# MINUTES OF THE MEETING OF THE INDIANA STATE ETHICS COMMISSION March 9, 2023

# I. Call to Order

A regular meeting of the State Ethics Commission ("Commission") was called to order at 10:01 a.m. Commission members present were Katherine Noel, Chair; Corinne Finnerty; Sue Anne Gilroy; John Krauss; and Rafael Sanchez (via telephone). Office of Inspector General (OIG) staff present included David Cook, Inspector General; Tiffany Mulligan, Chief of Staff and Chief Legal Counsel; Sean Gorman, State Ethics Director; Mark Mader, Staff Attorney; Doreen Clark, Staff Attorney; Mike Lepper, Special Agent; Sam Stearley, Special Agent; and J.J. Fajt, Special Agent.

Others present were Jessica Keyes, Ethics Officer, Family and Social Services Administration; Mattheus Mitchell, Compliance and Ethics Specialist, Indiana Department of Revenue; Keith Beesley, General Counsel, Indiana State Personnel Department; Nila Miller-Cronk, Ethics Officer, Indiana State Police; Dr. Rich Hogue, former contract employee, Indiana State Police; Amie Durfee, Deputy General Counsel, Indiana Department of Workforce Development; Chris Serak, Ethics Officer, Indiana Department of Transportation; Erin Elam, Ethics Officer, Indiana Department of Health; Kathy Mills, Ethics Officer, Indiana Department of Environmental Management; and Jillian Battle, Ethics Officer and General Counsel; Indiana Treasurer of State.

# II. Adoption of Agenda and Approval of Minutes

Commissioner Krauss moved to adopt the agenda, Commissioner Gilroy seconded the motion, and the Commission passed the agenda via roll call vote (5-0).

Commission Chair Krauss moved to approve the Minutes of the January 12, 2023, Commission Meeting, and Commissioner Gilroy seconded the motion, which passed via roll call vote (3-0). Commissioners Finnerty and Sanchez abstained as they were not present at the January 12, 2023 meeting.

# III. Consideration of Waiver of Post-Employment Restrictions for Charlee Beasor Mitchell

Greg Harrell, School and Community Outreach Manager for the Indiana Commission for Higher Education, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Gilroy moved to approve the Waiver, and Commissioner Krauss seconded the motion, which passed (4-0).

# IV. Request for Formal Advisory Opinion

2023-FAO-002

Richard Hogue, Ph.D., Former Professional Services contract employee Major Nila Miller-Cronk, Ethics Officer Indiana State Police

Major Nila Miller-Cronk is the Ethics Officer for the Indiana State Police (ISP). She also serves as the Commander of ISP's Internal Investigations Section. Major Miller-Cronk requested a formal advisory opinion on behalf of Richard Hogue, Ph.D., who served as a contractor for ISP from February of 2013 through October of 2022. Dr. Hogue had a one-year contract with ISP that ISP renewed each year until Dr. Hogue resigned in October of 2022.

In his role as a contractor with ISP, Dr. Hogue worked with ISP officers and developed early on threat assessments for schools and then developed a program for unarmed responses for active shooters. In her request for a formal advisory opinion, Major Miller-Cronk provided a copy of Dr. Hogue's contract with ISP. The contract is entitled "Professional Services Contract."

With her request for a formal advisory opinion, Major Miller-Cronk also provided a copy of an informal advisory opinion that Major Miller-Cronk obtained from the Office of Inspector General (OIG) on Dr. Hogue's behalf. In her request for an informal advisory opinion, Major Miller-Cronk asked whether the Code would prohibit Dr. Hogue from creating threat assessments for schools after his retirement. The OIG advised that the Code would not apply to Dr. Hogue because he was not a state employee as defined by the Code.

In her request for a formal advisory opinion, Major Miller-Cronk again writes that Dr. Hogue wants to create threat assessments for schools in his retirement. She asks for a formal advisory opinion on whether it would be a Code violation for him to do so and whether engaging in such activity would require a cooling off period.

The analysis stated the following:

Major Miller-Cronk's request for a formal advisory opinion invokes consideration of the Code's definition of employee and the post-employment rule. The application of each provision to Dr. Hogue is analyzed below.

