

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2018-015

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, [REDACTED], 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 10, 2017, the State Auditor's Office (SAO) received a whistleblower complaint alleging [REDACTED], the Director of Student Affairs & Leadership Involvement (DSA) at Green River College (GRC), used state resources for non-work related purposes.
2. On February 26, 2018, The Executive Ethics Board (Board) received an SAO referral alleging [REDACTED] may have violated the Ethics in Public Service Act by using state resources for private benefit or gain.
3. According to GRC, [REDACTED] was employed with GRC as the DSA the summer of 2014. She remained in that position until she resigned effective January 4, 2018. Her responsibilities

included supervising one full-time employee and student employees. [REDACTED] was responsible for planning and organizing various campus and student activities and coordinating with employees of other schools for large events and conferences.

4. According to the SAO, [REDACTED] was also a member of a non-profit organization, Cheer Seattle, a cheerleading group which, according to Marshall Sampson, VP of Human Resources & Legal Affairs at GRC, "The College has used Cheer Seattle for events on our campus but we do not have an affiliation agreement with them."

5. According to the SAO investigative report, during the period of August 10, 2016 through August 9, 2017, [REDACTED]'s internet history contained 3.6 hours of non-work related browsing of which 19 minutes related to her volunteer work for a non-profit organization. The SAO also found three documents related to the non-profit organization on [REDACTED]'s hard drive.

- One of the documents outlines the responsibilities of a committee to raise funds for Cheer Seattle to participate in the Gay Games. The document lists the committee member as of October 31, 2016 and includes [REDACTED].
- A second document related to Cheer Seattle contains a statement from the subject's health care provider to the Cheer Seattle Board of Directors. The memo was requested by [REDACTED]. [REDACTED]. The received date on the document is April 27, 2017.
- The third document related to Cheer Seattle is a proposal from the Novotel Paris, France. This proposal appears to be in response to [REDACTED] requesting rates for a group booking at the hotel. The response date on the document is Friday, March 17, 2017.

6. The SAO investigative report states that [REDACTED] acknowledged she used her state computer to do volunteer work for the non-profit organization. She said she often worked up to 12 hours

a day at the College and supervised activities outside of normal business hours, and as a result, would conduct some personal business during downtimes.

7. [REDACTED] told Board staff that she has been a member with Cheer Seattle since September 2016. She said the reason she was looking into booking accommodations for the Paris trip was because of her experience with traveling. She said she communicated with other members at Cheer Seattle by telephone or Facebook messaging.

8. The SAO report also found the following documents, unrelated to Cheer Seattle but were personal in nature: Eight PDF documents related to fashion trends from the Style Network;

- Two documents with sewing instructions downloaded from patternsforpirates.com;
- One credit card statement from Kohl's with a payment due date of November 4, 2017. [REDACTED] advised the SAO investigator that the Kohl's statement had been downloaded when she received a late payment notification via email while at work); and
- One document that appears to be the subject's resume targeted toward a career in event planning. (According to the SAO, [REDACTED] said the event planning resume was used for making professional contacts in connection with school activities.)

9. According to the SAO report, [REDACTED] said that the fashion and pattern documents were for student activities. The SAO report said that [REDACTED] acknowledged that three of the documents were connected to her activities with Cheer Seattle.

10. [REDACTED] said that because of her job she spent a lot of time on the internet shopping for items for school projects. She said the sewing paperwork was because members of her staff were into sewing and she was looking for projects for team building. [REDACTED] said that from February through May 2017 she was covering another director's duties while that director was on maternity leave, so she

was working two jobs during that time, which meant that she was working with an additional 20 students/employees on top of the 20 she already supervised.

11. The SAO report stated that they reviewed the internet browser history from August 11, 2016 to August 10, 2017. The bulk of the 216 minutes (3.6 hours), 158 minutes, occurred in a single day on August 9, 2017. Nineteen minutes of the internet use concerned [REDACTED] searching hotel bookings for Cheer Seattle.

12. Board staff reviewed the browsing history for [REDACTED] and confirmed that on August 9, 2017, from 12:10 pm until 12:28 pm [REDACTED] was searching among other websites, bookings at Novotel and booking.com.

13. According to the SAO, during her interview with the SAO, [REDACTED] acknowledged the use of the state computer to search hotel arrangements for members of Cheer Seattle. [REDACTED] stated that due to working outside of normal business hours and for long periods of time, she would sometimes conduct personal business during down times.

14. In a written response to Board staff, [REDACTED] said she believed her use of state computers was de minimis. It is the nature of the position to not only work regular business hours, but also nights and weekends. The time spent was quick in nature and never interfered with her duties. Part of her responsibilities was providing opportunities and instilling a value to volunteers in the community and beyond.

15. Board staff reviewed [REDACTED] emails from 2014 until her resignation and found three emails sent to her from Orbitz.com in regards to Paris Hotel Deals. Board staff checked for any emails from or to [REDACTED]'s personal email and only found one that appeared personal in nature and was regarding a medical appointment.

16. In a written response to Board staff from GRC, they stated that the college was unaware of the actions of [REDACTED] prior to the allegations brought by the SAO. The college agreed with the findings of the SAO's investigation. As they were unaware of the action by [REDACTED] prior to the SAO, no internal investigation was conducted. The resignation of [REDACTED] occurred prior to the conclusion of the investigation by the SAO. As such, the college took no disciplinary action.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from Use of persons, money or property for private gain. RCW 42.52.160 states:

No state officer or state employee may employ or use any person, money, or property under the officers or employees official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee or another.

WAC 292-110-010 Use of state resources, after April 2016, states, in part:

.....

(3) **Permitted personal use of state resources.** This subsection applies to any use of state resources not included in subsection (2) of this section.

(a) A state officer or employee's use of state resources is de minimis only if each of the following conditions are met:

- (i) There is little or no cost to the state;
- (ii) Any use is brief;
- (iii) Any use occurs infrequently;
- (iv) The use does not interfere with the performance of any state officer's or employee's official duties;
- (v) The use does not compromise the security or integrity of state property, information systems, or software;
- (vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and
- (vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

2. Based on the evidence reviewed [REDACTED] used state resources for her private benefit or gain in violation of RCW 42.52.160. [REDACTED] activities do not meet the exceptions for the use of state resources as permitted in WAC 292-110-010.

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 government employees and they were continuous in nature.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] 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. [REDACTED] 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. [REDACTED] 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. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or her 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 [REDACTED] 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. [REDACTED] 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 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, [REDACTED] 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, [REDACTED] 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. [REDACTED] agrees to pay a civil penalty in the amount of one-thousand five hundred dollars (\$1,500) associated with violations of RCW 42.52.

12. The civil penalty in the amount of one-thousand five hundred (\$1,500), 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, [REDACTED], 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.

[REDACTED]

Respondent

Date

Presented by:

K. Reynolds

KATE REYNOLDS
Executive Director

6/12/19

Date

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;
 MODIFIED. This stipulation will become the order of the Board if the Respondent approves* the following modification(s):

DATED this 12th day of July, 2019

Shirley Battan

Shirley Battan, Chair

Gerri Davis

Gerri Davis, Member

Lisa Marsh

Lisa Marsh, Member

Anna Dudek Ross / RB

Anna Dudek Ross, Member

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

 , Respondent Date