

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:
JOHN TREU, Chairman,
Board of Directors, West Virginia Academy

Complaint No. VCRB 2024-40

Conciliation Agreement

The West Virginia Ethics Commission and John Treu freely and voluntarily enter into the following Conciliation Agreement pursuant to W. Va. Code § 6B-2-4(t) to resolve all the potential charges arising from allegations of violations of the West Virginia Governmental Ethics Act based upon the facts set forth below.

Findings of Fact

1. John Treu ("Respondent") is the Chair of the Board of West Virginia Academy, Ltd., a West Virginia Non-Profit Corporation recognized as a 501(c)(3) public charity that was founded by Respondent and his wife in December of 2020 that obtained a charter to open West Virginia's first-ever public charter school beginning in August of 2022 ("WV Academy").
2. The WV Academy is a West Virginia Public Charter School organized pursuant to W. Va. Code § § 18-5G-1 through 18-5G-17.
3. The Ethics Commission's position, as more particularly stated in Advisory Opinion 2024-09, is that, as of the time that West Virginia Academy opened as a charter school, the Respondent was either a "public employee" or a "public official" as defined in the Ethics Act, at W. Va. Code § 6B-1-3(j) and (k). Respondent acted at all times pertinent hereto in a manner consistent with his good faith belief that the Ethics Act does not apply to charter schools because they are required by law to be private non-profit 501(c)(3) corporations under W. Va. Code § 18-5G-2(1)(A). Notwithstanding Respondent's objection to the Ethics Commission's position, Respondent is entering into this conciliatory agreement because Respondent is supportive of the institutional

compliance measures that align with the underlying motivations for the Ethics Act and because settling this matter provides greater certainty with respect to the obligations of charter school boards and employees going forward, including the board members and employees of WV Academy.

4. The Ethics Commission has jurisdiction over alleged violations of the West Virginia Ethics Act committed by employees or officials, such as Respondent. W. Va. Code §§ 6B-1-1 through 6B-3-11.

5. Respondent is a voting member and the chair of the Governing Board of WV Academy, which has direct authority to determine the Officers of WV Academy. The Officers of WV Academy have been delegated authority by the Board of WV Academy by virtue of its Bylaws to manage WV Academy funds and contracting for services, including the hiring of administrators, teachers, and staff, but the governing board remains responsible for the same pursuant to the charter law. W. Va. Code § 18-5G-7(e).

6. A complaint was filed with the Ethics Commission that asserted that Respondent engaged in multiple significant violations of the Ethics Act during the first and second year of WV Academy's charter school operations arising from governing board practices, changes to the WV Academy bylaws, and hiring practices for multiple employees. Some of these assertions resulted in the Ethics Commission opening an investigation into this matter, but the Ethics Commission's investigation revealed that substantially all of the allegations of wrongdoing in the complaint against Respondent were unsubstantiated.

7. Notwithstanding the foregoing, during its investigation of the allegations in the complaint related to hiring practices, the Ethics Commission discovered Respondent had engaged in a technical violation of the Ethics Act because the process Respondent followed to abstain from voting on employment matters related to Respondent's spouse did not follow all of the Ethics Act requirements for recusal, which Respondent admits. More specifically, during the November 17, 2022, Board of Directors meeting, another member of the Board proposed that Respondent's wife fulfill the position of Interim Executive Director at WV Academy and then during the November 16, 2023, Board of Directors meeting, another Board member made a motion to extend the Respondent's wife's term to the end of 2025. Although Respondent did not make or second the motions concerning his wife and Respondent also abstained from voting on either motion, which both passed unanimously, Respondent did not remove himself from the board meeting room during discussions of his wife's nomination and subsequent job extension, nor for the actual votes as required under the Ethics Act.

Relevant Legal Provisions

W. Va. Code § 6B-1-3(m) defines a relative as a "spouse, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law."

W. Va. Code § 6B-2-5(b)(1) states that a public official or public employee may not knowingly and intentionally use his or her office for his or her own private gain or that of another person.

W. Va. Code § 6B-2-5(b)(4) states that a public official or public employee may not show favoritism or grant patronage in the employment or working conditions of his

or her relative or a person with whom he or she resides: *Provided*, That as used in this subdivision, “employment or working conditions” shall only apply to government employment: *Provided, however*, That government employment includes only those governmental entities specified in subsection (a) of this section.

W. Va. Code § 6B-2-5(j) states, in relevant part, that:

(j) *Limitations on voting.* -- (1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(C) The employment or working conditions of the public official’s relative or person with whom the public official resides

(3) For a public official’s recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue. The recusal shall also be reflected in the meeting minutes.

W. Va. Code R. § 158-6-3 (2022) states:

3.1. [T]he term “nepotism” means favoritism shown or patronage granted in employment or working conditions by a public official or public employee to a relative or person with whom the public official or public employee resides.

3.2. [T]he term “relative” means spouse, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law.