# A. Definition of Employee

IC 4-2-6-1(a)(9) defines an employee as "an individual, other than a state officer, who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis." The definition of employee further specifies that it includes "an individual who contracts with an agency for personal services." The Code's definition of employee does not include an individual with whom an agency contracts for professional services or services other than personal services.

Dr. Hogue's contract with ISP specifies that it is for professional services. Based on the information provided with Major Miller-Cronk's request for a formal advisory opinion, Dr. Hogue's contract with ISP and the testimony provided to the Commission, Dr. Hogue was party to a contract with ISP for professional services and is not a former state employee. As such, the Commission finds that Dr. Hogue was not a state employee and is not a former state employee under the Code.

## B. Post-Employment

IC 4-2-6-11 primarily consists of two separate limitations: a "cooling off" period and a "particular matter" restriction. Both provisions apply to a "former state officer, employee, or special state appointee."

Based on the information provided by Major Miller-Cronk and Dr. Hogue, Dr. Hogue did not serve as a state officer or special state appointee. Furthermore, he is not a former state employee as defined by the Code. As Dr. Hogue is not a former state officer, employee or special state appointee as defined by the Code, IC 4-2-6-11 does not apply to him. As such, the Commission finds that the Code's post-employment rule does not apply to him; therefore, the Code does not prohibit or restrict Dr. Hogue's proposed activities.

Commissioner Krauss moved to approve the Commission's findings, and Commissioner Gilroy seconded the motion, which passed via roll call vote (5-0).

# V. Consideration of the Final Report

In the Matter of John L. Galipeau Case Number 2022-02-0030

State Ethics Director Sean Gorman presented the Final Report regarding the Agreed Settlement in the Matter of John L. Galipeau for approval.

Commissioner Krauss moved to approve the Final Report, and Commissioner Gilroy seconded the motion, which passed via roll call vote (5-0). The Final Report was signed by Commissioners present at the meeting. Commission Chair Noel signed on behalf of Commissioner Sanchez with permission.

#### VI. Ethics Director's Report

State Ethics Director Sean Gorman welcomed the Commission back after not having a meeting in February. He began his report with an update that the first Ethics Officer Roundtable for 2023 was held in January. The OIG has scheduled four events to provide an opportunity for agency ethics officers to discuss challenges, experiences, and questions in their roles. Director Gorman indicated that although the attendance to the first Roundtable was not very high, there was good discussion by those who participated. The next Ethics Officer Roundtable is scheduled for May 23, 2023.

He continued that the OIG is continuing to monitor relevant legislative items in the General Assembly's first 2023 session. Director Gorman also provided that OIG staff will be monitoring the legislative session for any proposed bills that may impact OIG or SEC concerns. Unfortunately, Senate Bill 36, which was slated to amend a statute to include OIG Special Agent investigators extended benefits should they fall in the line of duty, died in committee.

Director Gorman reported that the annual Financial Disclosure Statement filing period has ended with all required filers submitting a Disclosure as required by statute. OIG Legal Assistant Nathan Baker was credited for coordinating the effort.

Next, Mr. Gorman informed the Commission that the OIG's Annual Report has been completed and published to the OIG website.

Finally, Director Gorman reported that OIG has issued 25 IAOs since the January SEC meeting. The IAOs mostly dealt with Post-Employment, Outside Employment, Conflicts of Interest, Nepotism, and Gifts.

#### VII. Adjournment

Commissioner Gilroy moved to adjourn the public meeting of the State Ethics Commission. Commissioner Krauss seconded the motion, which passed (3-0).

The public meeting adjourned at 10:32 a.m.



Eric J. Holcomb, Governor Terry J. Stigdon, MSN, RN, Director

# **Indiana Department of Child Services**

Room E306 – MS47 302 W. Washington Street Indianapolis, Indiana 46204-2738

> 317-234-KIDS FAX: 317-234-4497

> > www.in.gov/dcs

Child Support Hotline: 800-840-8757

Child Abuse and Neglect Hotline: 800-800-5556

March 28, 2023

Mr. Sean Gorman Indiana State Ethics Director Office of the Inspector General

via email only

RE: Limited Personal Use of State Property/Resources Policy

Dear Mr. Gorman:

The Indiana Department of Child Services (DCS) has updated its Limited Personal Use of State Property/Resources Policy and would like to present this newest version, which is attached, to the State Ethics Commission on April 13, 2023 for its review and approval.

