

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Leigh Bacharach
Respondent.

No. 2022-004

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Leigh Bacharach and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through KATE REYNOLDS, Executive Director, pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation. This stipulation is based on the following:

A. STIPULATED FACTS

1. On March 9, 2022, the Executive Ethics Board (Board) received a complaint alleging that Leigh Bacharach (Ms. Bacharach), an employee with the Department of Health (DOH), may have violated the Ethics in Public Service Act. The complaint alleged that Ms. Bacharach violated several sections of the Ethics in Public Service Act, by requiring all staff to participate in team meetings where they played "office Olympics" and were rewarded with monetary gifts. According to the anonymous complainant, Ms. Bacharach, as part of Senior Team Management, scheduled an online meeting for February 8, 2022 from 10am-noon. The complainant noted that this was during "normal working hours" but that Ms. Bacharach (and

others) “mandatorily” required employees to create a Trello profile with their work emails and names. The complainant further alleged that this meeting was held utilizing the agency’s Microsoft Teams accounts, that Trello was not a government approved social platform, and that DOH does not have an account with Trello.

2. The complainant additionally alleged that Team Management “forced” 60 employees to play an “Olympics game,” utilizing Trello, and that there were awards given in the form of Amazon gift cards. The Amazon gift cards were allegedly given as “rewards” for “competition” which is considered “gambling,” according to the complainant. The meeting in question was allegedly labeled as “Data Support All Staff Meeting,” but that the meeting was actually not a government meeting, but instead a “gaming group.” The complainant further advised that when some employees complained about the ethics of the activity, they were “hazed” by Management and other team members. The complainant advised that previous meetings of this “gaming” nature were optional to attend, but due to low attendance, employees were now being “forced” to attend. Lastly, the complainant alleged that this meeting also violated the non-disclosure agreements they all signed as DOH employees, due to the agreements reading, “all meetings are considered confidential.” The complainant stated that Trello is held in public format, therefore “violating” confidential status.

3. According to DOH, Ms. Bacharach was hired on April 1, 2012, as a supervisory Office Manager, Division of Prevention and Community Health, Office of Nutrition Services. On July 16, 2014, Ms. Bacharach was promoted to Health Services Consultant 2, Division of Disease Control and Health Statistic, Center for Health Services. On September 1, 2014, Ms. Bacharach was relocated to Health Services as a Consultant 3. On May 1, 2018, Ms. Bacharach was promoted to Supervisory Health Services Consultant 4. On October 26, 2020, Ms. Bacharach’s role was

transferred to Office of Public Health Outbreak Coordination, Informatics and Surveillance (PHOCIS). On June 16, 2021, Ms. Bacharach was reallocated to Management Analyst 5. On December 16, 2021, Ms. Bacharach was promoted to Data Support Unit Manager (WMS Band 2).

4. In Ms. Bacharach's written response to Board staff, she indicated the complaint was referring to the Data Support section of DOH. Ms. Bacharach provided the following background of the Data Support section:

"The Data Support section started as a direct response to the COVID-19 outbreak. It has taken many forms throughout the response, but the current footprint was put in place about a year and a half ago. All of the employees in Data Support are project permanent with funding until July 31, 2023. Most of the employees in Data Support are new to state government. All of the employees work 100% remotely. The Data Support section employees (until last month) worked 7 days a week, including holidays. Staff in Data Support work throughout the state and have, for the most part, never met in person. All of these details relate to the creation of quarterly team-building meetings, which are the basis of this complaint."

5. Ms. Bacharach additionally described how members of leadership, herself included, felt it was important to "strive for team cohesion, especially when working long hours on the COVID-19 response." She further explained that Data Support Section Manager, Kim Macleod (Ms. Macleod), was looking for ways to bring the Data Support section together as a team. Ms. Macleod allegedly asked the team what they would like to do for team building. A volunteer group of staff was then established to plan the meetings. The volunteer group was different during each meeting. Since remote work was new to the agency, and building teams and maintaining team synergy in a remote workplace was new, they wanted to include staff in meeting planning - to enable ownership and commitment. Ms. Bacharach provided a list of the most recent team members who were responsible for coming up with the team building exercises: Blair Glanville (Ms. Glanville), Shane Tebeck (Mr. Tebeck), Maggie Enquist (Ms. Enquist), and Jennifer Valverde (Ms. Valverde).

