

1 **BEFORE THE WASHINGTON STATE**
2 **EXECUTIVE ETHICS BOARD**

3 In the Matter of:

EEB Case No. 2018-037

4 Derrick Gray,

FINAL ORDER

5 Respondent
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7 **I. PROCEDURAL HISTORY**

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9 On May 10, 2019, the Executive Ethics Board (Board) found reasonable cause to
10 believe that the Respondent, Derrick Gray (Mr. Gray), violated the Ethics in Public Service
11 Act while employed as a Financial Services Specialist 5 (FSS5) with the Washington State
12 Department of Social and Health Services (DSHS) Statewide Customer Service Contact
13 Center, South Team, Tacoma (CSCC). Notice of the Reasonable Cause Determination and the
14 right to request a hearing was served upon Mr. Gray by regular mail and certified mail on May
15 10, 2019. Mr. Gray failed to respond to the Reasonable Cause Determination within 30 days as
16 required by WAC 292-100-060(2).

17 The Board entered an Order of Default on September 13, 2019. On September 17,
18 2019, Board staff provided Mr. Gray with notice of the Board's Order of Default by regular
19 and certified mail.

20 Pursuant to WAC 292-100-060(4) Mr. Gray was allowed 10 days to request vacation of
21 the Order of Default. Mr. Gray has not moved to vacate the order entered on September 13,
22 2019.

23 **II. FINDINGS OF FACT**

24 1. According to DSHS, Mr. Gray was employed with DSHS on June 7, 2012, as a
25 FSS3 and on October 1, 2017, was promoted to an FSS5. On September 26, 2018, as a result
26 of the DSHS investigation into the allegations made by the State Auditor's Office (SAO), Mr.

1 Gray was demoted to an FSS3 position which is the position he held at the time of the
2 investigation.¹

3 2. On January 18, 2018, the SAO received a whistleblower complaint alleging
4 Mr. Gray was attending college during state time and failing to submit leave.

5 3. On July 12, 2018, the Board received an SAO referral alleging Mr. Gray may
6 have violated the Ethics in Public Service Act by using state resources for private benefit or
7 gain.

8 4. According to the SAO, Mr. Gray had an approved education plan that allowed
9 him to attend college classes during his workday. The plan allowed him to extend his lunch
10 break to attend class, with the understanding he make up the time. Mr. Gray attended both day
11 and night classes. As a result, he worked an irregular schedule that changed slightly depending
12 on the day of the week. Mr. Gray emailed his manager each time his school schedule changed.
13 The most recent schedule approved by his manager totaled only 37.1 hours, leaving Mr. Gray
14 2.9 hours short each week.

15 5. According to the SAO, they spoke with Mr. Gray's manager, South Sound
16 Contact Center Administrator Ronald Thomas (Mr. Thomas), who said when he met with Mr.
17 Gray, they went over his school schedule. They knew he was going to have to make up time
18 throughout the week, and Mr. Gray said he would come in at 7 am or stay until 6 pm, if he
19 needed to. He said making up the time was a clear expectation and he has no doubt that Mr.
20 Gray knew he had to make it up.

21 6. According to the SAO investigative report, they requested Mr. Gray's leave
22 reports, emails, door entry logs and computer records. In this instance, the computer's normal
23 processes had overwritten some of the computer records from the past year. As a result, they
24 were only able to review from November 6, 2017 through February 3, 2018.

25 ¹ On February 11, 2019, DSHS advised Board staff that after receiving the notice of a second
26 investigation on December 24, 2018, Mr. Gray requested to resign in lieu of discipline. Mr. Gray's resignation
was accepted on December 24, 2018 and he separated from state service effective February 1, 2019.

1 7. According to the SAO, during the reviewed period Mr. Gray worked or
2 submitted leave for 469.3 hours, instead of 520 hours. The SAO provided Board staff with a
3 copy of an email from Mr. Gray in which he told Mr. Thomas he would start work at 7:30 am.
4 According to the SAO, Mr. Gray regularly came in at 8 am. Additionally, he did not stay late
5 to make up the missed time. The SAO investigative report states that because of his extended
6 lunch breaks, his late arrivals, and his failure to make up the missed time, Mr. Gray worked an
7 average of 36.1 hours each week. The SAO said they found that Mr. Gray did not submit
8 leave for 50.7 hours when he arrived late and failed to make up time attending college classes.

