented by Jennifer Elias, Assistant Attorney General, and the Board's Executive Director Melanie DeLeon. Other Board staff was also present. Respondent did not appear in person, and no one representing the respondent appeared.

1.7 The Administrative Law Judge timely convened the proceedings, and activated the telephone line. The Board waited for a period of seventeen minutes, but Mr. Gilbert did not call in or have a representative call in. The Administrative Law Judge found Mr. Gilbert to be in default for his failure to appear, by telephone or in person, and closed the phone line.

1.8 The Board staff presented Exhibits 1 through 11, which were admitted into evidence. The Board was provided copies of documents which were admitted as exhibits:

1. Executive Ethics Board Complaint No. 2009-0854, received September 18, 2009 (14 pages);
2. Secretary of State Information for The Field School to Chile, dated June 8, 2010 (3 pages);
3. Superior Court Case Summary, Case No. 00-3-00562-9, retrieved from Washington Courts website on June 8, 2010 (8 pages);
4. March 12, 2010 letter from Jorge Gilbert to Melanie deLeon (7 pages);
5. DISAL information from the internet, translated by Google (18 pages);
6. March 23, 2010 letter from Chief Ed Sorger with attachments (6 pages);
7. Special Investigation Audit Report with Attachments, dated November 10, 2008 (141 pages);
8. Information regarding the Sports Club Officials of the Comptroller General, printed on June 14, 2010 (9 pages);
9. Email from Lorrie Moore to Melanie deLeon, June 14, 2010 (1 page);
10. Letter from Brent Normoyle, dated June 14, 2009, with attachments (31 pages);
11. Settlement Agreement between Jorge Gilbert and The Evergreen State College, dated November 16, 2009 (5 pages).

1.9 The proceedings were recorded and open to the public.

1.10 The Board heard the testimony of Ed Sorger, who testified by telephone; Maryam Jacobs; and Melanie deLeon.

1.11 On March 14, 2011, Administrative Law Judge Thomas Rack issued an Initial Order of Default (Failure to Appear at Proceeding), which was served on Mr. Gilbert at the last address he had provided to the Office of Administrative Hearings. The Initial Order notified Mr. Gilbert of the ability to request the default order be vacated within seven days of the date of mailing of the default order. Mr. Gilbert did not move to vacate the Default, or otherwise contact the Board to request the default be vacated.

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

II. FINDINGS OF FACT

2.1 The Executive Ethics Board (Board) received a referral from the Office of the State Auditor (Auditor) alleging that Jorge Gilbert, then an employee with the Evergreen State College (TESC), may have misappropriated public funds, entered into contracts on behalf of

TESC with a company owned by his family members, received financial gain from his position with the college and used state resources to benefit himself and his family members. The Board reviewed the referral and issued a complaint on September 11, 2009. Board staff conducted an investigation, including soliciting information and a response from Mr. Gilbert.

2.2 Jorge Gilbert was a faculty member at the Evergreen State College between 1988 and December 2009. As an instructor, he offered courses related to South American history, politics, economics and his programs offered a trip to Chile in the spring.

2.3 Mr. Gilbert initiated the "Field School to Chile" program in 1995. In December, 1997, Mr. Gilbert incorporated a non-profit organization with the Washington Secretary of State's office, UBI 601839609, using his then wife, Renee Bourbeau, as the name of the agent and his home address as the business' address. The registration for this organization expired on December 12, 2008 and it was dissolved on April 1, 2009. (Ex. 2). Thurston County Superior Court documents indicate that Mr. Gilbert and Ms. Bourbeau obtained a dissolution of marriage under Thurston County Docket # 00-03-00562-9 on April 24, 2002. (Ex. 3).

2.4 For the times pertinent to this investigation, Mr. Gilbert took trips to Chile that were associated with his studies abroad program, and took ten (10) students in 2005, eleven (11) students in 2006, and fifteen (15) students in 2008. Although there was no trip in 2007 that was sanctioned by TESC, Mr. Gilbert traveled in Chile with five (5) students in 2007. Mr. Gilbert admits that these numbers of students participated in each of these years (Ex. 4 page 2) and also that 5 students participated in the "informal" trip in 2007. Therefore, the Board finds that at the number of students participated in each of the years as shown above.