Sincerely,

Rachel D. Russell

Deputy General Counsel and Ethics Officer

Indiana Department of Child Services

# INDIANA DEPARTMENT OF CHILD SERVICES ADMINISTRATIVE POLICIES AND PROCEDURES

Policy Number: HR-3-7 Effective Date: TBD Version: 3.0

## POLICY TITLE: LIMITED PERSONAL USE OF STATE PROPERTY/RESOURCES

**OVERVIEW:** This policy establishes guidelines for limited personal use of state property/resources by state employees and special state appointees of the Indiana Department of Child Services (DCS).

#### I. DEFINITIONS

N/A

#### II. REFERENCES

- A. 42 IAC 1-5-12 Use of state property
  - B. IC 4-2-6-17: Use of state property for other than official business; exceptions; violations
- C. IC 4-2-7-5: Code of ethics; use of state property for political purpose; filing ethics compliant

#### III.STATEMENTS OF PURPOSE

- A. DCS recognizes that employees and special state appointees occasionally need to use state property/resources for emergencies and other infrequent personal business (i.e., communicating with schools, child-care providers, physicians, and others) that cannot reasonably be handled away from work.
- B. DCS believes accommodating occasional and limited use of state resources provides a public benefit of attracting and maintaining a diverse, well-rounded workforce.
- C. Such limited, personal use of state property/resources should not be considered a violation of the Indiana Code of Ethics.
- D. The parameters of permissible use of state property/resources under this policy are as follows:
  - 1. The use must not interfere with the performance of official duties and work responsibilities.
  - 2. The use must be infrequent, of short duration and, unless not reasonably practical, made on the state employee's or special state appointee's personal time.
  - 3. The use of state property/resources must not be used for:
    - a. The purpose of conducting personal business, including supplemental employment,
    - b. An illegal activity, or
    - c. A political purpose.

**Note:** A political purpose does not include handling or disposing of unsolicited political communications.

- E. A state employee or special state appointee shall not make private use of any state property which has been removed from state facilities or other official duty stations, even if there is no cost to the State, unless otherwise approved.
- F. The use must be in accordance with the current version of the Information Resources Use Agreement (IRUA). "Information Resources" are defined in the IRUA.
- G. The use must not violate any other ethics laws/rules or agency/state policies.

#### IV. PROCEDURE

- A. Directors, supervisors, and managers are responsible for monitoring the appropriate use of state property/resources within their areas of supervision.
- B. Directors, supervisors, and managers are responsible for referring matters for investigation and/or discipline to the DCS Ethics Officer or the Indiana Office of Inspector General (OIG).
- C. Employees and special state appointees who violate this policy may be subject to disciplinary action by DCS, the Indiana OIG, and/or the State Ethics Commission.

#### V. FORMS, DOCUMENTS, AND TRAININGS

- A. Code of Conduct
- B. Information Resources Use Agreement (IRUA)

#### VI. END DATE

Upon recission.

APPROVAL DATE: Terry Stigdon, Director Department of Child Services

APPROVAL DATE: State Ethics Commission



Dr. David Geeslin Superintendent/CEO 1200 E 42<sup>nd</sup> Street Indianapolis, IN 46205-2004 Phone: 317-550-4807 Toll free: 1-800-722-6166

VP: 317-493-0525 Fax: 317-550-4872 www.deafhoosiers.com

March 30, 2023

Indiana Ethics Commission 315 West Ohio Street, Room 104 Indianapolis, IN 46202

Dear Indiana Ethics Commission,

This is a formal ethics opinion request:

Indiana School for the Deaf has developed a new policy based on a need for our employees' time and skillsets to assist with the development and operations of the Indiana Deaf Children Foundation. Our relationship with the foundation is similar to that of the Indiana Destination Development Corporation and Indiana Destination Development Foundation and we have based our policy around the existing language in use by the Lieutenant Governor's office governing these two organizations. Please note the attached policy, with my signature, which allows for the use of state employees' time and state-owned resources to grow the Mission and Vision of ISD through the fundraising efforts of the Foundation. We request to be included on the State Ethics Commission meeting agenda for April 13th at 10 a.m. Our situation is one of a kind, as we are the only state agency servicing young Deaf Hoosiers from 18 months to 21 years old as both a school and a state agency. Navigating both the requirements of a state-run agency and the logistics of a school corporation presents a challenge not known to other public schools in the state. An affirmative Formal Advisory Opinion will make a difference in our capacity to serve Deaf students optimally. We are looking forward to your feedback and thoughts on how we may maximize our opportunities for students to feel belonging, start to excel, and become thriving citizens making a difference in the community at large.

