

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
December 12, 2019**

**I. Call to Order**

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Commission members present included Katherine Noel, Chairperson; Corinne Finnerty; Sue Anne Gilroy; and Kenneth G. Todd (arrived at 10:10 A.M.). Staff present included Jennifer Cooper, State Ethics Director; Luba Gore, Staff Attorney; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were S. Kyleen Welling, Chief of Staff/Chief Operating Officer, Indiana Housing and Community Development Authority; Tammera Glickman, Deputy General Counsel, Indiana Department of Administration; Beth Green, General Counsel, Department of Workforce Development; James Brewer, former employee of the Indiana State Department of Health; David Johnson, Chief Counsel, Office of Attorney General; Mattheus Mitchel, Compliance and Ethics Specialist, Department of Revenue; Amber Nicole Ying, Special Counsel – Compliance and Ethics, Department of Revenue; Deana Smith, Ethics Officer, Indiana State Department of Health; Latosha Higgins, Managing Attorney and Ethics Officer, Family and Social Services Administration; Megan Rhea, former employee of the Family and Social Services Administration; and Chris Serak, Ethics Officer, Indiana Department of Transportation.

**II. Adoption of Agenda and Approval of Minutes**

Commissioner Gilroy moved to adopt the Agenda and Commissioner Finnerty seconded the motion which passed (3-0).

Commissioner Finnerty moved to approve the Minutes of the November 14, 2019 Commission Meeting and Commissioner Gilroy seconded the motion which passed (3-0).

**III. Consideration of Indiana Housing and Community Development Authority  
Waiver of Post-Employment Restrictions for Erika Young**

S. Kyleen Welling, Housing and Community Development Authority Ethics Officer, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Finnerty moved to approve the Waiver, and Commissioner Gilroy seconded the motion which passed (3-0).

#### **IV. Request for Formal Advisory Opinion**

2019-FAO-022

James Brewer, Former Director of Emergency Preparedness Division  
Indiana State Department of Health

James Brewer is a former state employee who previously served as the Director of the Division of Emergency Preparedness (the Division) for the Indiana State Department of Health (ISDH). Mr. Brewer had worked for ISDH since 2013 and served in this latest position from March 2019 - September 2019. His last day of state employment was September 27, 2019.

Mr. Brewer is interested in employment with a local health department or healthcare coalition. The Division provides sub-recipient agreements to ninety-three local health departments and ten healthcare coalitions in the State. These agreements are funded from cooperative agreements made by the Centers for Disease Control and Prevention (CDC) and the Assistant Secretary for Preparedness and Response (ASPR), respectively.

The sub-recipient program with local health departments and healthcare coalitions are both administered by the District and Local Readiness Director, a subordinate position to the Division Director. As the Division Director, Mr. Brewer supervised the District and Local Readiness Director.

The local health department agreements are non-competitive. No application is required, and a level amount is provided to each department. Mr. Brewer estimates that approximately eighty of the ninety-three departments entered into an agreement for the July 1, 2019 to June 30, 2020 period. An additional funding source, called the Cities Readiness Initiative, provides extra funding for twenty-six local health departments that the CDC specifically identified. This additional funding is also non-competitive and based on a mathematical formula (base + population). ISDH originally implemented this approach for funding several years ago, modeled after the way the CDC allocates these same funds to states.

The Healthcare Coalition agreements also are non-competitive. No application is required, and the funding was based on the same mathematical formula (base + population), modeled after how the ASPR allocates these funds to states.

The agreements themselves, for both local health departments and healthcare coalitions, had specific deliverables and scope of work that the District and Local Readiness Director and staff developed based on the current cooperative agreement from the CDC and ASPR that provides the direction and requirements for the overall award.

As the Director, Mr. Brewer's main role and relationship to these contracts was to act as the supervisor for the District and Local Readiness Director. His role included the signing off on Requests for Contracts (RFCs) - a procedural step for ISDH Finance to electronically create contract agreements. The Program Administrator, Division Director, Assistant Commissioner and Chief of Staff are all required to sign off on RFCs. Mr. Brewer asserts that his role did not include the negotiation or administration of any of these specific contracts.

Should Mr. Brewer obtain employment at a local health department or healthcare coalition, he writes that he will not be serving as a lobbyist. He has no confidential information relevant to this matter or application. He was never in a position that made any regulatory or licensing decisions. He further did not substantially participate in any of the twelve matters listed as particular matters in IC 4-2-6-11 (a)(1) as it applies to his former position at ISDH with the local health departments or healthcare coalitions.

Mr. Brewer is seeking the Commission's opinion regarding the application of the post-employment rule to a potential position with a local health department or health coalition that received funding from his Division while he was serving as the Division Director.

The analysis stated the following:

*A. Confidential Information*

IC 4-2-6-6 prohibits Mr. Brewer from accepting any compensation from any employment, transaction or investment that was entered into or made as a result of material information of a confidential nature. So long as any compensation Mr. Brewer receives does not result from his disclosure of confidential information, his potential post-employment opportunities would not violate IC 4-2-6-6.

*B. Post-Employment*

IC 4-2-6-11 consists of two separate limitations: a "cooling off" period and a "particular matter" restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Mr. Brewer from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

In terms of the cooling off restrictions, Mr. Brewer is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration.

Mr. Brewer provides that he would not be in a position to engage in lobbying activities if he were to secure the type of employment he is seeking at a local health department or a healthcare coalition. To the extent that Mr. Brewer does not engage in executive branch lobbying for one year after leaving state employment, the Commission finds that a post-employment opportunity with a local health department or a healthcare coalition would not violate this provision of the post-employment rule.

Further, the cooling off restrictions prohibit Mr. Brewer from accepting employment for 365 days from the last day of his state employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary.

The Commission finds that Mr. Brewer has not made any regulatory or licensing decisions that applied to local health departments or healthcare coalitions during his state employment.

In addition, Mr. Brewer is prohibited from accepting employment for 365 days from the last day of his state employment from an employer with whom 1) he engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract.

As Division Director, Mr. Brewer supervised the Division staff responsible for administering the sub-recipient contracts to local health departments and healthcare coalitions. ISDH District and Local Readiness Director and staff were responsible for administering these contracts. As the Director's supervisor, Mr. Brewer was in a position to make discretionary decisions regarding deliverables and scope of work.

Accordingly, the Commission finds that Mr. Brewer was involved in the administration of the funding contracts to the local health departments and that he was in a position to make discretionary decisions affecting the nature of the administration of these contracts.

