BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: Derrick Gray,
Respondent

EEB Case No. 2018-037
FINAL ORDER

I. PROCEDURAL HISTORY

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

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

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

II. FINDINGS OF FACT

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

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

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

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

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

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

1 On February 11, 2019, DSHS advised Board staff that after receiving the notice of a second 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.

FINAL ORDER
EEB No. 2018-037 (Gray)
7. According to the SAO, during the reviewed period Mr. Gray worked or submitted leave for 469.3 hours, instead of 520 hours. The SAO provided Board staff with a copy of an email from Mr. Gray in which he told Mr. Thomas he would start work at 7:30 am. According to the SAO, Mr. Gray regularly came in at 8 am. Additionally, he did not stay late to make up the missed time. The SAO investigative report states that because of his extended lunch breaks, his late arrivals, and his failure to make up the missed time, Mr. Gray worked an average of 36.1 hours each week. The SAO said they found that Mr. Gray did not submit leave for 50.7 hours when he arrived late and failed to make up time attending college classes.

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

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

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

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

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

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

October 2017

<table>
<thead>
<tr>
<th>Monday</th>
<th>7:30am - 4:30pm, School from 11:30am -12:20pm and 5:00pm - 6:00pm</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tuesday</td>
<td>7:30am - 4:30pm, School from 11:30am -12:20pm</td>
</tr>
<tr>
<td>Wednesday</td>
<td>7:30am - 4:30pm, School from 11:30am -12:20pm and 5:00pm - 6:00pm</td>
</tr>
<tr>
<td>Thursday</td>
<td>7:30am -4:30pm, School from 11:30am -12:20pm and 5:00pm - 6:00pm</td>
</tr>
<tr>
<td>Friday</td>
<td>7:30am -4:30pm, School from 11:30am -12:20pm and 5:00pm - 6:00pm</td>
</tr>
</tbody>
</table>
January 2018

<table>
<thead>
<tr>
<th>Day</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monday</td>
<td>7:30am - 9:45 (leave for class) 10:30 to 11:20 class, back in office 11:45 - 5:00pm</td>
</tr>
<tr>
<td>Tuesday</td>
<td>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</td>
</tr>
<tr>
<td>Wednesday</td>
<td>7:30am - 9:45 (leave for class) 10:30 to 11:20 class, back in office 11:45 - 5:00pm</td>
</tr>
<tr>
<td>Thursday</td>
<td>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</td>
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<tr>
<td>Friday</td>
<td>7:30am - 9:45 (leave for class) 10:30 to 11:20 class, back in office 11:45 - 5:00pm</td>
</tr>
</tbody>
</table>

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

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

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

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

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

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

20. During the course of Board staff’s investigation, DSHS advised Board staff that based on the allegations made by the SAO, there were two investigations conducted by their agency on Mr. Gray. Both investigations were conducted by Connie Weedin (Ms. Weedin), Internal Controls and Investigations Manager for the Statewide Customer Service Contact Center (SCSCC). According to the investigative reports she was assigned the investigation by
Ronnie-Sue Johnson (Ms. Johnson), the SCSCC Administrator. The first report was dated September 19, 2018, and was in regards to Mr. Gray’s failure to take leave while absent from work. The second investigation was dated November 15, 2018, and was in regards to the allegations made by the SAO about Mr. Gray’s use of his state computer for personal use. Board staff were provided copies of both of those investigations by DSHS.

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

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

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

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

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

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

28. According to the DSHS report, Ms. Weedin asked Mr. Gray if he agreed with the SAO’s finding that he was overpaid for 50.7 hours during the review period of November 6, 2017, through February 3, 2018. He replied that he did not, that he had told the SAO investigator when they met that he disagreed with her spreadsheet and she said she would correct this, on some of the times and that she would get more information. He said that the final report did not have any of the calculations, just her report. When asked why he did not respond to the SAO after June 11, 2018, he replied, “No reason. I do not think 50.7 hours
overpaid is correct." Mr. Gray also stated that he did not know any steps that he could take to get the report corrected, and that he “would need to look at the dates again to see if she took all that off or not.”

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

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

- During the reviewed period, Mr. Gray worked or submitted leave for 469.3 hours, instead of 520 hours. Even though Mr. Gray told his manager he would start work at 7:30 AM, he regularly came in at 8 AM. Additionally, he did not stay late to make up the missed time. Because of his extended lunch breaks, his late arrivals, and his failure to make up the missed time, Mr. Gray worked an average of 36.1 hours each week. The SAO said they found that Mr. Gray did not submit leave for 50.7 hours when he arrived late and failed to make up time attending college classes. Can you confirm if this is an accurate statement from the SAO? “Yes this is an accurate statement.”
During an interview with Mr. Gray, he said he must have "made a math mistake" when creating his schedule and that he "should have been staying later" to make up the time. He said he had not worked outside his reported schedule because he did not realize he needed to make up time. Mr. Gray said that he arrived for work at 7:30 am, but sat in his car and listened to the radio until about 7:50 am, which he said made up some of his missing time. When asked how that made up time, he said, "I'm here, I thought it counted." This statement was taken from the SAO report in regards to an interview between you the SAO investigator. Do you have any disagreement with what the SAO investigator said? "No disagreement"

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

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

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

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

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

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

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

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

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

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

2 DSHS advised that staff are not issued a thumb drive by the agency so this would have been a personal thumb drive.
permission from Aldeana Doss (Ms. Doss), who was then his supervisor, before starting the online bingo games during working hours. He said that the prizes given to the winners are “just little fun trinkets. Nothing really big,” and that the funds used to purchase those prizes are funds from the Fun Committee and that sometimes he used his own personal funds.