9 8. Additionally, the SAO found that Mr. Gray sent and received more than 700
10 emails regarding a fun committee, which also involved hundreds of emails of fantasy football
11 and day-long bingo games over state email. The SAO also found that during this time Mr.
12 Gray spent 10 hours browsing non-work related websites, most of which was related to his
13 college coursework. Because this was discovered outside of their investigative period, they did
14 not include this in their report.

15 9. According to the SAO, they provided Mr. Gray with a copy of a spreadsheet
16 created using Mr. Gray's leave reports, and door entry logs, and conducted an interview with
17 Mr. Gray regarding the times on the spreadsheet.

18 10. In that interview the SAO asked Mr. Gray to describe his daily routine. He said
19 he gets into the parking lot at about 7:30 am each morning. He then sits in his car and listens to
20 a radio show until about 7:45 am to 7:50 am before coming in to work. He said he leaves for
21 class approximately 45 minutes before class starts as it is a 30-minute drive. Sometimes after
22 class, he goes to the "Centennial II" building to talk with the other supervisors. Once back in
23 the office he stays until 4:45 if he has a night class or 5:00 pm if he does not. Mr. Gray said he
24 does not work on the weekends or evenings. When asked how he was making up his missing
25 time, Mr. Gray responded that he "thought it worked out coming in a half hour early and using
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1 his lunch." He said he combined his breaks and lunch and came in a half hour early, and he
2 believed that covered his absence during the day.

3 11. According to the SAO, when asked how he was coming in a half hour early if
4 he is not entering the building until 7:45 am - 8:00 am. Mr. Gray stated, "I'm here, I thought it
5 counted." According to the SAO investigator, they confirmed with Mr. Gray said he believed
6 being in his car in the parking lot and listening to the radio was being at work and he again
7 said "I thought it counted."

8 12. According to the SAO report, Mr. Gray was told they added up the hours he
9 provided to his supervisor and he is short one hour each week from October 3, 2017 to January
10 3, 2018 (his schedule did not account for travel to and from college) and 2.6 hours each week
11 from January 3 to the present. He said he "must've made a math mistake" and that he "should
12 have been staying later to make up for it." He again stated that he had not worked outside his
13 schedule because "I didn't think I had time to make up."

14 13. Board staff were provided copies of the emails sent to Mr. Thomas from Mr.
15 Gray dated October 3, 2017 and January 3, 2018. Below is an example of his schedule that he
16 provided in those emails.

17 **October 2017**

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Monday	7:30am - 4:30pm, School from 11:30am -12:20pm and 5:00pm - 6:00pm
Tuesday	7:30am - 4:30pm, School from 11:30am -12:20pm
Wednesday	7:30am - 4:30pm, School from 11:30am -12:20pm and 5:00pm - 6:00pm
Thursday	7:30am -4:30pm, School from 11:30am -12:20pm and 5:00pm - 6:00pm
Friday	7:30am -4:30pm, School from 11:30am -12:20pm and 5:00pm - 6:00pm

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1 **January 2018**

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Monday	7:30am - 9:45 (leave for class) 10:30 to 11:20 class, back in office 11:45 - 5:00pm
Tuesday	7:30am - 9:45 (leave for class) 10:30 to 11:20 class, back in office 11:45 - 4:45pm (leave for night class) 5:30 - 7:00pm
Wednesday	7:30am - 9:45 (leave for class) 10:30 to 11:20 class, back in office 11:45 - 5:00pm
Thursday	7:30am - 9:45 (leave for class) 10:30 to 11:20 class, back in office 11:45 - 4:45pm (leave for night class) 5:30 - 7:00pm
Friday	7:30am - 9:45 (leave for class) 10:30 to 11:20 class, back in office 11:45 - 5:00pm

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9 14. According to the SAO, they asked Mr. Gray if he had adjusted his schedule
10 since their initial meeting with the SAO. Mr. Gray said he has been taking one hour of leave
11 each day. According to the SAO report, while reviewing the original spreadsheet with Mr.
12 Gray, he was able to provide explanations for some of the days, such as all day off-site
13 training, and as a result, the final spreadsheet was adjusted to reflect this. Board staff compared
14 the two spreadsheets and found that the original spreadsheet from April 2018 shows Mr. Gray
15 working or using paid leave for approximately 431 hours during the time-period from
16 November 6, 2017, through February 2, 2018. The final spreadsheet shows him working or
17 using paid leave for approximately 469 hours during that same time-period resulting in
18 approximately 50 hours absent without taking leave.

