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**BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD**

In the matter of:

THERESE FERRERIA,

Respondent.

OAH NO. 01-2019-AGO-00032
EEB NO. 2018-008

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER ON BOARD
STAFF'S MOTION FOR SUMMARY
JUDGMENT

I. PROCEDURAL HISTORY

1.1 On April 10, 2017, the Department of Social and Health Services (DSHS) initiated an administrative investigation of Therese Ferreria (Ms. Ferreria), Title IV-E Training and Quality Assurance Manager. On September 12, 2017, an investigation report was issued by the Centralized Investigations Unit, DSHS Children's Administration.

1.2 On January 9, 2018, the Executive Ethics Board (Board) received a complaint alleging that Ms. Ferreria may have violated the Ethics in Public Service Act (Ethics Act) by receiving an "honorarium" for attending federally sponsored training in addition to receiving her normal salary by the state during her attendance at that training.

1.3 On August 27, 2018, the Board found reasonable cause to believe that a violation of RCW 42.52 was committed.

1.4 An evidentiary hearing in this matter is scheduled for January 9, 2020.

1 1.5 On October 10, 2019, Board Staff, through counsel, filed a Motion for Summary
2 Judgment (Motion), requesting that the Board find that Ms. Ferreria violated the Ethics Act,
3 RCW 42.52 and impose sanctions. The Motion was brought pursuant to WAC 10-08-135.

4 1.6 On October 24, 2019, Ms. Ferreria filed a response to the Motion, which Board
5 Staff, through counsel, replied to on November 1, 2019.

6 1.7 After due and proper notice, a hearing was held on the motion for summary
7 judgment. The hearing was held at the Board offices at Bristol Court in Olympia, Washington,
8 convening on November 8, 2019. Administrative Law Judge TJ Martin from the Office of
9 Administrative Hearings conducted the proceedings, and Board Chair Shirley Battan, and
10 members Lisa Marsh and Anna Dudek Ross were present. Also present was Assistant Attorney
11 General, Michelle A. Carr, legal advisor to the Board. The Board's Executive Director, Kate
12 Reynolds, and other Board Staff members were present.

13 1.8 Chad C. Standifer, Assistant Attorney General, represented Board Staff.

14 1.9 Ms. Ferreria represented herself.

15 1.10 Board Staff filed the following documents:

- 16 • Board Staff's Motion for Summary Judgment;
17 • Declaration of David Killeen in Support of Motion for Summary
18 • Board Staff's Reply to Response of Therese Ferreria in Opposition to
19 Board Staff's Motion for Summary Judgment.

20 1.11 Ms. Ferreria filed the following documents:

- 21 • Response of Therese Ferreria in Opposition to Board Staff's Motion for
22 Summary Judgment; and
23 • Declaration of Therese Ferreria in Opposition to Board Staff's Motion for
24 Summary Judgment, with attached Exhibits A-E.

24 1.12 The proceedings were recorded and open to the public.

25 1.13 The hearing was adjourned on November 8, 2019.

1 Based on the documents filed and evidence presented, the Board enters the following
2 Findings of Fact, Conclusions of Law, and Order on Board Staff's Motion for Summary
3 Judgment:

4 **II. FINDINGS OF FACT**

5 2.1 Ms. Ferreria is a former DSHS employee who began working for the agency in
6 1988. She was appointed to the position of Title IV-E Policy Training and Quality Assurance
7 Manager on July 16, 2001. Decl. of Killeen Ex. 4.

8 2.2 The Title IV-E Foster Care Program is managed by the United States Children's
9 Bureau (Children's Bureau) organized under the United States Department of Health and Human
10 Services Administration. Decl. of Killeen Ex. 5. Title IV-E Foster Care Program funds are
11 awarded to all 50 states, the District of Columbia, Puerto Rico, and federally recognized Indian
12 tribes to assist with costs of foster care maintenance programs, program management
13 administrative expenses, and training for staff, foster parents and certain private agency staff. *Id.*
14 at 1.

15 2.3 Title IV-E compliance reviews are conducted by a team of federal and Title IV-
16 E agency representatives. Reviewers examine child and provider case records, as well as
17 payment documentation to validate the accuracy of a state agency's Title IV-E reimbursement
18 claims of foster care payments. Decl. of Killeen Ex. 5 at 2. Reviewers also detail strengths and
19 weaknesses of a state's program and identify any technical assistance needed for program
20 improvement. *Id.*

21 2.4 JBS International (JBS), located in Bethesda Maryland, is the federally contracted
22 vendor with the Children's Bureau to oversee Title IV-E reviews. Decl. of Killeen Ex. 5 at 4.