Therefore, Mr. Brewer would be subject to the one-year cooling off period. In the absence of a waiver of the post-employment restrictions from ISDH, he would not be able to work for any local health departments or healthcare coalitions who entered into any of these agreements while the Division was under Mr. Brewer's supervision until September 27, 2020.

Finally, Mr. Brewer is subject to the post-employment rule's "particular matter" prohibition in his prospective post-employment. This restriction prevents him from representing or assisting a person on any of the following twelve matters if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

In this instance, Mr. Brewer would be prohibited from representing or assisting a local health department or a healthcare coalition, as well as any other person, in a particular matter in which he personally and substantially participated as a state employee.

The Commission finds that Mr. Brewer's participation in the funding contracts provided to local health departments and healthcare coalitions during his tenure as Division Director was personal and substantial. Accordingly, absent a waiver of this restriction from ISDH, he would not be able to represent or assist any person on these contracts, for the life of the contracts. He could, however, work on new contracts.

The Commission further finds that Mr. Brewer must ensure compliance with the particular matter restrictions and refrain from assisting or representing any person on any other particular matters that he may have been personally and substantially involved in during his state employment.

Commissioner Finnerty moved to approve the Commission's findings, and Commissioner Gilroy seconded the motion which passed (4-0).

**V. Request for Formal Advisory Opinion**

2019-FAO-023

Megan Rhea, Former Financial Analyst

Latosha Higgins, Ethics Officer

Family and Social Services Administration

Latosha Higgins is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Higgins is requesting an advisory opinion on behalf of Megan Rhea, former Financial Analyst in the Bureau of Childcare/Office of Early Childcare and Out-of-School Learning (Bureau) within FSSA.

Ms. Rhea left state employment on June 26, 2019. Prior to leaving state employment, Ms. Rhea had held a variety of positions with FSSA. She started with FSSA as a Human Services Consultant in 2013 and then transitioned to a Program Director in 2017. In 2018, she transitioned to the role of a Financial Analyst. Ms. Rhea is currently employed as a Volunteer Manager at Outreach Indiana, an organization that assists homeless youth.

Ms. Rhea is interested in pursuing a temporary, part-time contract position with The Consultant Consortium, Inc. (TCC), a contractor with FSSA. In the position with TCC, Ms. Rhea would provide training to TCC employees on how to input data into TCC's software systems. She would work two hours a week for five days to provide such training for a total of 10 hours. Although Ms. Rhea would be teaching the TCC employees how to use software she used while employed by FSSA, she would not be required to work on any matters that she worked on while with FSSA.

TCC is a software solutions company that currently has two contracts with FSSA. TCC is an Indiana company that provides information technology consulting services nationwide. During her employment with FSSA, Ms. Rhea was responsible for performing the administrative function of preparing and submitting the Request for Contract Preparation (RCP) for TCC contracts to FSSA's contracting team. This included incorporating information she received from FSSA's Division of Family Resources, Bureau of Childcare Operations Director regarding the terms of the contract negotiated and approved by the Bureau. Ms. Rhea was responsible for creating RCPs once FSSA's Division of Family Resources, Bureau of Childcare negotiated and approved a contract's specifics, such as the rate, term, line items, scope of work, etc.

Ms. Higgins provides that Ms. Rhea was not involved in the contract negotiation. Rather, she would make sure that the content of the RCP matched the budget and dates that the Bureau Director previously had approved before she sent the RCP to FSSA's contracting team to begin the process of creating the contract. If in completing the RCP, Ms. Rhea noticed a discrepancy, she would notify the Operations Director of her findings, and the Operations Director and Bureau Director would decide the appropriate course of action. If there were any changes to the RCP or contract documents, the Operations Director and Bureau Director

made those decisions. In completing the RCP, Ms. Rhea would occasionally contact TCC to relay information. Once she completed the RCP, the Operations Director reviewed the RCP and documentation before Ms. Rhea sent the form and any additional information to the contracting team.

Ms. Rhea recalls that in or around 2016-2017, she worked with two or three colleagues to review claims submitted by TCC on two or three occasions. Such reviews included: (1) requesting information to conduct an initial desk review; (2) reviewing at least ten claims submitted by TCC; and (3) conducting an on-site review at TCC's place of business. During the onsite review, she would ensure that TCC was maintaining and exchanging documentation securely. She also reviewed the documentation to see if TCC was submitting claims in accordance with the contract terms. She would collect the data and submit it to the Operations Director who would review the data and issue a letter either requesting clarification and/or additional information or noting the completion of the review. Ms. Rhea performed these tasks until she transitioned to the role of a Financial Analyst in 2018. As a Financial Analyst she was no longer responsible for preparing RCPs for the Bureau. Ms. Rhea did not make any licensing or regulatory decisions regarding TCC in any of her positions with FSSA.

Ms. Higgins provides that Ms. Rhea knows and understands that Indiana's ethics laws will continue to apply to her as a private sector employee. She understands and agrees not to divulge confidential information of FSSA during her post-employment endeavors. Furthermore, Ms. Rhea understands and agrees to abide by the one-year restriction regarding registering as an executive branch lobbyist.

FSSA is seeking the Commission's opinion regarding the application of any of the rules in the Code to Ms. Rhea's post-employment opportunity with TCC.

The analysis stated the following:

*A. Confidential Information*

IC 4-2-6-6 prohibits Ms. Rhea from accepting any compensation from any employment, transaction or investment that was entered into or made as a result of material information of a confidential nature. So long as any compensation Ms. Rhea receives does not result from confidential information, her potential employment with TCC would not violate IC 4-2-6-6.

*B. Post-Employment*

IC 4-2-6-11 consists of two separate limitations: a "cooling off" period and a "particular matter" restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Ms. Rhea from accepting employment from an employer for 365 days from the date that she leaves state employment under various circumstances.

First, Ms. Rhea is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making

of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration.

Ms. Higgins provides that Ms. Rhea would not be required to engage in any lobbying activities in her prospective employment with TCC. To the extent that Ms. Rhea does not engage in executive branch lobbying for one year after leaving state employment, the Commission finds that her intended employment with TCC would not violate this provision of the post-employment rule.

Second, Ms. Rhea is prohibited from accepting employment for 365 days from the last day of her state employment from an employer with whom 1) she engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract.