19 15. Included in the SAO report was a copy of Mr. Thomas' written response. Mr.
20 Thomas said that in early 2017, he met with Mr. Gray and his supervisor, Sandra Pisapio (Ms.
21 Pisapio), as Mr. Gray was requesting career development feedback. He said Mr. Gray was an
22 FSS5 and his career goal was to be an administrator. Subsequently, Ms. Pisapio had followed
23 up with him advising that Mr. Gray would like to enroll at Tacoma Community College (TCC)
24 in a social services education program. She said he would like to use his lunch and flex his
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1 schedule to attend class during the day. Mr. Thomas said he followed up with his appointing
2 authority and it was approved as an education plan for Mr. Gray.

3 16. Mr. Thomas said that on October 1, 2017, Mr. Gray was hired as a supervisor at
4 the Pierce South office under his direct supervision. He met with Mr. Gray on October 3,
5 2017, and October 5, 2017, at the Pierce South office to begin the orientation process a new
6 supervisor. He said he also had an in-depth conversation with Mr. Gray regarding his approved
7 education plan. Mr. Gray shared he had been working with his prior supervisor, Ms. Pisapio,
8 allowing him to flex his day and/or use leave as needed to cover his daily school schedule.

9 17. Mr. Thomas said he discussed with Mr. Gray his expectation that all work time
10 that needed to be "made up" occur within the workweek (M-F). Mr. Gray stated he understood.
11 He also told Mr. Gray that he would like him to send a written email of his school schedule so
12 that he could retain them for his records.

13 18. Mr. Thomas said that in December 2017 they reviewed Mr. Gray's education
14 plan and his winter school schedule. Mr. Gray indicated that his two days per week for leaving
15 early was continuing; however, it was two different days of the week. Mr. Thomas said he
16 confirmed with Mr. Gray his expectation that all flex 'make up' time was accounted for during
17 the workweek. Mr. Gray indicated he understood. In addition, Mr. Thomas said he asked Mr.
18 Gray to send him a follow-up email of his new school schedule.

19 19. Mr. Thomas said he discussed Mr. Gray's education plan and classes on
20 multiple occasions. He said he never received any information or feedback of any concerns
21 regarding Mr. Gray's work schedule and/or education plan.

22 20. During the course of Board staff's investigation, DSHS advised Board staff that
23 based on the allegations made by the SAO, there were two investigations conducted by their
24 agency on Mr. Gray. Both investigations were conducted by Connie Weedin (Ms. Weedin),
25 Internal Controls and Investigations Manager for the Statewide Customer Service Contact
26 Center (SCSCC). According to the investigative reports she was assigned the investigation by

1 Ronnie-Sue Johnson (Ms. Johnson), the SCSCC Administrator. The first report was dated
2 September 19, 2018, and was in regards to Mr. Gray's failure to take leave while absent from
3 work. The second investigation was dated November 15, 2018, and was in regards to the
4 allegations made by the SAO about Mr. Gray's use of his state computer for personal use.
5 Board staff were provided copies of both of those investigations by DSHS.

6 21. According to the September DSHS investigative report, Mr. Gray was
7 interviewed by Ms. Weedin about the allegations made by the SAO regarding being absent
8 without taking leave. During the interview Mr. Gray was asked why, after the SAO
9 investigator conducted an entrance exam with him, he began taking one hour of vacation leave
10 most days beginning April 3, 2018, he responded that he, "[j]ust thought it would be easier."
11 When Ms. Weedin asked Mr. Gray why he stopped taking one hour of vacation leave most
12 days after June 7, 2018, he responded that, "school was over."

13 22. When Ms. Weedin asked Mr. Gray if, after his interview with the SAO
14 investigator on April 19, 2018, he continued to sit in his car in the parking lot from 7:30 am
15 until close to 8:00 am and count that as being at work. Mr. Gray responded that he "continued
16 the same" which he then clarified to mean that he was sitting in his car in the parking lot until
17 close to 8:00 am.