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

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

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

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

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3 Mr. Thomas and Ms. Johnson.
4 Toby Wills is a FSS3, with DSHS.
According to Ms. Weedin, when she showed Mr. Gray copies of emails found on his state issued computer which relate to the Fun Committee and asked him to tell her about the Fun Committee, he replied that he “used to be chair of the Fun Committee. Tried to boost morale. Notices sent about what was going on, different events which were being held each month.”

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

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

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

Ms. Gutierrez-Leach, who is now the chair of the Staff Engagement Committee, stated that after the committee was asked to put on the All Staff Recognition Event, committee members spent a lot of time at first on that event as they only had a few weeks to put together an All Staff Recognition Event. She stated, “And now we have two
meetings per month. One meeting we came up with a list of events we would like to do the next month. Then we submit those to Ron and Tina\textsuperscript{5} for approval and they don’t always get approved. Then once we have their approval, then we meet again to plan. So we are meeting twice per month.” Ms. Gutierrez-Leach also stated that Mr. Wills was very frustrated with the approval process and he chose to be a backup member rather than a primary member and that the committee needs to be okay with being told no.

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

51. According to Ms. Weedin, when she asked Mr. Gray if he was aware that state employees are prohibited from conducting raffles during work time using state resources, he replied, “[n]o, I am not aware of that.” When she asked him why, if he is not aware, that he told Kim Arzberger\textsuperscript{6} to remove the word “raffle” from the poster she had drafted for the Mother’s Day Fun Committee event, he replied, “[s]omebody must have told me to tell her that.” Ms. Gutierrez-Leach, Ms. Pisapio, and Ms. Doss all stated they were made aware that state employees are prohibited from conducting raffles during work time using state resources, but all three also stated that they were told that using a random draw program in Excel, similar to what Babs Roberts used to select an employee to Spend a Day with Babs\textsuperscript{7}, was permitted.

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

\textsuperscript{5} Tina Hatley is the Central Sound Administrator for DSHS.
\textsuperscript{6} Kim Arzberger is a FSS3 with DSHS.
\textsuperscript{7} Babs Roberts is the Director of DSHS.
53. According to Ms. Weedin, she spoke with Mr. Thomas and asked him about Ms. Doss's statements that because he and Ms. Johnson were present during the all staff when the awards were given to the winners of these activities they knew about the use of the random selection to choose the winners of baskets. And that they knew staff were participating in Fantasy Football, Baseball Bingo, NFL Weekly Pickem, the NCAA Tourney Pool, and College Bowl Mania during work time using their state issued computers. She said Mr. Thomas replied that he was not aware that any such awards were given at the 2016 or 2017 recognition event, but that Ms. Doss may have been referring to a very lengthy all staff event in 2015 during which awards were given to everybody for participation. However, he did not notice any awards given at the 2015 event for the activities such as Fantasy Football and neither did Ms. Johnson. He said that if he or Ms. Johnson had noticed that was happening, they both would have addressed it. Mr. Thomas also stated he did not have any knowledge of the use of the random selection process in Excel.

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

55. Board staff contacted Mr. Thomas and asked if they had taken any action as a result of the DSHS investigation of Mr. Gray. In a written response, he said they disbanded the staff-led morale committee referred to as the "Fun Committee" and ensured that future workgroups have a specific, concise and detailed charter for the workgroup, and an experienced supervisor as a lead member of the workgroup. Mr. Thomas said he and his peer administrator review these charters, prior to approval of the new workgroup(s). In addition, they require each workgroup to provide them with workgroup meeting notes after each meeting and to receive advance approval from us for any proposed workgroup activity. He said they have been coordinating with the DSHS Disclosure and Ethics Administrator, Andrew
Colvin, on completing an in-person ethics training for all supervisors in the Tacoma CSCC facility. He said the DSHS Ethic policy was also reviewed by each employee in conjunction with their annual performance evaluation during the fall of 2018.

III. CONCLUSIONS OF LAW

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

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

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

   (2)(d) a state officer or employee may make an occasional but limited personal use of state resources as long as 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 officer's or employee's official duties; and
   (v) The use does not compromise the security or integrity of state property, information, or software.

Under 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.
3. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Mr. Gray and over the subject matter of this complaint.

4. Based on the evidence, Mr. Gray used his state issued computer and time for his private benefit or gain in violation of RCW 42.52.160. Mr. Gray’s activities do not meet the exceptions for the use of state resources as permitted in WAC 292-110-010.

5. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360.

6. In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 have been reviewed.

IV. FINAL ORDER

Based on the foregoing:

IT IS HEREBY ORDERED Respondent Derrick Gray is liable for and shall pay a civil penalty of three-thousand dollars ($3,000). The payment shall be made to the Executive Ethics Board within forty-five (45) days of this Order.

V. AUTHORITY AND PROCEDURE

Pursuant to RCW 34.05.470, Respondent has the right to file a Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition must be filed with the Executive Ethics Board at 2425 Bristol Court SW, Olympia, Washington 98504, or by U.S. Mail at P.O. Box 40149, Olympia, Washington 98504-0149, within ten (10) days of service of the Final Order upon Respondent.

The Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in this matter. A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the petition is filed, the Board does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on a petition.
Respondent has the right to petition the superior court for judicial review of the Board’s
action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition
for Judicial Review, see RCW 34.05.510 and sections following.

DATED this 8th day of November, 2019.

Shirley Battan, Chair

Gerri Davis, Vice Chair

Lisa Marsh, Member

Anna Dudek-Ross, Member