6. Ms. Bacharach explained that all mentioned parties in the complaint are part of Data Support, which is a sub-section of PHOCIS. Ms. Bacharach advised she is the current manager, Ms. Roloff is the unit supervisor, Mr. Olson is the team lead of "Blue Jays," and Ms. Engelund is the section administrative assistant.

7. Ms. Bacharach confirmed that the meeting time and date noted by the complainant was accurate, but claimed the meetings sole purpose was team building, not for gaming with monetary awards as mentioned in the complaint.

8. Ms. Bacharach confirmed the meetings were held utilizing state computers and that Trello was used, but that it was not public facing. Ms. Bacharach further advised that information within Trello is only visible to those invited into the meeting by management. Regarding the use of Trello, Ms. Bacharach advised the "free" version was utilized, therefore no downloading was necessary to attend the meeting.

9. In response to the allegation of employees being "forced" to attend, she stated no one was forced, but that the meetings were "mandatory." Ms. Bacharach further advised that all previous meetings were also mandatory, not voluntary, as mentioned in the complaint.

10. Regarding the complaint of violation of the signed non-disclosure form - Ms. Bacharach advised DOH employees fill out the form, annually, and that it states "all meetings are considered confidential." She further advised that since the Trello meetings were only viewable by DOH employees invited by management staff, there would have been no violation of their non-disclosure. A copy of the DOH form was provided to Board staff.

11. Ms. Bacharach disputed the "hazing" comment, and advised she had never heard complaints from staff members about having to attend, until recently. Ms. Bacharach advised that after their last meeting, Ms. Roloff approached her and informed her that one person had

complained about it being mandatory, due to no interest in sports or team building. Ms. Bacharach advised that after hearing that complaint, they immediately changed the meetings from “mandatory” to “strongly encouraged” attendance, and that if one chooses not to attend, they’re allowed to go about their usual DOH tasks.

12. Ms. Bacharach provided a brief description of what the team building entailed. The games played had an “Olympics” theme. Each team was comprised of random employees who would then have to select a leader, team name, and their own “Olympic flag.” Ms. Bacharach noted the point was for staff to learn to work together, make decisions as a team, and be creative. The games were broken into three sections: trivia brain teasers, visual brain teasers, and gif epic fail captioning. Ms. Bacharach provided Board staff with examples of each mentioned section. When all sections were completed, the group of Data Support volunteers scored each team, accordingly, to decide a team “winner.” The winning “prize” was allegedly not disclosed to employees, at the start of the games. Ms. Bacharach further provided Amazon receipts showing the amount, and each individual’s name that received a gift card (four in total, equaling \$100).

13. Regarding the games “rules” and “directions,” Ms. Bacharach provided Board staff with a copy of the instructions provided to all participants. The only verbiage that discusses a “prize” is at the end of the instructions, it reads, “The team with the most points wins the gold medal and a prize!” No mention of what the “prize” was is listed anywhere.

14. Ms. Bacharach advised, “I end by stating that the three team building meetings we have had in Data Support were just that, team building meetings and in no way were gambling. The Department of Health has encouraged team building as staff are worn out over long hours and stressful work on the COVID-19 response. It is common practice to award small prizes, including gift cards at team building and wellness events throughout the agency, even on the agency level.”

Lastly, Ms. Bacharach stated, “these are my justifications for having team building meetings, for team building in general.”

15. Regarding the specific complaint that Trello is not private, therefore the online meetings breached the signed non-disclosure form, Board staff researched the company. According to Trello’s online frequently asked questions (FAQ) – Trello is a collaborative work management app designed to track team projects, highlight tasks underway, show who they are assigned to, and detail progress towards completion. Trello member profiles are “public” and will show the user’s first name and username, however, they do not show the user’s email. Additionally, Trello states that all user boards, by default, are private (meaning – only invited members can see and edit the information/data within).