18 23. According to the DSHS investigative report, Ms. Weedin showed Mr. Gray a
19 copy of the work schedule he emailed to his current supervisor Mr. Thomas on October 3,
20 2017, and asked him if he was reporting for work at 7:30 am while this schedule was in effect.
21 He replied, "I believe I was, yes." He was then asked if he was sitting in his car from 7:30 am
22 until close to 8:00 am, and he replied, "I would get there a little bit before 7:30, and I had an
23 employee who was having trouble with the gate and she started work at 7:45." He said he
24 would sit there to make sure she got in okay and then report for work. He reported the
25 employee's name was Rocelia Henderson (Ms. Henderson).
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1 24. Board staff contacted Ms. Henderson. Ms. Henderson is an FSS3 with DSHS.
2 She confirmed that for about two weeks after changing her shift to 7:45 am, she was unable to
3 access the gate and had to wait for other employees to come to work to get in. She said she
4 reported it to her supervisor, Mr. Gray. When asked if Mr. Gray ever helped her get through
5 the gate or if she saw him in the parking lot, she said no.

6 25. According to Ms. Weedin, she emailed Mr. Thomas on September 19, 2018,
7 and asked him to confirm in Leave Tracker if Ms. Henderson was scheduled to arrive at work
8 at 7:45 am at the time. Mr. Thomas verified that Ms. Henderson was approved to begin her
9 work schedule at 7:45 am effective December 4, 2017. He stated he was not familiar with any
10 staff having trouble accessing the security gate.

11 26. According to the DSHS report, Ms. Weedin showed Mr. Gray a copy of the
12 work schedule he sent to Mr. Thomas on January 3, 2018, which does not add up to forty
13 hours per week. She asked him how he intended to make up the work time missed while
14 attending classes and he replied that he “was going to come in early or stay late” but, when
15 questioned further, he clarified that he “never stayed late but I think I was coming in early.”

16 27. Ms. Weedin asked Mr. Gray about his meetings with Mr. Thomas to discuss
17 his approved education plan and what he recalled Mr. Thomas saying about the need for him
18 to make up any work time missed because of attending classes. Mr. Gray said, “[j]ust that I
19 needed to be sure that I made up the minutes or hours that I was missing.”

20 28. According to the DSHS report, Ms. Weedin asked Mr. Gray if he agreed with
21 the SAO’s finding that he was overpaid for 50.7 hours during the review period of November
22 6, 2017, through February 3, 2018. He replied that he did not, that he had told the SAO
23 investigator when they met that he disagreed with her spreadsheet and she said she would
24 correct this, on some of the times and that she would get more information. He said that the
25 final report did not have any of the calculations, just her report. When asked why he did not
26 respond to the SAO after June 11, 2018, he replied, “No reason. I do not think 50.7 hours

1 overpaid is correct.” Mr. Gray also stated that he did not know any steps that he could take to
2 get the report corrected, and that he “would need to look at the dates again to see if she took all
3 that off or not.”

4 29. In a written response from Mr. Gray to Board staff on August 16, 2018, he
5 stated that he believes he was working the required hours per week. He said he would arrive to
6 work at 7:30 am and sit in his car listening to the radio. He said he was watching his workers
7 come to work because he had recently had a worker with a schedule change from 7:45 am to
8 4:30 pm. He said this worker had been showing up late and was saying she was late because
9 the gate was not working. He said his other reasoning in this matter is that he felt he would
10 only miss about 2 hours of work each day for class, which means if he used his breaks and
11 lunch break he would only need to make up a half hour. He said he was making that half hour
12 up by showing up at work at 7:30 am instead of 8 am.