As it relates to TCC's contracts with FSSA, Ms. Rhea was responsible for performing the administrative function of preparing and submitting the RCPs. She prepared these RCPs for FSSA's contracting team so that they could begin the process of creating the contract. Ms. Rhea also worked with colleagues to review claims by TCC on two to three occasions to ensure that TCC was maintaining and exchanging documentation securely and submitting claims in accordance with the contract terms.

Ms. Higgins provides that Ms. Rhea created the RCPs after the Bureau negotiated and approved the contract's specifics, such as the rate, term, line items, scope of work, etc. According to Ms. Higgins, Ms. Rhea did not make any decisions or make any recommendations as to what information was included in the RCP; rather the Operations Director for the Bureau and the Bureau Director provided all of the information and made the decisions on any needed changes to the RCP or related contract documents. The Operations Director also reviewed the RCP and related documents before Ms. Rhea sent the form and any additional information to the contracting team.

In terms of her participation on the team that reviewed TCC's claims, Ms. Rhea submitted the data she collected during these reviews to the Operations Director. Ms. Rhea and Ms. Higgins provide that there was no subjectivity required in this process. Ms. Rhea did not have to use any discretion nor did she make any recommendations during this process. She was one of a group of individuals who collected specified data and passed it along to the Operations Director for any further review or action required.

The Commission finds that Ms. Rhea was involved in aspects of the negotiation and administration of TCC's contracts with FSSA; however, she was not in a position to make any discretionary decisions affecting the outcome of the negotiation or nature of the administration of these contracts. Accordingly, the Commission finds that Ms. Rhea would not be subject to the cooling off restriction for her role in interacting with TCC as a FSSA employee, and she may accept employment with TCC immediately.

Third, Ms. Rhea is prohibited from accepting employment for 365 days from the last day of her state employment from an employer for whom she made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary.

Ms. Higgins provides that Ms. Rhea did not make any regulatory or licensing decisions in her positions with FSSA that directly applied to TCC. Accordingly, the Commission finds that Ms. Rhea has never made any regulatory or licensing decisions that applied to TCC as a state employee, and she is not prohibited under this provision from accepting employment with TCC immediately.

Fourth, Ms. Rhea is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence her in her official capacity as a state employee. Ms. Rhea has already left state employment. Accordingly, the Commission finds that this restriction would not apply to her intended employment opportunity with TCC.

Finally, Ms. Rhea is subject to the post-employment rule's "particular matter" prohibition in her prospective post-employment. This restriction prevents her from representing or assisting a person on any of the following twelve matters if she personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

In this instance, Ms. Rhea would be prohibited from representing or assisting TCC, as well as any other person, in a particular matter in which she personally and substantially participated as a state employee.

Ms. Higgins provides that although Ms. Rhea would be teaching TCC employees how to use software she used while employed by FSSA, she would not be required to work on any matters that she worked on as a state employee.

The Commission finds that Ms. Rhea must ensure compliance with the particular matter restrictions and refrain from assisting or representing any person on any other particular matters that she may have been personally and substantially involved in during her state employment.

Commissioner Todd moved to approve the Commission's findings, and Commissioner Gilroy seconded the motion which passed (4-0).

## **VI. Director's Report**

State Ethics Director, Jen Cooper, stated that since the last Commission meeting, the Office of Inspector General had issued 28 informal advisory opinions on the subjects of post-employment restrictions, conflicts of interests, outside employment, and gifts.

She further advised the deadline for completing the Ethics Training was November 21, 2019 and that approximately 97.5% of required personnel have completed the training as of today. All training should be complete by the end of the year.

Director Cooper also indicated that the Financial Disclosure Statement filing period of Calendar Year 2019 would begin on January 2, 2020. Finally, Director Cooper introduced new OIG Staff Attorney Luba Gore to the Commissioners. She began at OIG in November 2019.

## **VII. Adjournment**

Commissioner Finnerty moved to adjourn the public meeting of the State Ethics Commission and Commissioner Gilroy seconded the motion, which passed (4-0).

The public meeting adjourned at 10:37 a.m.

INDIANA  
OFFICE OF INSPECTOR GENERAL

315 WEST OHIO STREET, ROOM 104, INDIANAPOLIS, IN 46202 317.232.3850

**Report of Inspector General to  
State Ethics Commission  
2019 Q4 and Year End**

1. IAOs: Q4 October 1 – December 31:
  - a. **103 issued in Q4**
  - b. **328 for 2019**
    - i. Compares to 74 issued in Q3 2019
    - ii. Compares to 83 in Q4 in 2018
    - iii. 2018 we issued 321
2. Investigations: Q4 October 1 – December 31:
  - a. **83 Requests to Investigate in Q4**
  - b. **323 for 2019**
    - i. Compares to 61 in Q3
    - ii. Compares to 73 in Q4 in 2018
    - iii. 341 requests in 2018
  - c. **15 New investigations opened in Q4**
  - d. **55 New investigations for 2019**
    - i. Compares to 7 in Q3
    - ii. Compares to 16 in Q4 2018
    - iii. Compares to 65 opened in 2018
  - e. **8 Closed investigations in Q4**
  - f. **51 investigations closed in 2019**
    - i. Compares to 15 closed in Q3
    - ii. Compares to 15 closed Q4 in 2018
    - iii. Compares to 52 investigations closed in 2018
    - iv. 40 of 51 closed case reports are published on the website
3. KPI's for Q4
  - a. KPI #1 - Number of informal advisory opinions ("IAO"s) requested  
**Q4: 115 2019: 356 [includes withdrawn and no jurisdiction]**
  - b. KPI #2 - Average number of business days to provide an IAO **Q4: 1.087 2019: 1.15**
  - c. KPI #3 - Number of recommendations made to reduce waste, inefficiency, fraud and improve integrity. **Q4: 7 recommendations in 1 confidential and 4 public reports. 2019: 41 recommendations in 20 reports**
4. SEC Work
  - a. 11 meetings held
  - b. 8 Post-Employment Waivers heard and approved
  - c. 18 Formal Advisory Opinions issued
  - d. 2 formal complaints filed by the IG with the Commission

- i. 2 resolved by settlement and received final commission approval
  - ii. 2 settlement agreements on 2018 complaints received final approval by the Commission in 2019
- e. 1 policy approved, specifically a Limited Use of State Property Policy
- 5. Update on appointment of 5<sup>th</sup> commissioner to replace outgoing member Priscilla Keith

# STATE OF INDIANA

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ERIC HOLCOMB Governor

INDIANA VETERANS' HOME

3851 N. River Road  
West Lafayette, IN 47906  
Telephone: (765) 463-1502



December 27, 2019

Ethics Commission  
Office of the Inspector General  
315 West Ohio Street, Room 104  
Indianapolis, Indiana 46202  
Via Email: [info@ig.in.gov](mailto:info@ig.in.gov)

Re: Request for Formal Advisory Opinion

Dear Chair Noel and members of the Ethics Commission:

The Indiana Veterans' Home ("IVH") is requesting a Formal Advisory Opinion as to whether an employee, Ms. Kim Jasper, may accept outside employment with a contractor of IVH. Ms. Jasper and I respectfully request to come before the Ethics Commission on January 9, 2020.