23 2.5 On January 5, 2016, Ms. Ferreria received an email from JBS, identifying her as
24 a Child and Family Services Reviewer (CFSR) Applicant. Decl. of Killeen Ex. 6. The email
25 indicated that in order to qualify as a CFSR, Ms. Ferreria was required to attend a two-day, in-
26 person training. *Id.* at 1. The two-day training sessions were available February 22-23, February

1 24-25, March 1-2, and March 7-8, 2016. *Id.* The email further indicated that JBS would be
2 sending Ms. Ferreria a training agreement to sign in order to receive reimbursement for her
3 attendance at the March 7-8, 2016 training. *Id.*

4 2.6 Ms. Ferreria's supervisor, Dan Ashby, approved Ms. Ferreria's attendance for the
5 March 2016, training. Decl. of Killeen Ex. 1 at 13.

6 2.7 JBS reimbursed Ms. Ferreria \$252.98 for food and travel expenses, excluding
7 airfare and hotel cost. Decl. of Killeen Ex. 7 at 4. Additionally, Ms. Ferreria submitted an
8 "Honorarium Voucher" to JBS and received \$300 for attendance at the March 7-8, 2016,
9 training. *Id.* at 2. The \$300 was in addition to Ms. Ferreria's state salary received for the same
10 two days.

11 2.8 In January 2017, JBS informed Ms. Ferreria via email that in order to qualify as
12 a CFSR, she was again required to attend a two-day, in-person training. Decl. of Killeen Ex. 8.

13 2.9 Ms. Ferreria attended the additional two-day CFSR Reviewer training on March
14 22-23. Decl. of Killeen Ex. 9. Ms. Ferreria traveled to this training on March 21 and returned on
15 March 23. Decl. of Killeen Ex. 10.

16 2.10 Mr. Ashby did not approve Ms. Ferreria's attendance for the March 2017, training
17 because she had already attended a similar training and Mr. Ashby did not believe that further
18 training benefited her job. Decl. of Killeen Ex. 1 at 13.

19 2.11 Ms. Ferreria did not submit authorization for out-of-state travel to attend either
20 the March 2016, or March 2017, trainings. Ms. Ferreria believed that because the state was not
21 paying for the training, approval was not required. Decl. of Killeen Ex. 1 at 20.

22 2.12 DSHS Administrative Policy 19.10.12 (A) Out-of-State Travel Approvals, states:
23 *Out-of-state travel must be pre-approved and requires additional*
24 *approval as shown on the Out-of-State Travel document posted on the*
DSHS Travel Website.

25 Decl. of Killeen Ex. 11.
26

1 2.13 Ms. Ferreria did not submit leave for attending the March 2016 or March 2017,
2 CFSR trainings, and received her normal state salary during the time she attended the training.
3 Decl. of Killeen Ex. 12.

4 2.14 In May 2016, JBS hired Headway Workforce Solutions to manage the payroll for
5 people training to become CFSR Reviewers. Decl. of Killeen Ex. 1 at 37.

6 2.15 From February 20, 2017, through October 2017, Headway paid Ms. Ferreria. *Id.*
7 Ms. Ferreria was paid \$25 an hour for participation in an online training held on February 20,
8 2017, (2 hours) and for her participation in the March 2017, CFSR training in Maryland (16
9 hours). *Id.* In total Ms. Ferreria was paid \$450 for the two trainings and received \$240.98 as
10 reimbursement for meals and incidentals. *Id.*

11 2.16 Ms. Ferreria confirmed receipt of the “honorarium,” but denied it was a salary,
12 asserting that it was a bonus for attending training. *Id.*

13 2.17 Section B(13) of DSHS Administrative Policy 18.64, Standards of Ethical
14 Conduct for Employees, approved by the Board on July 8, 2011, specifically prohibits DSHS
15 employees from receiving honorarium. Decl. of Killeen Ex. 13 at 3.

16 2.18 Ms. Ferreria did not submit authorization for outside employment. Decl. of
17 Killeen ¶ 18.

18 2.19 DSHS Administrative Policy 18.18, Outside Employment, requires DSHS
19 employees to request approval for outside employment. Decl. of Killeen Ex. 14.