2.5 Mr. Gilbert used a company called "DISAL" to assist him with travel and lodging arrangements in Chile for his Field School to Chile program. According to Mr. Gilbert, he selected DISAL based upon the health and safety of his students, the exclusiveness of the resort (no other guests occupied it at the time his students were there) and the presence

of security guards. (Ex. 4, p. 2). Mr. Gilbert stated that other considerations were that the resort also included prohibitions regarding the use of drugs and alcohol by students and worked with student dietary requirements, including vegetarian diets that are not common in Chile. (Ex. 4, p. 2).

2.6 Information gathered from the DISAL website and other on-line sites indicate that DISAL is primarily dedicated to the rental and sale of portable chemical toilets, has a home office in Santiago, Chile and 25 branches throughout Chile as well as subsidiaries in Peru and Paraguay. There is no indication that this company provides concierge travel arrangements or any type of lodging arrangements for groups or other tourists. (Exs. 5, 6). DISAL company literature states that the company began in 1969 when Joseph Dieguez Martinez started the business with the removal of waste from companies and supermarkets with the aim of using the edible waste to feed pigs. DISAL grew rapidly between 1987 and 1989 to become an important player in the solid waste removal market. In 1981, brothers Raul and Victor Dieguez Martinez joined the company and began evaluating the idea of renting portable toilets in Chile. In 1991 the company consolidated with the incorporation of partners Carmen Dieguez and Sebastian Gilbert Ceballos. Sebastian Gilbert Ceballos is Jorge Gilbert's brother. Sebastian Gilbert Ceballos is married to Maria Cristina Dieguez, sister to the Dieguez Martinez brothers. (Ex. 6).

2.7 Information regarding DISAL indicates that Mr. Gilbert's brother, Sebastian Gilbert Ceballos, is a Director within DISAL. Mr. Gilbert stated that while his brother works in the company, he did not consult with him regarding financial matters related to his students. However, Mr. Gilbert did work directly with his sister-in-law, who actually signed the 2008 contract between Mr. Gilbert and DISAL (Ex. 6. pp. 5-6).

2.8 On April 4, 2008 Maria Cristina Dieguez, Program Coordinator for DISAL, and Jorge Gilbert signed a "Memorandum of Agreement between Jorge Gilbert and "DISAL-Chile" delineating that DISAL agreed to operate the educational program know as "Field

School to Chile 2008" in Santiago, Chile. This agreement stated that Jorge Gilbert would provide the academic portion of the program and DISAL was responsible for making all of the in-country transportation arrangements, providing room and board for students and faculty for the period of April 5 – May 5, 2008. (Ex. 6, pp. 5-6).

2.9 For the services rendered per this 2008 agreement, Jorge Gilbert would pay DISAL $31,500 (US), which included room and board for 15 students for 30 days, classrooms and taxes required by Chile; the total cost would be $70 per student per day. Although the dates of the trip were April 5 to May 5, and the contract calls for Mr. Gilbert to pay DISAL upon receipt of the list of students, bank records for the "Chile Relief" checking account (Ex. 7, p. 72) show the payment to DISAL was made on May 13, 2008, after the trip had ended, and after Mr. Gilbert was made aware that TESC was investigating the propriety of his actions regarding the trips, after students found that their airline tickets had not been purchased, and the college advanced funds to purchase the tickets.

2.10 Mr. Gilbert directed the students to pay him directly for the cost of the trip, which was $3,150 for the 2008 trip, including the cost of the plane ticket. Mr. Gilbert made it clear to the students that they should make their deposits to a West Coast Bank account he had set up, and not to the college. (Ex. 7, p. 124, p. 126). For students making their own flight arrangements, the cost of the trip was $2,150. Mr. Gilbert purchased tickets for the students from a travel agent of his choosing.

2.11 While in Santiago, Chile, the students stayed at the Sports Club Officials of the Comptroller General, a resort apparently owned through an association of employees of the Chilean government.

2.12 Mr. Gilbert received $11,950 via a petty cash voucher from TESC for program and student expenses for the Field School in Chile program in 2005 (Ex.7, p. 107); $10,928 in 2006 (Ex. 7, p. 106); and $13,150 in 2008 (Ex. 7, p. 105). These funds were to pay his personal travel expenses and provide him with per diem and lodging while he was abroad for

the 30-day program. According to TESC, instructors who receive funds for lodging must provide receipts along with their travel voucher. Mr. Gilbert did not provide itemized receipts for his personal lodging and expenses to validate the expenditure of funds.