On December 12, 2019 I submitted a request for ethics advice regarding this issue. My question and the advice I was given by Ms. Mulligan is provided.

IVH has entered into a zero dollar contract with an organization called Greater Lafayette Career Academy ("GLCA"). They teach a Certified Nursing Assistant ("CNA") course, and the contract allows GLCA to do clinicals with the CNA students here at IVH. Our hope is that we can then recruit these CNAs as IVH employees once they receive their certification. These students will be doing their clinicals from 12-2:30pm Monday through Friday, and they will be supervised by GLCA employees. Basically GLCA is just utilizing our space and equipment.

Ms. Jasper is a night shift nursing supervisor who works 6pm to 6am. She would like to work for GLCA supervising the CNA students as they do their clinicals at IVH. Ms. Jasper would not be working as an IVH employee when she would be here to supervise the CNA students.

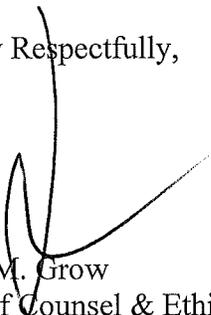
I agree with Ms. Mulligan's advice that Ms. Jasper would not have a potential conflict of interest under IC 4-2-6-9 and would recommend that Ms. Jasper file a written disclosure with the Office of the Inspector General. I believe Ms. Jasper would be able to fully comply with IC 4-2-6-17 and 42 IAC 1-5-13. My concern is mainly whether Ms. Jasper would violate the second point of IC 4-2-6-5.5, "accepting other employment . . . that would require them to disclose confidential information that was gained in the course of state employment."



Medical information regarding our residents would most definitely be confidential information that she would have acquired as an IVH employee. However, any GLCA employee supervising the students would have access to relevant patient information.

Thank you for your time and consideration in this matter. I look forward to your determination in this matter as I wish to ensure that IVH is conducting business in a manner consistent with Indiana's ethics laws. If you have any questions or need clarification, please do not hesitate to contact me.

Very Respectfully,



Joy M. Grow  
Chief Counsel & Ethics Officer  
Indiana Veterans' Home  
3851 N River Road  
West Lafayette, Indiana 47906  
[JGrow1@IVH.in.gov](mailto:JGrow1@IVH.in.gov)  
765.497.8606



## Grow, Joy

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**From:** Mulligan, Tiffany M  
**Sent:** Tuesday, December 17, 2019 11:24 AM  
**To:** Grow, Joy  
**Subject:** Ethics Informal Advisory Opinion; Grow (Jasper); IVH; outside employment

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Joy,

Thank you for contacting our office to request ethics advice and for providing me with additional information. You serve as the Chief Counsel and Ethics Officer for the Indiana Veterans' Home (IVH).

You write that IVH has entered into a zero dollar contract with an organization called Greater Lafayette Career Academy (GLCA). GLCA does a Certified Nursing Assistant (CNA) program, and the contract is to allow GLCA students to do their clinical hours at IVH. You find the relationship beneficial as hopefully CNAs will look to IVH for employment after they finish their education. GLCA employs its own instructors, and IVH lets GLCA use IVH's facility. The students do clinicals at the IVH facility from 12:00 to 12:30 p.m., Monday through Friday.

You explain that IVH employs a nurse named Kim Jasper. Ms. Jasper is a night shift nursing supervisor, which means she works from 6:00 p.m. to 6:00 a.m. GLCA is interested in hiring her to work for them as a supervisor to watch the CNA students when they are at IVH. If Ms. Jasper were to work for GLCA at the IVH facility, she would not be working in her capacity as an IVH employee; however, since Ms. Jasper is an IVH employee, you do not see how she could get around using confidential information (any patient information) because she would have acquired that knowledge as an IVH employee. You explain that Ms. Jasper would likely be disclosing confidential information if she took the job with GLCA as she would have to share patient information, which is confidential and protected under HIPAA; however, as part of her employment with GLCA, she would have access to certain patient information. The patient information would not necessarily be confidential to her as a GLCA employee.

You write that Ms. Jasper does not participate in any matters as an IVH employee that would somehow impact GLCA. She also does not have contracting authority for IVH. I understand that you are seeking advice to determine whether Ms. Jasper could accept employment from GLCA under the Code of Ethics (Code).

Your inquiry primarily invokes consideration of the following Code rules: IC 4-2-6-9, which pertains to conflicts of interests related to decisions and votes; IC 4-2-6-5.5, which pertains to outside employment/professional activity; IC 4-2-6-10.5, which pertains to conflicts of interests related to contracts; and 42 IAC 1-5-10 and 42 IAC 1-5-11, which pertain to confidential information. I included all relevant rules and definitions at the end of this opinion for your reference.

### **1. IC 4-2-6-9 – Conflicts of Interests; Decisions and Voting**

The conflict of interests in decisions and voting rule, which is found in IC 4-2-6-9, prohibits a state employee from participating in any decision or vote, or matter related to a decision or vote, if a business organization in which the employee is an employee or a member has a financial interest in the outcome. If the employee identifies a potential conflict of interests, the employee must make certain disclosures and either seek a formal

advisory opinion from the State Ethics Commission (Commission) or file a written disclosure statement with the Commission.

**You write that Ms. Jasper does not participate as an IVH employee in any matters in which GLCA would have a financial interest; therefore, Ms. Jasper does not have a potential conflict of interests under IC 4-2-6-9.** If this should change and Ms. Jasper is put in a position to make a decision that would financially impact GLCA, then Ms. Jasper will need to comply with the requirements of the rule, including either seeking an opinion from the Commission or submitting a disclosure statement with our office and being screened from any decisions or votes in which GLCA would have a financial interest.