13 30. On December 28, 2018, Board staff emailed Mr. Gray several follow-up
14 questions. Board staff provided Mr. Gray with specific statements made by the SAO
15 investigator (in Italics), and Mr. Gray provided the following written responses. Questions
16 from the SAO are in Italics and responses from Mr. Gray are in bold:

- 17 • *During the reviewed period, Mr. Gray worked or submitted leave for 469.3*
18 *hours, instead of 520 hours. Even though Mr. Gray told his manager he would*
19 *start work at 7:30 AM, he regularly came in at 8 AM. Additionally, he did not*
20 *stay late to make up the missed time. Because of his extended lunch breaks, his*
21 *late arrivals, and his failure to make up the missed time, Mr. Gray worked an*
22 *average of 36.1 hours each week. The SAO said they found that Mr. Gray did*
23 *not submit leave for 50.7 hours when he arrived late and failed to make up time*
24 *attending college classes. Can you confirm if this is an accurate statement from*
25 *the SAO? **“Yes this is an accurate statement.”***

- 1 • *During an interview with Mr. Gray, he said he must have “made a math*
2 *mistake “when creating his schedule and that he “should have been staying*
3 *later” to make up the time. He said he had not worked outside his reported*
4 *schedule because he did not realize he needed to make up time. Mr. Gray said*
5 *that he arrived for work at 7:30 am, but sat in his car and listened to the radio*
6 *until about 7:50 am, which he said made up some of his missing time. When*
7 *asked how that made up time, he said, “I’m here, I thought it counted.” This*
8 statement was taken from the SAO report in regards to an interview between
9 you the SAO investigator. Do you have any disagreement with what the SAO
10 investigator said? **“No disagreement”**

11 31. Board staff were provided a copy of a Notice of Demotion, dated September 26,
12 2018, notifying Mr. Gray that he was being demoted from his position as a FSS5 to an FSS3 as
13 a result of his failure to positively report his time and failure to work a forty-hour workweek.

14 32. According to the DSHS, a second investigation was initiated because of the
15 SAO finding additional issues, which were outside of the scope of their investigation. Those
16 issues included whether Mr. Gray used state resources for non-work-related purposes. The
17 allegations were that while at work he was using his work computer during work time to email
18 coursework to his supervisor, Ms. Pisapio, to proofread and provide feedback, to conduct
19 activities unrelated to official state duties and for prohibited personal use, and whether Mr.
20 Gray conducted a raffle on state time using state resources.

21 33. According to the DSHS investigative report, Ms. Weedon asked Mr. Gray and
22 Ms. Pisapio, his former supervisor, if Mr. Gray used his state issued computer during his
23 workday to email copies of his college coursework assignments to Ms. Pisapio to review and
24 provide feedback. They both affirmed that this happened, but both stated it only happened
25 once. Ms. Pisapio stated that she did not remember continuing to receive emailed assignments
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1 from Mr. Gray after he moved under the supervision of Mr. Thomas on October 1, 2017. Mr.
2 Gray denied continuing to email his assignments to Ms. Pisapio.

3 34. Ms. Weedin states that in the copies of emails she received from Jeff Madsen
4 (Mr. Madsen), a Forensic Investigator with DSHS, she found emails dated June 16, 2017;
5 October 18, 2017; October 24, 2017; November 16, 2017; November 17, 2017; and November
6 21, 2017, that contained college coursework assignments Mr. Gray emailed to Ms. Pisapio for
7 review and feedback. The emails confirmed that Ms. Pisapio reviewed the coursework and
8 provided feedback to Mr. Gray. Board staff were provided copies of the emails and confirmed
9 the email correspondence between Mr. Gray and Ms. Pisapio.

10 35. According to the DSHS investigative report, an image of Mr. Gray's state
11 issued computer was captured on July 12, 2018. According to Ms. Weedin, in the data
12 collected and provided to her by Mr. Madsen, she found 377 URLs for TCC or related to TCC,
13 37 URLs which appear to be school related, including Clover Park Technical College (CTCC),
14 online textbooks and what appears to be research for coursework. She also found that Mr.
15 Gray accessed ctc.link (community and technical colleges) 17 times. According to Ms.
16 Weedin, when she asked Mr. Gray why he accessed these URLs during work time using his
17 state issued computer, he replied, "I don't remember."

18 36. According to Ms. Weedin, during her review of the information received from
19 Mr. Madsen, she also found that Mr. Gray accessed URLs for US Bank 28 times. When she
20 asked Mr. Gray why he accessed his personal bank account during work time using his state
21 issued computer, he replied, "[t]hat was a mistake. From what I read, it was fine really as long
22 as I didn't enter or log into my account."