2.13 According to TESC Academic Financial Support Services Manager, the college collects funds from the students who will be traveling abroad. These funds are deposited at the Evergreen Cashier's office and are monitored through the college's finance system. The faculty initiates an agreement with a vendor abroad and the agreement is written up and sent to the vendor for signature. The agreement is supposed to be returned to Evergreen where, prior to the 2009-2010 academic year it was signed by the Vice President for Finance and Administration. Then payment is made according to the terms of the agreement; most often the payment was made via wire transfer into the vendor's foreign bank account. (Ex. 9).

2.14 Mr. Gilbert did not prepare written agreements with a foreign vendor for signature by the Vice President for Finance and Administration for the 2005 through 2008 school years. The only written agreement that Mr. Gilbert provided to the Board as evidence of such agreement was an unsigned copy of an agreement covering the "Field School to Chile" in 1999, and does not apply to the years in question. (Ex. 4, pp. 5-7) Mr. Gilbert did personally sign an agreement with DISAL for the 2008 trip (Ex. 6, pp. 5-6) but it was not in a form approved by the college, did not purport to be an agreement between the college and an appropriate vendor, and was not signed by any college official.

2.15 In years prior to the years in question (2005 through 2008), TESC had allowed the students to pay the vendor directly because sometimes the charges varied depending on what the students were doing once they arrived in the foreign country. For example, some may have had home-stay arrangements and some may not, and the charge for home-stays could vary. Occasionally the faculty would use a tour company to facilitate the travel and the students would pay the tour company directly. When questioned in 2008, Mr. Gilbert

informed Ken Tabbutt, Academic Dean for international travel, that the students would be paying the vendor directly for the services provided. In reality, the students paid Mr. Gilbert directly, not the vendor.

2.16 On November 13, 2008, TESC commenced a special audit of the academic travel programs of Jorge Gilbert because: 1) Mr. Gilbert did not follow the college's cash handling policies; 2) Mr. Gilbert used a travel agency, unbeknownst to the college, to purchase the students' tickets, but the agency did not buy the tickets, instead the funds were lost when the agency went bankrupt; and 3) Mr. Gilbert would not provide documents and financial records requested by an Academic Dean.

2.17 The audit concluded that it appeared that Mr. Gilbert had overcharged students for the study abroad program, and that he personally profited from this overcharging in the amount of $50,000, and violated the college policies in numerous ways.

2.18 The college audit further documented that Mr. Gilbert had students deposit travel funds into his personal bank account. College policies allowed students to deposit funds into third party accounts, but not an instructor's personal account. Mr. Gilbert did not provide an itemized listing of travel expenses after repeated requests by the college. Instead, he produced a one-page invoice from DISAL that listed all costs at a macro-level. (Ex. 7, pages 108-115). A review of the files in the Academic Budgeting office indicated that Mr. Gilbert used DISAL for all of his trips to Chile. No contracts were found between the college and DISAL and each year, Mr. Gilbert always submitted a one-page macro-level invoice from DISAL. Mr. Gilbert did not provide TESC with all of the student waivers required for overseas travel. The Financial Manager of Academic Budget was not aware that Mr. Gilbert's family was involved in the management and leadership of DISAL, the company he used to coordinate all of the student's in-county travel, room and board while in Chile.

2.19 An audit of Mr. Gilbert's personal financial records revealed four accounts:

a) Field School to Chile account. This account was used to deposit student funds received from Evergreen students and was held at West Coast Bank. The account was opened 9/24/04 and Jorge Gilbert was the sole signatory on the account. The account was registered as tax-exempt. A review of the account records shows that payments from students were deposited directly into this account in 2005, 2006, 2007 and 2008 (Ex. 7, pp. 60-66).

b) Chile Relief Account. Mr. Gilbert was the acting Chilean Consul in Olympia. Mr. Gilbert was the only signatory for the account. It was opened 6/14/02 and registered as an "unincorporated" business account. A search of Washington businesses did not reveal any business matching this description. (Ex. 7, pp. 52-59). This account consisted of deposits of checks written to the "Chile Consulate" and cash. Withdrawals from this account exactly matched deposits into Mr. Gilbert's personal savings and checking accounts. The auditor could not find any evidence that any of these funds were being sent to the Chilean government or any other outside party. (Ex. 7, pp. 67-73).

c) Personal checking.

d) Personal savings. The audit of this account revealed many large deposits and withdrawals. For example, on 4/19/05 there was an $85,000 withdrawal to DISAL. On 5/24/05 there was a $90,000 withdrawal to an investment account. On 12/5/05, Mr. Gilbert withdrew $100,000 to purchase a certificate of deposit. On 5/22/06, Mr. Gilbert transferred $50,000 to an investment account. On 5/22/07, he withdrew $8,500 to send to DISAL. As of the date of this withdrawal, the 2007 trip had not been approved by the college. The last entry on the account at the time it was audited showed a balance of $142,873.72 as of 9/17/08. (Ex. 7, pp. 84-88).