20 2.20 On December 13, 2017, Ms. Ferreria received a reprimand from DSHS, in part
21 based upon her failure to submit leave for March 21-23, 2017, and was directed to submit leave
22 for her unauthorized absence on those dates. Decl. of Killeen Ex. 15.

23 2.21 Ms. Ferreria asserts that she was an exemplary employee for over 35 years and
24 that she always followed the rules when it was clear to her that they apply. Ms. Ferreria claimed
25 to have no knowledge that it was impermissible to receive an “honorarium” for participating in
26 trainings. Additionally, Ms. Ferreria claims that her supervisor never requested that she take

1 leave to attend training, never requested that she receive authorization for out-of-state travel, and
2 did not require her to receive approval for outside employment.

3 III. CONCLUSIONS OF LAW

4 3.1 The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1),
5 which authorizes the Board to enforce the Ethics Act with respect to employees in the executive
6 branch of state government. The Board has jurisdiction over Ms. Ferreria, whose actions
7 occurred while she was a state employee. The complaint was filed in accordance with
8 RCW 42.52.410, the Board found reasonable cause pursuant to RCW 42.52.420, and an
9 adjudicative proceeding was conducted pursuant to RCW 42.52.430. All the required procedural
10 notices have been provided.

11 3.2 WAC 10-08-135¹ provides that a motion for summary judgment may be granted
12 and an order issued if the written record shows that there is no genuine issue as to any material
13 fact and the moving party is entitled to judgment as a matter of law. The object and function of
14 a summary judgment is to avoid a useless trial. *Hudesman v. Foley*, 73 Wn. 2d 880, 886, 441
15 P.2d 532 (1968). Summary judgment is appropriate if there is no genuine issue of material fact
16 and the moving party is entitled to judgment as a matter of law. *Ellis v. City of Seattle*, 142 Wn.
17 2d 450, 458, 13 P.3d 1065 (2000); *see* CR 56(c).

18 The basic facts of this matter are not in dispute, rendering resolution of this matter by
19 summary judgment appropriate. There is no factual dispute that Ms. Ferreria received
20 compensation from JBS for attending trainings in March 2016, and March 2017. There is also
21 no dispute that Ms. Ferreria received her regular state pay for the days during which she attended
22 the trainings. Last, it is undisputed that Ms. Ferreria did not receive out-of-state travel
23 authorization for the March 2017, training.

24 3.3 The Ethics Act governs the conduct of state officers and employees. Under
25 RCW 42.52.430(5), a violation must be established by a preponderance of the evidence.

26 ¹ The Board has adopted the model rules of procedures, chapter 10-08 WAC, WAC 292-100-006.

1 3.4 RCW 42.52.110 provides that no state employee:

2 [M]ay, directly or indirectly, ask for or give or receive or agree to receive any
3 compensation, gift, reward, or gratuity from a source for performing or omitting
4 or deferring the performance of any official duty, unless otherwise authorized by
5 law except: (1) The state of Washington; or (2) in the case of officers or
6 employees of institutions of higher education or of the *Spokane intercollegiate
7 research and technology institute, a governmental entity, an agency or
8 instrumentality of a governmental entity, or a nonprofit corporation organized for
9 the benefit and support of the state employee's agency or other state agencies
10 pursuant to an agreement with the state employee's agency. (Reviser's note
11 omitted).

12 3.5 RCW 42.52.160(1) states:

13 No state officer or state employee may employ or use any person, money, or
14 property under the officer's or employee's official control or directions, or in his
15 or her official custody, for the private benefit or gain of the officer, employee, or
16 another.

17 3.6 Ms. Ferreria does not dispute the basic facts, supporting violations of the Ethics
18 Act and her length of public service does not cure her violations. Furthermore, her attempts to
19 shift the blame for her misconduct to her former supervisor are not persuasive. DSHS has clear
20 policies, governing out-of-state travel, receipt of "honorarium," and it was Ms. Ferreria's
21 responsibility, as a DSHS employee, to comply with these polices.

22 3.7 Based on the above Findings of Fact, the Board concludes that Ms. Ferreria, by a
23 preponderance of the evidence, violated RCW 42.52.110 by receiving payment for attendance
24 at the March 2016 training in violation of DSHS Administrative Policy 18.64 while also
25 receiving her regular salary.

26 3.8 Based on the above Findings of Fact, The Board also concludes that Ms. Ferreria
violated RCW 42.52.160(1) by receiving a private benefit in the form of compensation for
participation in unapproved trainings in February and March of 2017.

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 anything received or sought in violation of the
Ethics Act, whichever is greater. The Board concludes that a \$1,500 penalty for each of Ms.