23 37. According to Ms. Weedin, the forensic analysis shows that the Mr. Gray
24 accessed onlinebanking.usbank.com on November 21, 2017, December 12, 2017, February 26,
25 2018, and March 7, 2018. Board staff were provided a copy of the URL spreadsheet by DSHS.
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1 The spreadsheet showed that Mr. Gray also accessed ESPN Fantasy Football, ESPN playoffs
2 as well as US Bank.

3 38. According to the DSHS investigative report, there is evidence showing that Mr.
4 Gray inserted a thumb drive into his state issued computer on November 7, 2017. When Ms.
5 Weedin asked Mr. Gray about the thumb drive, he replied that he did not remember. The
6 evidence in the forensic analysis shows that Mr. Gray last inserted the thumb drive into his
7 state issued computer on June 6, 2018. Board staff were provided a copy of USB Devices
8 spreadsheet confirming Mr. Gray inserted a thumb drive on June 6, 2018.²

9 39. According to the DSHS investigative report, Mr. Gray had approximately 700
10 emails related to the “Fun Committee” (social committee for employee morale). Of those 700
11 emails, about 500 were Fantasy Football related and 159 involved a large number of
12 employees playing bingo throughout the course of the day. Mr. Gray was the Chair of the Fun
13 Committee and it appears this involved printing bingo cards for staff and then emailing
14 numbers periodically throughout the day.

15 40. According to Ms. Weedin, when she showed Mr. Gray copies of emails found
16 on his state issued computer, which related to an online bingo game played during work hours
17 using state issued computers, he said, “[w]ell, it was supposed to be a morale booster. Every
18 thirty minutes or so, random numbers got picked and sent out to staff participating until
19 someone got a Bingo.” When asked how many people participated, he replied, “[i]t is totally
20 up to staff. Everybody, probably.” When asked if he has a list of names of employees who
21 have requested bingo cards, he replied, “[u]m, I didn’t keep a list. They just came and asked
22 me or sent me an email.” Ms. Weedin asked how often the games are played and he replied,
23 “[u]m, monthly. Once or twice per month.” Ms. Weedin asked how long this has been going
24 on and he replied, “[u]m, for two years now.” Mr. Gray stated that he asked for approval or
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26 ² DSHS advised that staff are not issued a thumb drive by the agency so this would have been a personal
thumb drive.

1 permission from Aldeana Doss (Ms. Doss), who was then his supervisor, before starting the
2 online bingo games during working hours. He said that the prizes given to the winners are
3 “just little fun trinkets. Nothing really big,” and that the funds used to purchase those prizes
4 are funds from the Fun Committee and that sometimes he used his own personal funds.

5 41. According to Ms. Weedin, when she interviewed the current South Sound
6 Team supervisors, Leandra Gutierrez-Leach (Ms. Gutierrez-Leach), Eric Burton (Mr. Burton),
7 Sandra Pisapio (Ms. Pisapio), and Aldeana Doss (Ms. Doss), none of them gave any
8 information which contradicted Mr. Gray’s statements to her about the online bingo game. Ms
9 Pisapio said she was his supervisor at the time bingo started and Ms. Doss stated she “was
10 pretty sure it was sanctioned by upper management and that Ron and Ronnie-Sue³ knew about
11 it as part of the Fun Committee and whatever.”

12 42. Board staff were provided over 100 pages of emails with the subject line,
13 “BINGO” being sent and received by Mr. Gray from multiple DSHS employees. Some of
14 those emails included attached bingo cards that were requested by the other employees. Mr.
15 Gray appears to be the contact person for the bingo game.

16 43. According to Ms. Weedin, when she showed Mr. Gray copies of emails found
17 on his state issued computer which relate to Fantasy Football, Baseball Bingo, NFL Weekly
18 Pickem, the NCAA Tourney Pool, and College Bowl Mania and asked him to tell her about
19 how these activities are played, he replied, “I don’t know about these activities. They were sent
20 to me from someone else.” When she asked who sent them to him, he replied, “Toby Wills.”⁴

21 44. Board staff were provided copies of over 200 pages containing over 200
22 emails/Skype messages and attachments related to Fantasy Football, Baseball Bingo, NFL
23 Weekly Pickem, the NCAA Tourney Pool, and College Bowl Mania. Several of the emails
24 were sent by Mr. Gray and he is included as a recipient on a majority of the emails.