Sincerely yours

Dr. David Geeslin



# Indiana School for the Deaf

# Standards for Indiana School for the Deaf Employees Who perform Work on Behalf of the Foundation

#### 1. Introduction

#### a. Background:

To assist in raising funds and resources for Indiana School for the Deaf (ISD), the school has established the Indiana Deaf Children Foundation ("Foundation"), a 501(c)(3) charitable organization. The Foundation was created exclusively for the benefit of ISD as it will provide funding to enhance academic, social, and cultural opportunities for deaf children. The Foundation will provide these opportunities to ISD by raising awareness and engaging both the public and private sectors of the community and alumni.

ISD employees will play a crucial role in the operation of the Foundation by assisting with its goals of promoting ISD's vision and mission. Per this policy, certain ISD employees may serve on the Foundation's board of directors, provide administrative support to the Foundation, and engage in fundraising activities on behalf of the Foundation.

# b. Importance of Ethical Principles and Transparency:

The Foundation must have the public's trust. Thus, its activities must meet or exceed the highest ethical standards.

The Indiana Code of Ethics is the minimum standard ISD employees must follow while working with the Foundation. To ensure compliance with these standards and to avoid even the appearance of impropriety, ISD adopts these additional guidelines that ISD employees shall adhere to when performing work on behalf of the Foundation. ISD may amend these guidelines at the Superintendent's discretion at any time. ISD will file these policies with the Indiana State Ethics Commission pursuant to 42 IAC 1-6-1. ISD employees must follow these guidelines in addition to any other documents created by the Foundation that may be applicable to the employees who participate in Foundation activities.

Transparency promotes trust by informing the public about the ethical standards that guide the Foundation's activities. Accessibility to the standards will help assure the public that the Foundation's business and the conduct of ISD employees on behalf of the Foundation are above reproach.

## c. Scope and Coverage:

These guidelines represent the minimum expectations for ethical behavior of ISD employees who serve as officers on the Foundation's board of directors, provide administrative support to the Foundation, and/or engage in fundraising activities on behalf of the Foundation. These guidelines shall take effect as

of the date indicated in the signature block below and shall remain in effect until there is a written rescission of such by ISD.

#### 2. Definitions

Agency: For the purposes of these guidelines and under I.C. 4-2-6-1 of the Indiana Code of Ethics, the agency includes a private, nonprofit, government-related corporation.

<u>Authorized Employee:</u> An individual who is employed by ISD on a full-time, part-time, temporary, intermittent, or an hourly basis performing Authorized Work on behalf of the Foundation. To perform Authorized Work on behalf of the Foundation, an employee must be approved in writing to do so by the ISD Superintendent or his or her designee.

<u>Authorized Work:</u> Only work approved by the ISD Superintendent or his or her designee shall be considered authorized work on behalf of the Foundation.

<u>Business Relationship:</u> Pursuant to I.C. 4-2-6-I(a)(5), dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing a pecuniary interest in a contract or purchase with the agency or a license or permit requiring the exercise of judgment or discretion by the agency. A business relationship also refers to the relationship a lobbyist has with an agency and the relationship an unregistered lobbyist has with an agency.

<u>Compensation:</u> Any money, thing of value, or financial benefit conferred on or received by any person in return for services rendered, or for services to be rendered, whether by that person or another.

<u>Foundation</u>: The Foundation is the Indiana Deaf Children Foundation and is a 501(c)(3) non-profit supporting organization of the Indiana School for the Deaf.

<u>Fundraising:</u> The organized activity or an instance of soliciting money, pledges, or other items of value for the Foundation.