2.20 A review of three trips to Chile through the academic program revealed that at least prior to the 2008 trip Mr. Gilbert had been told by the Dean's office and Academic Budgeting office that he could not collect fees directly from students; that all funds had to be deposited to the College. (Ex. 7. P. 38, p. 49). Following these exchanges, in March, 2008, Mr. Gilbert paid $1200 to the college for all of the deposits he had collected from the students ($150 per student). (Ex. 7, p. 102). While Mr. Gilbert indicated that he was not collecting monies from the students directly, and that they were instructed to deposit the funds into a "DISAL" account, the evidence indicates that the "DISAL" account was really the Field School to Chile account managed solely by Mr. Gilbert. Mr. Gilbert made a payment to

DISAL in 2008 for the amount of $31,500 ($70 per student (15 students) per day x 30 days). (Ex. 7, p. 72).

2.21 No contract was found to be in place between DISAL and Evergreen prior to the trips being taken, in violation of college policy. In 2008, after the trip was over, Mr. Gilbert submitted a contract that he had signed, (Ex. 6, pp. 5-6; Ex. 7, pp. 103-104) although he was not authorized to enter into such an agreement on behalf of the college. The agreement had not been signed or reviewed by the Academic Dean's office, the Provost's office, the Academic Budget office, or the Vice President of Finance as required.

2.22 An audit of the financial records for the 2006 trip to Chile indicated that Mr. Gilbert received a total of $42,193.00 from the students and TESC, but there was only one payment made to DISAL in the amount of $3,863.00. Other itemized expenses for this trip totaled $15,476.97, leaving $26, 716.03 unaccounted for. (Ex. 7, p. 18, p. 98).

2.23 An audit of the financial records for the 2005 trip to Chile showed that Mr. Gilbert received $31,467.00 from the college and students for the trip. He made one payment to DISAL in the amount of $2,155.00. Other trip expenses totaled $9,066.15, leaving $20,245.85 unaccounted for. (Ex. 7, pp. 19-20, pp. 99-101, p. 107, p. 114).

2.24 On July 14, 2009, eleven Evergreen students who had participated in the 2008 Field School to Chile trip with Mr. Gilbert sent a letter through a private attorney to TESC President, Dr. Purce seeking reimbursement from TESC for losses they incurred as a result of this trip. These students sought a total refund of $22,816 for excessive daily charges and a partial tuition refund because they claimed that Mr. Gilbert had not delivered the academic content that was promised. (Ex. 10).

2.25 On or about November 12, 2009, TESC, the United Faculty of Washington State, the United Faculty of Evergreen and Jorge Gilbert entered into a settlement agreement and release to resolve all disputes and claims relating to Mr. Gilbert's employment as an Evergreen College faculty member. As a result of this agreement, Mr. Gilbert agreed to

resign and retire, effective December 15, 2009, receiving all salaries and benefits up to that point. Mr. Gilbert also reimbursed the college $23,579 for monies refunded by the college to the students who had participated in the 2008 Field School to Chile program. (Ex. 11).

2.26 The Evergreen State College reimbursed students for duplicate airline tickets purchased, or TESC directly paid for airline tickets for students in 2008, in the amount of $9,900.

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 RCW 42.52 with respect to employees in the executive branch of state government. The complaint was filed in accordance with RCW 42.52.410, the Board found reasonable cause pursuant to RCW 42.52.420, and the public hearing was conducted pursuant to RCW 42.52.430 and .500. All the required procedural notices have been provided.

3.2 The Ethics in Public Service Act, chapter 42.52 RCW, governs the conduct of state officers and employees. A state employee is restricted from having an interest or engaging in an activity or transaction where there is a conflict with the performance of official duties, is prohibited from assisting others in transactions with the state, and from being beneficially interested in contracts, purchases, or grants made by or under the supervision of the employee, in whole or in part, and from accepting any compensation or reward from any other person beneficially interested in the transaction.

RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

RCW 42.52.030 states:

(1) No state officer or state employee, except as provided in subsection (2) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

(2) No state officer or state employee may participate in a transaction involving the state in his or her official capacity with a person of which the officer or employee is an officer, agent, employee, or member, or in which the officer or employee owns a beneficial interest, except that an officer or employee of an institution of higher education or the Spokane intercollegiate research and technology institute may serve as an officer, agent, employee, or member, or on the board of directors, board of trustees, advisory board, or committee or review panel for any nonprofit institute, foundation, or fund-raising entity; and may serve as a member of an advisory board, committee, or review panel for a governmental or other nonprofit entity.

RCW 42.52.040(1) states:

(1) Except in the course of official duties or incident to official duties, no state officer or state employee may assist another person, directly or indirectly, whether or not for compensation, in a transaction involving the state:

In which the state officer or state employee has at any time participated; or

(b) If the transaction involving the state is or has been under the official responsibility of the state officer or state employee within a period of two years preceding such assistance.

RCW 42.52.120(1) states:

No state officer or state employee may receive any thing of economic value under any contract or grant outside of his or her official duties. The prohibition in this subsection does not apply where the state officer or state employee has complied with *RCW 42.52.030(2) or each of the following conditions are met:

(a)The contract or grant is bona fide and actually performed;

(b) The performance or administration of the contract or grant is not within the course of the officer's or employee's official duties, or is not under the officer's or employee's official supervision;

(c) The performance of the contract or grant is not prohibited by RCW 42.52.040 or by applicable laws or rules governing outside employment for the officer or employee;

(d) The contract or grant is neither performed for nor compensated by any person from whom such officer or employee would be prohibited by RCW 42.52.150(4) from receiving a gift;

(e) The contract or grant is not one expressly created or authorized by the officer or employee in his or her official capacity;

(f) The contract or grant would not require unauthorized disclosure of confidential information.

3.3 A state officer or employee is prohibited under RCW 42.52.070 from using his or her position to "secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons."

3.4 Jorge Gilbert violated the RCW 42.52.020 and RCW 42.52.030 when he directed the students he was supervising to make payments for international study programs to his personal bank accounts, or accounts under his control, and when he accepted payments from those students.

3.5 Jorge Gilbert violated RCW 42.52.020 when he ignored college procedures requiring obtaining waivers for all students travelling abroad, placing the students at risk.

3.6 Jorge Gilbert violated RCW 42.52.120 when he entered into contracts regarding the study abroad program offered through the Evergreen State College without the college's permission or knowledge.

3.7 Jorge Gilbert violated RCW 42.52.030 and .040 when he deposited student funds directly into his personal bank accounts contrary to college policy and benefitting him financially. Each of the violations regarding the receipt of student funds is a separate and distinct violation of RCW 42.52.030.

3.8 Jorge Gilbert violated RCW 42.52.070 when he entered into contracts with companies owned or managed by family members, and did not comply with contracting requirements of TESC.

3.9 Taking into account the facts of this case and mindful of the purpose of the Ethics in Public Service Act as set out in RCW 42.52.900, the Board concludes that the undisputed facts in this case support the conclusion that the conduct of Mr. Gilbert violated RCW 42.52.020, .030, .040, .070, and .120.

3.10 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 any thing received or sought in violation of RCW 42.52, whichever is greater. The Board may also impose the cost of investigating the complaint, and order restitution of any damages sustained by the state to be paid by the respondent.

3.11 The Board concludes that Mr. Gilbert violated the conflict of interest provision of RCW 42.52.020 in at least four academic years, 2005, 2006, 2007 and 2008. RCW 42.52.020 prohibits state employees from engaging in transactions that conflict with their official duties. By directing the students to pay money into his personal bank account, Mr. Gilbert violated this provision of law. The Board may impose a fine of up to $5,000 per violation, for a total of $20,000 for these violations, if calculated on the basis of the number of years. In the alternative, if the penalty was based on the number of students from whom he collected payments in the years 2005 through 2008, it would be nearly $250,000. See paragraph 3.15 below for this alternative calculation.

3.12 The Board concludes that Mr. Gilbert violated the "special privileges provision of RCW 42.52.070 in at least three academic years, 2005, 2006 and 2008, when he arranged for DISAL, a company owned by his relatives, to provide services for the study abroad program that he arranged for the students. Mr. Gilbert did not arrange for TESC to contract with DISAL, but instead personally made the arrangements, and signed the 2008 agreements. Mr. Gilbert did not solicit competitive bids for the services DISAL provided, and gave the students no choice but to use the service provider he contracted with. The Board may impose a fine of up to $5,000 per violation, for a total of $15,000 for these violations.