## **2. IC 4-2-6-5.5 – Outside Employment**

IC 4-2-6-5.5 prohibits state employees from:

- 1) accepting other employment that would involve compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or would require them to recuse themselves from matters so central or critical to the performance of their official duties that their ability to perform them would be materially impaired;
- 2) accepting other employment or engaging in professional activity that would require them to disclose confidential information that was gained in the course of state employment; or
- 3) using their official position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

Subsection 1) of this rule may apply to Ms. Jasper's potential outside employment with GLCA. Because she serves as a nursing supervisor with IVH and would be serving as a supervisor of CNA students for GLCA, these roles do not appear to be inherently incompatible with one another; however, if the job with GLCA would require her to recuse herself from central job duties due to confidentiality or other concerns, then this subsection would apply. Also, subsection 2) may apply because you indicate that she likely could not avoid disclosing confidential information that was gained as a state employee. Although she may have access to some of this information as a GLCA employee, she may still be required to disclose confidential information she learned as an IVH employee in her role with GLCA. Finally, under subsection 3) she would need to ensure that she did not use her position with IVH to secure any advantages for GLCA or anyone else that would not be available to similar individuals.

**We recommend that Ms. Jasper seek a formal advisory opinion from the Commission to get a public and final determination on this matter.** The next Commission meeting for which she can request an opinion is January 9, 2020, and the deadline to submit the request is December 30, 2019. You can find more information about the formal advisory opinion process at this link: <http://www.in.gov/ig/2334.htm>.

## **3. IC 4-2-6-10.5 - Conflicts of Interests Related to Contracts**

The conflict of interests in contracting rule, which is found in IC 4-2-6-10.5, prohibits a state employee from knowingly having a financial interest in any contract made by any state agency, unless the state employee does not participate in or have contracting responsibility for the contracting agency and he or she files a written disclosure statement with our office. The Commission has interpreted this rule to apply when a state employee derives compensation through a state contract.

You write that GLCA does not receive state funding; however, IVH has a non-monetary contract with GLCA. GLCA would compensate Ms. Jasper for working under the contract. As a result of the compensation, Ms.

Jasper likely would have a financial interest in the contract between IVH and GLCA, even though she would not be receiving state funds from the contract. **As a result, this rule may apply to Ms. Jasper and prohibit her from accepting any compensation from GLCA for working under the contract unless she files a written disclosure with our office. Again, we recommend Ms. Jasper get a formal advisory opinion on this question.**

#### **4. IC 4-2-6-17 and 42 IAC 1-5-13 – Use of State Property and Ghost Employment**

IC 4-2-6-17, which is the use of state property rule, and 42 IAC 1-5-13, which is the ghost employment rule, also apply to Ms. Jasper. The use of state property rule prohibits a state employee from using state materials, funds, property, personnel, facilities or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that has been approved by the Commission. The ghost employment rule prohibits a state employee from engaging in work other than the performance of official duties during working hours, except as permitted by general written agency, departmental or institutional policy or regulation.

In this case, Ms. Jasper would not be permitted to use any state property for her work for an outside employer unless IVH has a Commission-approved policy in place allowing such use for non-official state business. Although most agencies have a limited use policy, most of these policies do not allow for use of state resources for commercial activity; therefore, Ms. Jasper could not use state resources for her outside employment. Moreover, any activity related to her activities for GLCA must be completed on non-state time outside of her IVH hours.

#### **5. 42 IAC 1-5-10 and 42 IAC 1-5-11 – Confidential Information**

Finally, Ms. Jasper should keep in mind the ethics rules pertaining to confidential information found at 42 IAC 1-5-10 and 42 IAC 1-5-11. These rules would prohibit her from benefitting from, permitting another person to benefit from or divulging information of a confidential nature except as permitted by law. Because Ms. Jasper has access to confidential information as an IVH employee, she will need to ensure that she complies with these rules.

Thank you again for submitting your question to our office. Please note that this response does not constitute an official advisory opinion. Only the Ethics Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving advice and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Tiffany Mulligan  
Chief Legal Counsel

*Please take a few moments to provide feedback on your experience:*  
<https://www.surveymonkey.com/r/OIGInformals>. *Thank you!*

#### **IC 4-2-6-1 Definitions**

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

(7) "Compensation" means 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.

(11) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person;  
or

(B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

(12) "Information of a confidential nature" means information:

(A) obtained by reason of the position or office held; and

(B) which:

(i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or

(iii) is not in a public record, but if it were, would be confidential.

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

#### **IC 4-2-6-5.5**

##### **Conflict of interest; advisory opinion by commission**

Sec. 5.5. (a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

(1) Accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired.

(2) Accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment.

(3) Use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:

(A) of substantial value; and

(B) not properly available to similarly situated individuals outside state government.

(b) A written advisory opinion issued by the commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

#### **IC 4-2-6-9**

##### **Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations**

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.
- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

(1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(2) File a written disclosure statement with the commission that:

(A) details the conflict of interest;

(B) describes and affirms the implementation of a screen established by the ethics officer;

(C) is signed by both:

(i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and

(ii) the agency ethics officer;

(D) includes a copy of the disclosure provided to the appointing authority; and

(E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

#### **42 IAC 1-5-10 Benefiting from confidential information**

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

#### **42 IAC 1-5-11 Divulging confidential information**

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

#### **IC 4-2-6-17**

#### **Use of state property for other than official business; exceptions; Violations**

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, an employee, or a special state appointee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the commission. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.

(b) An individual who violates this section is subject to action under section 12 of this chapter.

**42 IAC 1-5-13 Ghost employment**

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 13. A state officer, employee, or special state appointee shall not engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

Tiffany Mulligan  
Chief Legal Counsel  
Office of Inspector General/State Ethics Commission  
315 West Ohio Street, Room 104  
Indianapolis, IN 46202  
[tmulligan@ig.in.gov](mailto:tmulligan@ig.in.gov)  
Phone: (317) 232-0708

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**From:** Grow, Joy  
**Sent:** Monday, December 16, 2019 2:37 PM  
**To:** Mulligan, Tiffany M <TMulligan@ig.IN.gov>  
**Subject:** RE: Advice

See my responses below. Thank you for your advice.

Joy M. Grow  
Chief Legal Counsel  
Ethics & Compliance Officer  
765.497.8606 - Office  
765.490.0679 - Cell



3851 N River Rd  
West Lafayette, IN 47906  
(765) 463-1502

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**From:** Mulligan, Tiffany M  
**Sent:** Friday, December 13, 2019 1:39 PM  
**To:** Grow, Joy <[JGrow1@ivh.IN.gov](mailto:JGrow1@ivh.IN.gov)>  
**Subject:** FW: Advice

Joy,

Thank you for contacting the Indiana Office of Inspector General to request ethics advice. I am working on an informal advisory opinion in response to your request, but I had a few questions to make sure I understand the facts. Can you please provide responses to the following questions?