#### 3. Guidelines

#### a. Employee:

- 1) Only Authorized Employees shall perform Authorized Work on behalf of the Foundation.
- 2) Authorized Employees shall perform Authorized Work for both the ISD and the Foundation in an official capacity and as part of their official ISD duties.
- 3) The following positions qualify as Authorized Employees to perform work on behalf of the Foundation withing the scope of their respective job description:
  - a. <u>Superintendent:</u> shall serve as the ex-officio member of the Foundation board and set the direction of the Foundation with the Foundation President. This individual shall also oversee fundraising and establish the Foundation meeting agendas with the Foundation's President. The Superintendent may work with the Superintendent's Administrative Assistant and Information Specialist at ISD and assign them to provide services that the Foundation needs.

<u>Superintendent's Administrative Assistant:</u> may support the Foundation Secretary, including handling Foundation meeting logistics, agendas,

invoicing and providing backup administrative duties including providing reports to the Foundation President as needed. The Superintendent's Administrative Assistant may also send and maintain notices and agendas through OnBoard or similar software.

<u>Information Specialist:</u> may sell advertisements to raise funds for the Foundation. Additionally, this individual may maintain data and payment records related to advertising revenue for the Foundation as well as provide the Foundation support with its website development and/or maintenance.

- b. Assistant Superintendent of Operations: may assist attorneys and accountants of the Foundation in maintaining financial reports. This individual may also support the Foundation with assistance from ISD departments under their supervision, including the Business Office, Maintenance, and Security departments in their work for the Foundation. The Business Office may handle deposits for the Foundation and provide a reconciliation of funds received. Furthermore, the Business office may track outgoing Foundation payments and incoming checks within the Foundation's financial system and work with the Foundation's Treasurer on financial reporting.
- c. <u>Assistant Superintendent of Education:</u> may support the Foundation with assistance from ISD departments under their supervision, including the Education department, Related Services, Interpreting Services, and the Technology Office with resources to support their work for the Foundation. Additionally, the individual may manage the community engagement efforts of the Foundation.
- d. <u>Assistant Superintendent of Student Affairs:</u> may support the Foundation with assistance from ISD departments under their supervision including the Health Center, Food Services, Athletics, and the Residential Program with resources and personnel to ensure the success of the Foundation's vision and mission for students and families. Additionally, this individual may manage the community engagement efforts of the Foundation.
- 4) The aforementioned job descriptions seek to define the core responsibilities of each position but shall not be construed as fully inclusive of all tasks that may be assigned by the Superintendent or his or her designee, including as such tasks that may relate to the Foundation.
- 5) State resources including, but not limited to, printers, office supplies, software, and vehicles, may be used to perform Authorized Work on behalf of the Foundation.
- 6) The ISD Superintendent or his or her designee will provide Authorized Employees with a copy of these guidelines. Authorized Employees shall:
  - Read and acknowledge receipt of guidelines.
  - Agree to comply with policies and procedures stated in these guidelines.

- 7) Authorized Employees understand that the Foundation is charitable, and they will engage only in activities that relate to one or more of the 501(c)(3)'s taxexempt purposes while working on Foundation activities.
- 8) If an employee is not authorized to perform work on behalf of the Foundation and they receive an inquiry about the Foundation, they will refer said inquiry to the ISD Superintendent or his or her designee.
- 9) The ISD Ethics Officer ("Ethics Officer") will screen ISD employees for conflicts of interests before said employees perform any Authorized Work on behalf of the Foundation.
  - a. Before receiving authorization to work on behalf of the Foundation, ISD employees must complete and sign a Conflict-of-Interests Disclosure Statement in the attached form and file it with the Ethics Officer.
  - b. The Ethics Officer will review the Statement to ensure the employee has no conflicts of interests with the Foundation, a Foundation Board Member, a person, or organization the Foundation is soliciting funds from, or an organization benefitting from the Foundation's work. For these guidelines, a conflict of interests includes having a financial interest in one of these organizations or being in a position at ISD to make decisions that would financially impact any of these individuals or organizations.
  - c. If the Ethics Officer determines the employee has a conflict of interests that cannot be eliminated or mitigated, ISD will not authorize the employee to work on the Foundation's behalf.
  - d. If the Ethics Officer determines the employee has a conflict of interests that can be eliminated or mitigated, the ISD Superintendent or his or her designee may authorize the employee to perform work on behalf of the Foundation so long as ISD has implemented a screen as approved by the Ethics Officer or the State Ethics Commission if required by I.C. 4-2-6-9.
  - e. The ISD employee shall update his or her Disclosure Statement annually and when any significant changes or additions to the Statement occur.
- 10) If an employee has an ethical concern regarding the Foundation, the ISD employee shall report the issue immediately to the Office of Inspector General and/or the Ethics Officer. If the employee is uncertain whether an issue is one of ethics, including an issue that may not be addressed in these guidelines, the employee shall contact the Ethics Officer for guidance as soon as possible.