16. In Ms. Glanville’s response to Board staff, she advised that meetings were held on both Teams and Trello and that the email invites came from “DOH Agency COVID19 WDRS Data Support,” which Board staff later confirmed came from Ms. Macleod (Section Manager). In regard to the meetings being mandatory or optional, Ms. Glanville replied, “I remember that attendance was encouraged but I do not know if the meetings were mandatory or optional.” In regard to Trello, Ms. Glanville advised that members were to open a free Trello account and that the meetings were private (for invited members only). Regarding synopsis of the meetings, Ms. Glanville advised they were teambuilding in nature, with “friendly competition,” and there was no promise of monetary rewards.

17. Mr. Tebeck’s response to Board staff advised the meetings were held over both Teams and Trello, that participation was “encouraged” but optional, they were held in private meeting rooms, and that the meetings were team building in nature. Mr. Tebeck advised that no monetary (or other) rewards were advertised for the meetings.

18. Ms. Enquist's response to Board staff advised the meetings were held on Teams/Trello and added that the meetings started in Teams, at which point staff were prompted to navigate to Trello to participate in the team building games, "Team Awesome Winter Games." Ms. Enquist noted that she believed the meetings were optional and that meetings were all private (for Data Support staff only). Ms. Enquist further noted that the point of the meetings were to "interact with members of other teams within Data Support and to participate in an activity together in groups." She also indicated that the games were a "fun competition," in which points were awarded for things such as "creativity and correct answers." Lastly, Ms. Enquist stated that teams were informed the winners would receive a "prize" but that it was never advertised what the prize would be.

19. Ms. Valverde's response to Board staff advised meetings were held via Teams/Trello. She didn't recall if they were mandatory, only that participation was "encouraged to all," and that meetings were "invite only." She further advised that the meetings were team building in nature, which included "work appropriate" game playing. Lastly, she indicated that no rewards were advertised.

20. In Ms. Macleod's response to Board staff, she confirmed that all email notifications, regarding meetings, were sent by her. She stated that Teams and Trello were both used, and that members had to create a (free) Trello account. She further indicated that meetings were not mandatory, but that staff attendance was "highly encouraged." Ms. Macleod further advised that all meetings were private and were team building in nature. She further elaborated, indicating that since all team members had been working virtually – this was to "allow an opportunity for cross Data Support pollination of working relationships outside of each team members' immediate work

pod.” In regard to prizes, Ms. Macleod advised that they were “de minimis” amounts (in gift cards) that were paid for by her, personally.

21. In the DOH response to Board staff, they indicated an internal preliminary investigation was conducted. DOH’s Office of Human Resources had received the same complaint that was sent to the Board. Following the DOH investigation, it was determined that a “minor violation” of the agency’s Managing IT Standards procedure had occurred. Members of the leadership team were “counseled” and advised they were not to download and utilize free software (Trello). They were additionally reminded to first obtain the approval of DOH IT, in the future, if they wished to utilize outside agency free software. Copies of the IT policy, as well as copies of the communication, were provided to Board staff.

22. Additionally, at request of Board staff; DOH provided a forensic copy of Ms. Bacharach’s hard drive, which included all email correspondence dating back to January 1, 2022. Board staff analyzed all emails, utilizing Magnet Forensics Axiom 4.2 software. The hard drive was analyzed utilizing software provided by DOH. Nothing of evidentiary value to this case was located on the hard drive, but several items of interest were located within DOH email correspondence.

23. In regard to the complainant’s specific mention of the February 8, 2022 meeting, in which it was alleged that members were “forced” to attend the “unsanctioned gaming for monetary award gifts,” Board staff located several emails and files. The initial email, sent on January 14, 2022 from “DOH AGENCY COVID19 WDRS Data Support” was sent to multiple DOH employees. The body of the email read as follows:

Hello Team Awesome! Our quarterly staff meeting is coming up soon. The theme game this time will be “Team Awesome Winter Games.” You will be using Trello and GIPHY.com, as well as your creative brain power, to compete. Here is the link to the Trello Powerpoint for review, Trello Practice Powerpoint, and this is the GIPHY website: GIPHY – Be Animated Please attend if you are working this day. Thank you so much ☺

The email included a link to join the Microsoft Teams Meeting, on the scheduled date and time.