1. Does Kim participate in any matters as an IVH employee that would somehow impact Greater Lafayette Career Academy (GLCA)? No.
2. Does Kim have any contracting authority for IVH? No.
3. Would Kim have to disclose confidential information if she took the job with GLCA? I understand you have concerns regarding the confidentiality rules; I just want to make sure I understand your concerns. This is what is confusing for me. Kim would likely be disclosing confidential information if she took with job the GLCA as she would have to share patient information which of course is confidential and protected under HIPAA. However, she and the GLCA will have access to patient information so just because patient information is confidential it isn't necessarily confidential to her in that role.

I would appreciate any additional information you can provide me regarding your request.

Again, thank you for contacting our office.

Tiffany Mulligan  
Chief Legal Counsel  
Office of Inspector General/State Ethics Commission  
315 West Ohio Street, Room 104  
Indianapolis, IN 46202  
[tmulligan@ig.in.gov](mailto:tmulligan@ig.in.gov)  
Phone: (317) 232-0708

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**From:** [noreply@formstack.com](mailto:noreply@formstack.com) [mailto:noreply@formstack.com]

**Sent:** Thursday, December 12, 2019 2:52 PM

**To:** IG Info <[info@ig.IN.gov](mailto:info@ig.IN.gov)>; Cooper, Jennifer <[JCooper@ig.IN.gov](mailto:JCooper@ig.IN.gov)>; Torres, Lori <[LTorres@ig.IN.gov](mailto:LTorres@ig.IN.gov)>

**Subject:** Advice

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## Formstack Submission For: ig\_2815

Submitted at 12/12/19 2:52 PM

**Name:** Joy Grow

**Email:** [Jgrow1@ivh.in.gov](mailto:Jgrow1@ivh.in.gov)

**Phone:** (765) 497-8606

**State Agency:** Indiana Veterans' Home

**Description of Your State Occupation:** I am the Chief Counsel and Ethics Officer for my agency.

**What is your ethics question?:** We have entered into a \$0 dollar contract with an organization called Greater Lafayette Career Academy (GLCA). They do a Certified Nursing Assistant (CNA) program and the contract is to allow their students to do their clinical hours here at the Indiana Veterans' Home. We find this relationship beneficial as

hopefully the CNAs will look to IVH for employment after they finish their education. GLCA employs their own instructors, so we basically are just letting them utilize our facility. They will do clinicals in the facility from 12-2:30 pm Monday through Friday.

IVH employs a nurse name Kim Jasper. Kim Jasper is a night shift nursing supervisor (meaning she works from 6p to 6a). GLCA is interested in hiring her to work for them as a supervisor to watch the CNA students when they are at IVH. When Ms. Jasper would be at IVH during the time she was working for GLCA, she would not be working as an IVH employee. However, since she is an IVH employee, I don't see how she could get around using confidential information (any patient information) because she would have acquired that knowledge as an IVH employee. Thus, I personally believe that this would violate the ethics rules. Do you agree and are there any other possible violations that I am missing?

Thank you for your time and assistance.

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Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038





Eric Holcomb, Governor  
State of Indiana

*Office of General Counsel*  
402 W. WASHINGTON STREET, ROOM W451, MS27  
INDIANAPOLIS, IN 46204-2744

**VIA ELECTRONIC MAIL**

December 30, 2019

Ethics Commission  
Office of the Inspector General  
315 West Ohio Street, Room 104  
Indianapolis, Indiana 46202  
Email: [info@ig.in.gov](mailto:info@ig.in.gov)

RE: Request for Formal Advisory Opinion for Julie Reynolds

Dear Chair Noel and members of the Ethics Commission:

The Indiana Family and Social Services Administration (“FSSA”), on behalf of Julie Reynolds, requests a Formal Advisory Opinion from the State Ethics Commission regarding conflicts of interest and post-employment restrictions for Ms. Reynolds. Ms. Reynolds and I respectfully request to come before the Ethics Commission at its next meeting on January 9, 2020.

Ms. Reynolds is the Director of Strategic Initiatives for the FSSA, Division of Disability and Rehabilitative Services (“DDRS”). Her duties include working with the Charting the LifeCourse Community of Practice framework,<sup>1</sup> business/data analytics, Home and Community Based Services waivers, and information technology projects.

Ms. Reynolds is interested in pursuing a position with the University of Missouri, Kansas City (“UMKC”) Institute for Human Development (“IHD”) as a Senior Research Associate. Ms. Reynolds learned of the position through the UMKC job board and applied on November 22, 2019. Ms. Reynolds notified me of her interest in the position on November 21, 2019. We reviewed the post-employment restrictions and discussed an internal screen, which her supervisor promptly implemented to ensure she would not have any involvement with any matters involving UMKC-IHD. Additionally, FSSA submitted a conflict of interest disclosure statement on her behalf on December 4, 2019. On December 17, 2019, Ms. Reynolds

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<sup>1</sup> According to the Charting the Life Course Guide, Chartering the Life Course is a framework that was developed to help individuals with disabilities and families at any age or stage of life think about what they need to know, identify how to find or develop supports, and discover what it takes to live the lives they want to live.



interviewed for the position. Ms. Reynolds has a second interview scheduled for January 6, 2020.

According to its website, the UMKC-IHD works to improve the quality of life of people from underserved communities. Its focus is on those with developmental disabilities. The university seeks to accomplish its goals through interdisciplinary training, applied research, community program development, and information dissemination. It is the home of the federally designated University Center for Excellence in Developmental Disabilities for the state of Missouri and part of a network of 67 centers in the nation. UMKC-IHD conducts and collaborates on a wide variety of applied research projects to develop, implement, and evaluate new ideas and promising practices that support healthy inclusive communities.

In 2016, DDRS, through the Division Director, decided to participate in the Charting the LifeCourse™ Framework National Community of Practice (“CoP”) through the National Association of State Directors for Development Disabilities (“NASDDDS”) in partnership with UMKC-IHD. FSSA pays annual membership dues to NASDDDS. As part of its membership with NASDDDS, DDRS has an agreement that allows it to participate in the Chartering the LifeCourse™ Framework as a membership option for an additional fee. NASDDDS pays UMKC-IHD from the funds that it receives from FSSA. Ms. Reynolds was not responsible for making decisions regarding the funding of the project or payments for services. The DDRS Director made decisions regarding the funding and the DDRS Director of Operations made all decisions regarding payment for services.