#### 4. Authorized Employee Compensation

- a. Authorized Employees shall not receive additional compensation for matters handled on behalf of the Foundation.
- b. Authorized Employees' assistance with the Foundation shall not be tied to supplemental compensation, including, but not limited to, pay increases and/or spot bonuses, unless said assistance is directly listed in the employee's performance expectations.

#### 5. Transparency

- a. All Authorized Employees shall be held to the highest ethical standards when working on behalf of the Foundation and shall cooperate and assist as necessary with any questions regarding the Foundation, including transparency, audits fundraising, and solicitation matters.
- b. These guidelines and other guidelines issued on behalf of the Foundation shall be disclosed to the public.
- c. The Foundation and employees working on behalf of the Foundation will comply with Indiana's Open Door Law found in I.C. 5-14-1.5.
- d. The name of donors, individual(s), and/or businesses that do not donate anonymously to the Foundation shall be disclosed to the public. In addition, the amount of donations the Foundation receives shall also be subject to the Access to Public Records Act found in I.C. 5-14-3.

# 6. Fundraising and Acceptance of Donations

- a. Only Authorized Employees shall fundraise during a standard work schedule.
- b. Any fundraising performed shall not be done through coercion.
- c. All written fundraising activities will include the following disclaimers. If the fundraising activity is verbal, these disclaimers shall be made part of a written document provided to the potential donor before receiving any donation:
  - "Participation is completely voluntary." And
  - "Participation will not affect any ongoing matter(s)." and
  - "Participation will not affect any future application for participation in any of ISD's programs or any future regulatory action(s).
- d. Contribution(s) will not affect any ongoing matter(s) with ISD.
- e. Authorized Employees will not solicit subordinates.
- f. No solicitation will be directed towards entities regulated by the ISD, if any.
- g. Authorized Employees will not solicit any person or entity that has a business relationship with ISD, including anyone:
  - That has a contract or grant with ISD;
  - That is bidding on a contract or grant with ISD;
  - That is soliciting business from ISD;
  - That is lobbying ISD; or
  - Through any form of coercion.
- h. The Foundation may accept non-solicited contributions from those with a business relationship with ISD. However, the Foundation shall not accept donations from those with a business relationship with ISD that have a pending regulatory action with the ISD, if any.
- i. Generally, the Foundation may accept any gifts. However, the Foundation will not accept a gift if:
  - A reasonable person would infer that the gift was offered to the Foundation to influence an action or inaction of ISD or its employees in their official capacity; or
  - It presents the appearance of impropriety for ISD.

j. The Foundation will accept all gifts following gift acceptance procedures adopted by the Foundation. These procedures will ensure transparency of any gifts made to the Foundation. Foundation Board Members or ISD employees shall contact the Ethics Officer if there are any questions about the acceptance of gifts.

#### 7. Travel

All Authorized Employees traveling on behalf of the Foundation will be reimbursed per State Policy and as set forth by the Indiana Department of Administration Travel Services.

#### 8. Compliance Mandatory

- a. ISD will discipline any employee, authorized or otherwise, committing violations of these guidelines following the applicable Employee Discipline and Procedures. In addition, ISD will report any employee, authorized or otherwise, that ISD suspects violated the Indiana Code of Ethics to the Inspector General's Office for review.
- **b.** The Ethics Officer shall review all reports of possible ethical violations and forward all reports of violations of the Indiana Code of Ethics to the Inspector General's office. No retaliation shall be taken against any individual reporting a possible violation, i.e., "whistleblowing".

Indiana School for the Deaf

Dr. David Geeslin, Superintendent & CEO

Effective Date: 3/30/2023