1 Ferreria's violations of RCW 42.52.110 and RCW 42.52.160(1), totaling \$3,000, is appropriate.
2 The Board considered the factors discussed below in assessing this penalty.

3 3.10 In determining the appropriate sanction, the Board may review the nature of the
4 violation, as well as aggravating circumstances and mitigating factors set forth in WAC 292-
5 120-030. The Board may consider the monetary cost of the violation, including the cost of the
6 violation to the state and the value of anything received or sought in the violation. *Id.* Here, Ms.
7 Ferreria's violations tend to reduce public respect for or confidence in state government or state
8 government officers or employees. WAC 292-120-030(2)(e). It is a mitigating factor that Ms.
9 Ferreria was subject to prior corrective action, a reprimand, by DSHS. WAC 292-120-030(4)(a).

10 3.11 Ms. Ferreria argues that her penalty should be less than that assessed against
11 fellow DSHS employee Robert Ensley (Mr. Ensley) because while she had limited involvement
12 with JBS, Mr. Ensley worked as a CFSR reviewer since 2001 and attended numerous reviews.
13 However, for the five-year time period in which the statute of limitations allowed the Board Staff
14 to review Mr. Ensley's conduct, he engaged in behavior similar to Ms. Ferreria's, which makes
15 the imposition of a comparable penalty appropriate. Additionally, Mr. Ensley stipulated to
16 violations of the Ethics Act.

17 IV. ORDER

18 4.1 Board Staff's Motion for Summary Judgment is GRANTED.

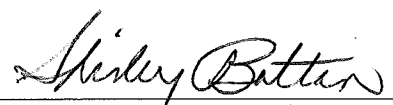
19 4.2 It is hereby ordered that Therese Ferreria is assessed a total monetary civil penalty
20 of \$3,000 based on her violations of RCW 42.52.110 and RCW 42.52.160(1).

21 4.3 The total amount of \$3,000 is payable in full within 90 days of the effective date
22 of this Order.

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DATED this 17th day of December 2019.

WASHINGTON STATE EXECUTIVE ETHICS BOARD



Shirley Battan, Chair

1 **APPEAL RIGHTS**

2 **RECONSIDERATION OF FINAL ORDER – BOARD**

3 Any party may ask the Executive Ethics Board to reconsider a Final Order. The request
4 must be in writing and must include the specific grounds or reasons for the request. The request
5 must be delivered to Board office within 10 days after the postmark date of this order.

6 The Board is deemed to have denied the request for reconsideration if, within 20 days
7 from the date the request is filed, the Board does not either dispose of the petition or serve the
8 parties with written notice specifying the date by which it will act on the petition.
9 RCW 34.05.470.

10 The Respondent is not required to ask the Board to reconsider the Final Order before
11 seeking judicial review by a superior court. RCW 34.05.470.

12 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

13 A Final Order issued by the Executive Ethics Board is subject to judicial review under
14 the Administrative Procedure Act, chapter 34.05 RCW. See RCW 42.52.440. The procedures
15 are provided in RCW 34.05.510 - .598.

16 The petition for judicial review must be filed with the superior court and served on the
17 Board and any other parties within 30 days of the date that the Board serves this Final Order on
18 the parties. RCW 34.05.542(2). Service is defined in RCW 34.05.542(4) as the date of mailing
19 or personal service.

20 A petition for review must set forth:

- 21 (1) The name and mailing address of the petitioner;
- 22 (2) The name and mailing address of the petitioner’s attorney, if any;
- 23 (3) The name and mailing address of the agency whose action is at issue;
- 24 (4) Identification of the agency action at issue, together with a duplicate copy, summary,
25 or brief description of the agency action;
- 26

- 1 (5) Identification of persons who were parties in any adjudicative proceedings that led to
2 the agency action;
- 3 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;
- 4 (7) The petitioner's reasons for believing that relief should be granted; and
- 5 (8) A request for relief, specifying the type and extent of relief requested.
6 RCW 34.05.546.

7 **ENFORCEMENT OF FINAL ORDERS**

8 If there is no timely request for reconsideration, this is the Final Order of the Board. The
9 Respondent is legally obligated to pay any penalty assessed.

10 The Board will seek to enforce a Final Order in superior court and recover legal costs
11 and attorney's fees if the penalty remains unpaid and no petition for judicial review has been
12 timely filed under chapter 34.05 RCW. This action will be taken without further order by the
13 Board.