For three years, Ms. Reynolds worked with UMKC-IHD and NASDDDS as the Indiana Facilitator for the Charting the LifeCourse™ Framework Community of Practice. As the Indiana Facilitator, she was responsible for relationship building and training across DDRS and across the State; utilizing the Charting the LifeCourse™ Framework to help lead DDRS on the path to cultural change in the ways it supports families; presenting information to the public; developing training and presenting to staff, Case Managers and providers; and serving as a subject matter expert. Ms. Reynolds was also responsible for contacting UMKC-IHD; participating in several subject specific monthly calls with them; discussing Indiana’s progress and issues with them; and attending an annual conference hosted by UMKC-IHD. As a member of the CoP, Indiana received five conference registrations annually at no charge. As the Indiana Facilitator, Ms. Reynolds attended the annual UMKC-IHD conference on two occasions.

In addition, the DDRS Director will be using the proceeds that DDRS received from the Living Well Grant, a Federal grant, to contract with UMKC-IHD as a sole source to provide technical assistance and trainings to further the mission of the grant. The recommendation to utilize UMKC-IHD for this work was made by a team of approximately eight DDRS staff who are part of an internal committee for the grant. Ms. Reynolds is not a member of the team. The decision to use UMKC-IHD for the work and appropriate funding to them was vetted through and approved by the DDRS Director.

Because of her knowledge and experience as the Indiana Facilitator, Ms. Reynolds assisted the Living Well Project Director with formulating a statement of work for UMKC-IHD by outlining the various opportunities for technical assistance around the Chartering the LifeCourse™ Framework and how those opportunities were consistent with the Living Well Grant. For example, UMKC-IHD has expanded opportunities for participation in their Ambassador Series and has expanded the ability of individuals and groups to be further certified in using the LifeCourse™ Framework. Ms. Reynolds discussed these options with the Living Well Project Director and explained what the different options were within the scope of the grant. The statement of work was drafted by the Living Well Project Director and Ms. Reynolds working collaboratively. Ms. Reynolds provided assistance with the procurement of UMKC-IHD's services through the initial process by ensuring that all appropriate documentation was collected and transmitted to the appropriate FSSA contract staff. Ms. Reynolds' role was to provide technical assistance via education and training on the procurement process to the Living Well Project Director. The DDRS Director made the final decision regarding the statement of work and funding amount for UMKC-IHD.

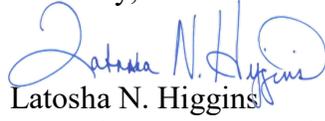
During her employment with FSSA, Ms. Reynolds has not been in a position where she had authority to make any discretionary decisions affecting the outcome of the negotiation or administration of any contract with UMKC-IHD. Furthermore, UMKC-IHD is not regulated by FSSA and Ms. Reynolds did not make any regulatory or licensing decisions regarding UMKC-IHD.

Ms. Reynolds' role as a Senior Research Associate would entail joining the Individual Advocacy and Family Support Team at the Institute. This position would work closely with key Principal Investigators on multiple grants to coordinate project activities focusing on systems level change, such as organizing national, statewide and local advisory councils, implementing local demonstration pilots, organizing and reporting on data and the development and delivery of training and capacity building initiatives. The primary focus of the position would be working on grants that UMKC-IHD has with the State of Missouri and with providing project management for national initiatives. Ms. Reynolds would have no responsibility for or work on any grants or projects with the State of Indiana. As such, she would not be working on matters related to the work she performed for FSSA. Ms. Reynolds does not anticipate engaging in any executive branch lobbying in her prospective employment with UMKC-IHD.

Ms. Reynolds knows and understands that Indiana's ethics laws will continue to apply to her as a private sector employee. She understands and agrees not to divulge confidential information of FSSA during her post-employment endeavors. Furthermore, Ms. Reynolds understands and agrees to abide by the one-year restriction regarding registering as an executive branch lobbyist. Additionally, she knows and understands that she must comply with the particular matter restriction and must refrain from assisting or representing any person on any particular matter she personally and substantially participated in as a state employee for the life of the matter.

We appreciate the Ethics Commission's consideration regarding this matter.

Sincerely,



Latosha N. Higgins  
Managing Attorney and Ethics Officer



Eric Holcomb, Governor  
State of Indiana

*Office of General Counsel*  
402 W. WASHINGTON STREET, ROOM W451, MS27  
INDIANAPOLIS, IN 46204-2744

VIA ELECTRONIC MAIL

December 30, 2019

Ethics Commission  
Office of the Inspector General  
315 West Ohio Street, Room 104  
Indianapolis, Indiana 46202  
Via Email: [info@ig.in.gov](mailto:info@ig.in.gov)

RE: Request for Formal Advisory Opinion for Cathleen Nine-Altevogt

Dear Chair Noel and members of the Ethics Commission:

The Indiana Family and Social Services Administration (“FSSA”), on behalf of Cathleen Nine-Altevogt, requests a formal advisory opinion from the State Ethics Commission regarding conflicts of interest related to the contracts, gift and honoraria rules as they relate to whether she may accept a \$5,000 contest prize awarded by an FSSA grantee. Additionally, she requests a formal advisory opinion regarding whether she has a conflict of interest under IC 35-44.1-1-1-4(c)(5). Ms. Nine-Altevogt and I respectfully request to come before the Ethics Commission at its next meeting on January 9, 2020.

In September 2019, Ms. Nine-Altevogt entered into the Infant and Toddler Access Challenge (“Challenge”), a public contest sponsored by Early Learning Indiana (“ELI”) that called for individuals to submit their ideas for improving Indiana’s infant and toddler care shortage. She entered the Challenge because of her personal interest in the issue as a new mother. She did so on her own time using her own resources. Ms. Nine-Altevogt did not identify herself as a state employee when she entered the Challenge. She admits that some of her ideas were shaped by her work experience at the Division of Aging; however, the idea that she submitted for the Challenge was not based on confidential information. She submitted a suggestion that daycare providers could consider locating in assisted living or retirement communities because these communities might find that feature a selling point and the childcare provider could have a built-in potential workforce.

Ms. Nine-Altevogt is the Regulatory and Compliance Director and Adult Protective Services Director for the FSSA Division of Aging. Her duties include overseeing the Adult Protective Services state program and ensuring division-wide compliance with federal and state legislation,



rules, and guidance. Ms. Nine-Altevogt does not have any contracting authority for FSSA. The Division of Aging and Division of Family Resources are two distinct divisions within FSSA. Ms. Nine-Altevogt does not have any interactions with the Division of Family Resources, Bureau of Child Development Services in the performance of her duties. Furthermore, her submission in the contest was unrelated to the work she does for the Division of Aging.