25 _____
26 ³ Mr. Thomas and Ms. Johnson.

⁴ Toby Wills is a FSS3, with DSHS.

1 45. According to Ms. Weedin, when she showed Mr. Gray copies of emails found
2 on his state issued computer which relate to the Fun Committee and asked him to tell her about
3 the Fun Committee, he replied that he “used to be chair of the Fun Committee. Tried to boost
4 morale. Notices sent about what was going on, different events which were being held each
5 month.”

6 46. When Ms. Weedin asked Ms. Gutierrez-Leach to tell her about the Fun
7 Committee, she described the process for using Excel to do random selection of the winners of
8 baskets. Ms. Pisapio stated that Mr. Gray was previously chair of the Fun Committee and that
9 he and several other people were responsible for the newsletter.

10 47. Ms. Doss stated that the Fun Committee was like “Staff Engagement
11 Committee stuff to keep staff involved and team building type stuff and they do a lot of fund
12 raising to pay for it. Our all staff and employee recognition program. Buy the awards and stuff
13 like that. For this team or customer service awards and stuff like that.” Ms. Gutierrez-Leach,
14 Ms. Pisapio, and Ms. Doss all stated that the Fun Committee was ongoing at the time they
15 became supervisors, and Ms. Gutierrez-Leach stated that the Fun Committee was renamed
16 Staff Engagement in August 2018.

17 48. Neither Ms. Gutierrez-Leach nor Ms. Pisapio were certain that any other
18 supervisor had asked for permission or approval for the Fun Committee but Ms. Doss stated, “I
19 know Ronnie-Sue and Ron were involved because they had to come up with the way the state
20 office does the random name Excel drawing. I do not, have not gone to Fun Committee for the
21 last couple of years but I am sure we report out on the Fun Committee at unit meetings so I do
22 not think it was done in secret.”

23 49. Ms. Gutierrez-Leach, who is now the chair of the Staff Engagement
24 Committee, stated that after the committee was asked to put on the All Staff Recognition
25 Event, committee members spent a lot of time at first on that event as they only had a few
26 weeks to put together an All Staff Recognition Event. She stated, “And now we have two

1 meetings per month. One meeting we came up with a list of events we would like to do the
2 next month. Then we submit those to Ron and Tina⁵ for approval and they don't always get
3 approved. Then once we have their approval, then we meet again to plan. So we are meeting
4 twice per month." Ms. Gutierrez-Leach also stated that Mr. Wills was very frustrated with the
5 approval process and he chose to be a backup member rather than a primary member and that
6 the committee needs to be okay with being told no.

7 50. Board staff were provided copies of over 90 emails/Skype messages and
8 attachments related to the Fun Committee. A significant amount of these emails were sent by
9 Mr. Gray.

10 51. According to Ms. Weedin, when she asked Mr. Gray if he was aware that state
11 employees are prohibited from conducting raffles during work time using state resources, he
12 replied, "[n]o, I am not aware of that." When she asked him why, if he is not aware, that he
13 told Kim Arzberger⁶ to remove the word "raffle" from the poster she had drafted for the
14 Mother's Day Fun Committee event, he replied, "[s]omebody must have told me to tell her
15 that." Ms. Gutierrez-Leach, Ms. Pisapio, and Ms. Doss all stated they were made aware that
16 state employees are prohibited from conducting raffles during work time using state resources,
17 but all three also stated that they were told that using a random draw program in Excel, similar
18 to what Babs Roberts used to select an employee to Spend a Day with Babs⁷, was permitted.

19 52. According to Ms. Weedin, when she asked if there was any other information
20 they would like to share with her, Ms. Doss stated, "I think their intentions were well. I do not
21 think anybody was trying to do anything covertly. Trying to raise money for all staff and staff
22 things like that." Ms. Pisapio stated, "[a]ll of these activities were just done to make staff
23 morale stronger and for staff engagement and that's all I have to say."
24

25 ⁵ Tina Hatley is the Central Sound Administrator for DSHS.

26 ⁶ Kim Arzberge is a FSS3 with DSHS.

⁷ Babs Roberts is the Director of DSHS.