3.3. [T]he term “supervise” or “supervision” means reviewing, auditing or evaluating work, or taking part in discussions or making recommendations concerning employment, assignments, compensation, bonuses, benefits, discipline, or related matters.

3.4. Nepotism constitutes improper use of office for private gain.

3.5. A public official or employee may not influence or attempt to influence the employment or working conditions of his or her relative or a person with whom he or she resides.

3.6. A public agency, including its officials and employees, must administer the employment and working conditions of a relative of a public employee or a public official or a person with whom the public official or employee resides in an impartial manner.

3.6.1. A public official or public employee may not participate in decisions affecting the employment and working conditions of his or her relative or a person with whom he or she resides unless required by law and an independent third party is involved in the process.

3.6.2. A public official or public employee may not directly supervise a relative or a person with whom he or she

resides. This prohibition does not extend to matters affecting a class of five or more similarly situated employees

3.7. A public official may not vote on matters affecting the employment or working conditions of a relative or person with whom the public official resides unless such relative or person is a member of a class of five or more similarly situated persons affected. For a public official's recusal to be effective, he or she must excuse himself or herself from participating in the discussion and decision-making process by physically removing himself or herself from the room during the period in which the matter is under consideration, fully disclosing his or her interests, and recusing himself or herself from voting on the issue.

Conciliation of Violation

I, the Respondent, John Treu, admit that I violated W. Va. Code §§ 6B-2-5(b)(4) and 6B-2-5(j) of the West Virginia Governmental Ethics Act when I did not remove myself from the board meeting room during the discussions of and votes on my wife's nomination for Executive Director of WV Academy and her subsequent job extension. I assert that I was unaware that the Ethics Act applies to the Board members of WV Charter Schools and so any of my actions were not intentionally violative of the Ethics Act. I acknowledge that the West Virginia Ethics Commission has now held, in Advisory Opinion 2024-09, which was issued based upon my request for guidance after the occurrence of all matters pertaining hereto, that public charter schools' governing boards are public corporations, and as such, I recognize that pursuant to such opinion a public charter school is deemed to be a political subdivision for purposes of the Ethics Act even though the charter law requires that all charter schools be incorporated as nonprofit corporations. Consequently, public charter school board members are deemed public

officials under the Ethics Act. Furthermore, the Ethics Commission found that the public charter school law does not exempt charter school board members or employees from the Ethics Act.

In order to resolve this matter, I am entering into this Conciliation Agreement. I understand that for this Agreement to be finalized, the Ethics Commission must approve it.

In consideration of the settlement of this matter, I agree to the Commission's imposition of the following sanctions:

1. To undergo training on the West Virginia Governmental Ethics Act, either in person, virtually, or by viewing the training provided on the Ethics Commission's website, at West Virginia Ethics Commission within 30 days of the entrance of the Order approving the Conciliation Agreement. I shall provide written confirmation of the completion of this training to the Ethics Commission within five business days of completing it.
2. A fine in the amount of \$50 to be paid to the West Virginia Ethics Commission within 30 days of the entrance of the Order approving the Conciliation Agreement.

I understand and agree that if the Ethics Commission fails to approve this Conciliation Agreement, then this Conciliation Agreement is null and void, as are any admissions, statements of fact, or concessions by either party hereunder, and the Complaint against me will proceed before the Probable Cause Review Board, where it will be processed in accordance with the West Virginia Code and the Ethics Commission's Legislative Rules.

If the Ethics Commission approves the Agreement, it will enter an Order in which it approves the Agreement and sets forth the sanctions listed above.

Both parties understand that, pursuant to W. Va. Code § 6B-2-4(t), this Conciliation Agreement and Commission Order must be made available to the public if it is approved.

December 5, 2024
Date _____
Robert J. Wolfe, Chairperson
West Virginia Ethics Commission

12/9/2024
Date _____
John Treu, Respondent

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

COMPLAINT NO. VCRB 2024-40

**JOHN TREU,
Chairman, Board of Directors
West Virginia Academy**

COMMISSION'S ORDER

After considering the Findings of Fact, Relevant Legal Provisions, and Conciliation of Violations in the Conciliation Agreement, the West Virginia Ethics Commission finds that the Conciliation Agreement is in the best interests of the State and John Treu, as required by W. Va. Code § 6B-2-4(t). In accordance with W. Va. Code § 6B-2-4(s), the Commission imposes the following sanctions:

1. Respondent shall undergo training on the West Virginia Governmental Ethics Act, either in person, virtually, or by viewing the training provided on the Ethics Commission's website, at ethics.wv.gov, within 30 days of the entrance of the Order approving the Conciliation Agreement and shall provide written confirmation of the completion of this training to the Ethics Commission within five business days of completing it.
2. Respondent shall pay a fine in the amount of \$50 to the West Virginia Ethics Commission within 30 days of the entrance of this Order.

Date: December 5, 2024



Robert J. Wolfe, Chairperson
West Virginia Ethics Commission