

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Sarah Scherer
Respondent.

No. 2017-049

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, SARAH SCHERER, 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 August 25, 2017, the Executive Ethics Board (Board) received a complaint referral from Seattle Central College (SCC) following their internal investigation regarding two Seattle Maritime Academy (SMA) employees. The complaint alleged that Ms. Scherer may have violated the Ethics in Public Service Act when, as Director of the Seattle Maritime Academy, she allowed Sean Baldeschwiler, (Mr. Baldeschwiler) Port Engineer for SMA, to store and dock his personal boat at SMA property on a regular basis.

2. The SMA's Ballard campus is a satellite campus of SCC. The campus houses a 24,000 square foot building located on Lake Washington Ship Canal. Students receive certification in Marine

Deck Technology and Marine Engineering Technology. Ms. Scherer has been the Director of SMA since February 2016.

3. SCC conducted an internal investigation, following an incident involving a small fire on the floating pier that is part of the SMA campus during the weekend of July 15-16, 2017.

4. On July 16, the Seattle Fire Department (SFD) was dispatched to SMA, following a report of smoke near the SMA pier. Upon arrival, SFD determined one of the support pilings on the pier had caught fire. SFD extinguished the fire and then cut and removed a 1-2 foot section from the top portion of the burned piling. SFD left the removed section of piling on the adjacent SMA dock.

5. The following day, Ms. Scherer observed the burned/removed section of piling on the dock and began making inquiries with staff. After further investigation and contact with SFD by Port Captain Erik Davis (Mr. Davis), they learned of the fire that had occurred on July 16.

6. SMA's campus is equipped with video surveillance, which was reviewed by school officials on August 3. The surveillance video from July 16 showed Mr. Baldeschwiler had entered the locked campus with two friends. They proceed to the pier/dock where his small boat (10-12ft) was located. One of Mr. Baldeschwiler's companions used the top of one of the pilings to extinguish a cigarette. Approximately twenty minutes after Mr. Baldeschwiler and his companions left the dock in his boat, heavy smoke could be seen coming from the piling. Mr. Baldeschwiler and his companions eventually returned to the pier in his boat. Ms. Scherer indicated that Mr. Baldeschwiler stopped and examined the burned piece of piling then left campus with his group walking in the same direction they originally came from.

7. During an interview with Board staff, Ms. Scherer acknowledged that she was aware that Mr. Baldeschwiler was using the SMA facility to store and launch his personal boat from SMA's dock. She agreed that by not clearly expressing to him that he should not be using the SMA facilities

for such purposes she had given him tacit approval. She was unsure exactly when he began using the dock, but believed it was several months prior to the fire.

8. Ms. Scherer said since SMA has a number of their own small boats, at first it took her some time to realize it was his personal boat. When she learned it was his, she did not instruct him to remove it. Ms. Scherer said the boat was small and did not seem to create problems. She said Mr. Baldeschwiler would use a trailer to bring the boat to SMA and then launch it from the dock. Ms. Scherer said she did not fully consider that it could be a potential ethics violation.

9. Ms. Scherer told Board staff that although she was aware he was using the dock for his boat she was not aware until shortly before the fire that he had been accessing the facility after hours and had been bringing his friends onto campus. When she learned of this, she expressly told him this was not allowed. Ms. Scherer said in hindsight she was looking at the situation more from a liability standpoint and should have considered potential ethics violations as well.

10. Ms. Scherer told Board staff that since the investigation she has reviewed SMA policies and state ethics laws.

11. For her actions, Ms. Scherer was given a letter of reprimand from SCC.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing special privileges or exemptions for themselves or other employees.

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 himself or herself, or his or her spouse, child, parents or other persons.

2. Based on the stipulated facts above, Ms. Scherer allowed a special privilege situation to her subordinate when she was aware that he was using state resources to dock his personal boat at the school and did not take action to stop it in violation of 42.52.070.

3. 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 it is an aggravating factor these types of violations significantly reduce the public respect and confidence in state employees. It is an aggravating factor that Ms. Scherer was in a supervisory position. It is a mitigating factor that Ms. Scherer received a letter of reprimand from Seattle Central College following the internal investigation.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Sarah Scherer 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. Sarah Scherer 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. Sarah Scherer further agrees that the evidence available to the Board is such that the Board may conclude she 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. Sarah Scherer 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).

7. If the Board accepts this stipulation, the Board agrees to release and discharge Sarah Scherer 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. Sarah Scherer 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 Sarah Scherer 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 Sarah Scherer 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 Sarah Scherer 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, Sarah Scherer 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, Sarah Scherer 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. Sarah Scherer agrees to pay a civil penalty of two thousand dollars (\$2,000) for the violations associated with RCW 42.52. The Board agrees to suspend one thousand dollars (\$1,000) on the condition that Sarah Scherer 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 non-suspended portion of the civil penalty 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.

II. CERTIFICATION

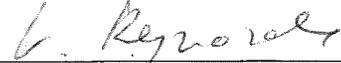
I, Sarah Scherer, hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without 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.



Sarah Scherer
Respondent

1/22/18
Date

Presented by:



Kate Reynolds
Executive Director

1/31/18
Date