1 53. According to Ms. Weedin, she spoke with Mr. Thomas and asked him about
2 Ms. Doss's statements that because he and Ms. Johnson were present during the all staff when
3 the awards were given to the winners of these activities they knew about the use of the random
4 selection to choose the winners of baskets. And that they knew staff were participating in
5 Fantasy Football, Baseball Bingo, NFL Weekly Pickem, the NCAA Tourney Pool, and
6 College Bowl Mania during work time using their state issued computers. She said Mr.
7 Thomas replied that he was not aware that any such awards were given at the 2016 or 2017
8 recognition event, but that Ms. Doss may have been referring to a very lengthy all staff event
9 in 2015 during which awards were given to everybody for participation. However, he did not
10 notice any awards given at the 2015 event for the activities such as Fantasy Football and
11 neither did Ms. Johnson. He said that if he or Ms. Johnson had noticed that was happening,
12 they both would have addressed it. Mr. Thomas also stated he did not have any knowledge of
13 the use of the random selection process in Excel.

14 54. In a written response to Board staff, Mr. Gray confirmed that he browsed the
15 internet for his college courses, but he only did it briefly and it didn't affect his work. When
16 asked by Board staff about the hundreds of emails regarding the Fun Committee, he said, "I
17 was the chair person for the committee."

18 55. Board staff contacted Mr. Thomas and asked if they had taken any action as a
19 result of the DSHS investigation of Mr. Gray. In a written response, he said they disbanded the
20 staff-led morale committee referred to as the "Fun Committee" and ensured that future
21 workgroups have a specific, concise and detailed charter for the workgroup, and an
22 experienced supervisor as a lead member of the workgroup. Mr. Thomas said he and his peer
23 administrator review these charters, prior to approval of the new workgroup(s). In addition,
24 they require each workgroup to provide them with workgroup meeting notes after each
25 meeting and to receive advance approval from us for any proposed workgroup activity. He
26 said they have been coordinating with the DSHS Disclosure and Ethics Administrator, Andrew

1 Colvin, on completing an in-person ethics training for all supervisors in the Tacoma CSCC
2 facility. He said the DSHS Ethic policy was also reviewed by each employee in conjunction
3 with their annual performance evaluation during the fall of 2018.

4 III. CONCLUSIONS OF LAW

5 1. RCW 42.52.160(1) – Use of persons, money, or property for private gain, states:

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

9 2. Under WAC 292-110-010 Use of state resources, prior to April 2016, states, in

10 part:

(2)(d) a state officer or employee may make an occasional but limited personal use of
11 state resources as long as each of the following conditions are met:

- 12 (i) There is little or no cost to the state;
- 13 (ii) Any use is brief;
- 14 (iii) Any use occurs infrequently;
- 15 (iv) The use does not interfere with the performance of any officer's or
employee's official duties; and
- 16 (v) The use does not compromise the security or integrity of state
property, information, or software.

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

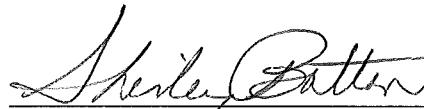
18 (3) **Permitted personal use of state resources.** This subsection applies to any use of
state resources not included in subsection (2) of this section.

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

- 20 (i) There is little or no cost to the state;
- 21 (ii) Any use is brief;
- 22 (iii) Any use occurs infrequently;
- 23 (iv) The use does not interfere with the performance of any state officer's
or employee's official duties;
- 24 (v) The use does not compromise the security or integrity of state
property, information systems, or software;
- 25 (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
- 26 (vii) The use is not for supporting, promoting the interests of, or soliciting
for an outside organization or group.

1 Respondent has the right to petition the superior court for judicial review of the Board's
2 action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition
3 for Judicial Review, see RCW 34.05.510 and sections following.
4

5 DATED this 8th day of November, 2019.
6

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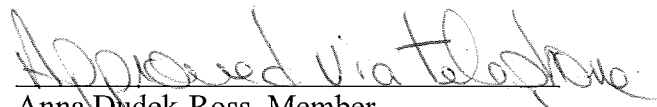
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Shirley Battan, Chair
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Gerri Davis, Vice Chair
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Lisa Marsh, Member
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Anna Dudek-Ross, Member
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