24. Board staff located a PowerPoint file, in one of the many email strings related to the all staff meetings. In reviewing the PowerPoint, it was a series of slides referencing the meeting agenda and “games” played. The PowerPoint appeared as described; team building in nature, with breakout rooms, challenges, etc. There was no mention of any “rewards” until the very last slide. The last slide stated, “Gold Medal winners will need to decide if they want an Amazon or Starbucks gift card! Please tell Leigh Bacharach your preference.” It should be noted that the last slide was not shown until the games were completed, therefore there was no mention or promise of rewards until the conclusion of the games.

25. Board staff additionally located a word document titled, “*Data Support all Staff notes*,” presumably for leadership member’s eyes only. In reviewing the file, it was evident the staff meeting was built for employees to join teams with other lesser known staff with the intent of everyone working together to complete the challenges presented to them. At the end of the notes, it stated, “**Gold medal winners receive a prize - gift card**, which will be provided by Leigh Bacharach (gift cards for each winning team member and each member of planning team)”

26. Board staff located an additional Word document titled, “*Participation Instructions*,” presumably for all joining members to review. In reviewing the instructions, there was no mention of mandatory participation, competition, or rewards.

27. On July 13, 2022, Board staff received a follow up letter from Jessica Todorovich (Ms. Todorovich), Deputy Secretary for Administrative Operations with DOH. The letter was written on behalf of Ms. Bacharach, after DOH was notified of the Board’s Reasonable Cause finding. Ms. Todorovich indicated in her letter that it was an oversight on DOH’s part that their current policy did not allow for “organizational effectiveness.” Ms. Todorovich stated that wording

was unintentionally removed from their policy during a recent update. Ms. Todorovich further placed blame on DOH for that situation, and stated that DOH encourages team-building activities.

B. CONCLUSIONS OF LAW

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

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

WAC 292-110-010 Use of state resources, 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.

(b) A state officer or employee may use state resources for wellness or combined fund drive activities as long as use conforms with (a) of this subsection or as authorized in state law and rule.

2. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

C. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, it is an aggravating factor that these types of violations significantly reduce public respect for or confidence in state government or state government officers or employees. In the matter at hand, there are no mitigating factors.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Leigh Bacharach and over the subject matter of this complaint.
2. Under RCW 34.05.060, the Board can establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.
3. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.
4. Leigh Bacharach agrees that if any or all of the alleged violations were proven at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).
5. Leigh Bacharach further agrees that the evidence available to the Board is such that the Board may conclude they violated the Ethics in Public Service Act. Therefore, in the interest

of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order.

6. Leigh Bacharach waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or their acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2).

7. If the Board accepts this stipulation, the Board agrees to release and discharge from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the stipulation. Leigh Bacharach in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between Leigh Bacharach and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. No other claims of alleged violations are pending against Leigh Bacharach at this time.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if Leigh Bacharach does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Leigh Bacharach understands and agrees that this stipulation as well as information obtained during any settlement discussions

between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. Leigh Bacharach agrees to pay a civil penalty in the amount of two-hundred-fifty dollars (\$250) associated with violations of RCW 42.52.

12. The civil penalty in the amount of two-hundred-fifty dollars (\$250) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

I. CERTIFICATION

I, Leigh Bacharach, hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter and if the Board accepts the stipulation, I understand that I will receive a signed copy.

 7-30-2022
Leigh Bacharach Date
Respondent

Presented by:

 9/9/2022
KATE REYNOLDS Date
Executive Director

II. ORDER

Having reviewed the proposed stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

✓

ACCEPTED in its entirety;

REJECTED in its entirety;

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

DATED this 9th day of September 2022.

Approved Virtually
Shirley Battan, Chair

Approved Virtually
Jan Jutte, Vice Chair

Absent
Gerri Davis, Member

Approved Virtually
Earl Key, Member

Approved Virtually
Kelli Hooke, Member

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

Leigh Bacharach

Date