3.13 The Board concludes that Mr. Gilbert violated the "financial interest" provision of RCW 42.52.030 in at least four academic years, when he received funds that benefitted him personally, in excess of his wages and benefits due him by reason of his faculty position. The Board may impose a fine of up to $5,000 per violation, for a total of $20,000 for these violations.

3.14 The Board may also calculate the penalty by determining the excess money Mr. Gilbert received from students for the trips, over and above the actual cost of the trip. The Board may impose a penalty of up to three (3) times the amount of excess funds received by the person violating the Ethics laws. Using conservative figures (the actual amount received by Mr. Gilbert is almost certainly larger than that which can be unequivocally established) these amounts are found to be: in 2008, $3,317.84; in 2007; $4,559.77; in 2006, $26,716.03, and in 2005, $20,245.85, for a total of $54,839.49. Three times this amount would be $164,518.47, plus restitution to The Evergreen State College in the amount of $9,900.

3.15 The Board also considered the option of imposing a penalty based on the number of students who traveled in each year as a separate violation of the conflict of interest prohibition in the laws, and imposing the maximum penalty of $5,000 per violation for these violations. Based on 41 students who traveled [ten (10) students in 2005, eleven (11) students

in 2006, and fifteen (15) students in 2008], this penalty alone adds up to $205,000. In addition, the Board can impose the $5,000 fine for each of the three violations of the "special privileges" law as outlined in paragraph 3.12 ($15,000 total) and the four violations of the financial interest provisions ($20,000 total) for a grand total of $240,000 plus restitution in the amount of $9,900.

3.16 Based on the totality of the facts in the record, and utilizing RCW 42.52.480 and WAC 292-120-030 as a guide, the Board finds that an appropriate monetary penalty for all violations is $119,578.98. This penalty equates to two (2) times the excess money received as provided in paragraph 3.14, plus restitution in the amount of $9,900.00 to The Evergreen State College.

IV. ORDER

4.1 The Initial Order of Default dated March 14, 2011 is hereby adopted by the Board, and incorporated into this Final Order by this Reference. Jorge Gilbert is in default for failure to appear at the March 11, 2011 hearing.

4.2 Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered that Jorge Gilbert violated the Ethics law as outlined above in paragraphs 3.3 through 3.13 above. Mr. Gilbert is assessed a monetary civil penalty in the amount of $109,678.98, and restitution in the amount of $9,900. Total payment of $119,578.98 is due within 180 days of the date of this order.

DATED this 19th day of May, 2011.

Mike Connelly, Chair

Matthew Williams III, Vice Chair

Neil Gorrell, Member

Linnaea Jablonski, Member

in 2006, and fifteen (15) students in 2008], this penalty alone adds up to $205,000. In addition, the Board can impose the $5,000 fine for each of the three violations of the "special privileges" law as outlined in paragraph 3.12 ($15,000 total) and the four violations of the financial interest provisions ($20,000 total) for a grand total of $240,000 plus restitution in the amount of $9,900.

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DATED this 18th day of May, 2011.

M. Williams III

Mike Connelly, Chair

Matthew Williams III, Vice Chair

Neil Gorrell, Member

Linnaea Jablonski, Member

in 2006, and fifteen (15) students in 2008], this penalty alone adds up to $205,000. In addition, the Board can impose the $5,000 fine for each of the three violations of the "special privileges" law as outlined in paragraph 3.12 ($15,000 total) and the four violations of the financial interest provisions ($20,000 total) for a grand total of $240,000 plus restitution in the amount of $9,900.

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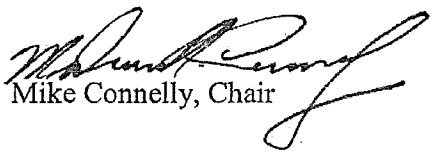
4.2 Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered that Jorge Gilbert violated the Ethics law as outlined above in paragraphs 3.3 through 3.13 above. Mr. Gilbert is assessed a monetary civil penalty in the amount of $109,678.98, and restitution in the amount of $9,900. Total payment of $119,578.98 is due within 180 days of the date of this order.

DATED this 23 day of May, 2011.



Mike Connelly, Chair

Matthew Williams III, Vice Chair

Neil Gorrell, Member

Linnaea Jablonski, Member

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 20 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)). 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.

Service is defined in RCW 34.05.010(19) as the date of mailing or personal service.

ENFORCEMENT OF FINAL ORDERS

If there is no timely request for review or reconsideration, this Initial Order becomes a Final Order. 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.