ELI was not aware that Ms. Nine-Altevogt was a FSSA employee until after they notified her that she had won a \$5,000 cash prize. Ms. Nine-Altevogt learned that she won one of the contest prizes on November 18, 2019. To date, Ms. Nine-Altevogt has not accepted the prize nor has she completed any of the forms ELI requested that she sign to claim her prize. Ms. Nine-Altevogt notified me of the award on December 2, 2019. After discussing the potential conflicts of interest and seeking a formal advisory opinion, Ms. Nine-Altevogt decided to request a formal advisory opinion to determine whether she could keep the prize if she obtained a gift waiver and under what conditions.

As a condition of receiving the \$5,000 cash prize, Ms. Nine-Altevogt would be required to execute an Infant and Toddler Access Challenge- Preschool Development Grant – Recipient Agreement (“Agreement”). The Agreement would require her to relinquish all of her rights to the idea she submitted to ELI and the State of Indiana. Additionally, she would be required to provide copies of all documents, assets and other documented intellectual property prior to the awarding of the cash prize. She would also be required to agree to participate in a discovery session, not to exceed one hour. A copy of the Agreement is attached to this request for your reference.

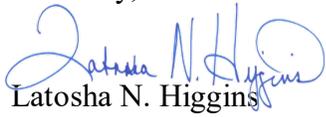
ELI is child care provider that operates nine child care centers licensed and regulated by the FSSA Division of Family Resources, Bureau of Child Development Services. Additionally, ELI currently has a total of 10 active agreements with FSSA. The grant involved in this situation is contract number 29002, a Preschool Development Grant, which is for ELI to oversee the Service Deliverable Area Agencies and provide training and technical support. Additionally, ELI provides support for community outreach and the Paths to Quality Program under the grant. The Challenge was supported by the grant awarded to ELI.

Ms. Nine-Altevogt was one of five winners selected. According to Natalie Brake, the Director of Capacity Building at ELI, the Challenge submissions were evaluated by a team of five ELI staff members. Per Ms. Brake, after the staff completed their evaluations, they submitted their recommendations to ELI leadership who approved the awards. Neither FSSA nor Ms. Nine-Altevogt were involved in or consulted regarding the evaluation of the Challenge submissions or awarding of the prizes.

Ms. Nine-Altevogt knows that she is required to comply with the ethics laws regarding confidentiality and that she is prohibited from divulging confidential information if she is permitted to enter into an agreement with ELI and accept the prize.

We appreciate the Ethics Commission's consideration regarding this matter.

Sincerely,



Latosha N. Higgins  
Managing Attorney and Ethics Officer

Attachment: Infant and Toddler Access Challenge- Preschool Development Grant – Recipient Agreement

**Infant & Toddler Access Challenge - Preschool Development Grant – Recipient Agreement**

---

**Infant & Toddler Access Challenge Recipient: Letter of Agreement**

This Letter of Agreement (the “**Agreement**”) entered into by and between Cathleen Nine-Altevogt (“**Recipient**”) and Early Learning Indiana (“**ELI**”) is effective on the date of the signature below.

Whereas, Recipient responded to the Infant and Toddler Access Challenge issued by ELI during the fall of 2019 (the “**Competition**”); and

Whereas, in accordance with the guiding principles of the Competition, ELI selected the Recipient as an awardee of the Competition.

Now, therefore, be it resolved, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ELI shall provide Recipient an award of \$5,000 under this Agreement.

By accepting the award, the Recipient agrees that all right, title, and interest in and to any and all ideas, original works of authorship, developments, concepts, improvements, designs, drawings, discoveries, algorithms, formulas, ideas, trademarks, or trade secrets, whether or not patentable or registrable under patent, copyright or similar laws, related to the Recipient’s contest submission, which the Recipient may have solely or jointly conceived or developed, is hereby given to ELI and the State of Indiana to use, copy, develop, sell, or otherwise take action with respect to in their sole or joint discretion.

The Recipient also agrees to, and shall participate in, a discovery session, not to exceed one (1) hour in length, regarding their Competition submission and provide copies of all documents, assets and all other documented intellectual property related to the submission prior to the awarding of funds.

ELI shall send any notifications related to this Agreement to the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This Agreement and each party's obligations shall be binding on the representatives, assigns, and successors of such party. Recipient has signed this Agreement through its authorized representative.

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Signature of Individual, Owner, Executive Director or Authorized Board Officer

Date

*Maureen Weber*

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Signature of Maureen Weber, President and CEO of Early Learning Indiana

Date



Eric Holcomb, Governor  
State of Indiana

*Office of General Counsel*  
402 W. WASHINGTON STREET, ROOM W451, MS27  
INDIANAPOLIS, IN 46204-2744

VIA ELETRONIC MAIL

December 31, 2019

Ethics Commission  
Office of the Inspector General  
315 West Ohio Street, Room 104  
Indianapolis, Indiana 46202  
Via Email: [info@ig.in.gov](mailto:info@ig.in.gov)

RE: Correction to Request for Formal Advisory Opinion for Cathleen Nine-Altevogt

Dear Chair Noel and members of the Ethics Commission:

Please be advised that the request for a formal advisory opinion submitted on behalf of Cathleen Nine-Altevogt on December 30, 2019 by the Family and Social Services Administration contained an error. The letter incorrectly stated that the Bureau of Child Development funded the Early Learning Indiana Infant and Toddler Access Challenge (“Challenge”). The letter should have stated that the Bureau of Child Care funded the Challenge.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Latosha N. Higgins  
Managing Attorney and Ethics Officer





Eric J. Holcomb  
Governor

Kristina Box, MD, FACOG  
State Health Commissioner

February 5, 2020

Ethics Commission  
Office of the Inspector General  
315 West Ohio Street, Room 104  
Indianapolis, Indiana 46202  
Via Email: [Info@ig.in.gov](mailto:Info@ig.in.gov)

RE: Request for Formal Advisory Opinion for Dr. Lindsay

Dear Chairman Noel and members of the Ethics Commission:

The Indiana State Department of Health ("ISDH"), on behalf of Dr. Lindsay Weaver, requests a Formal Advisory Opinion from the State Ethics Commission addressing whether it would be a conflict of interest for Dr. Weaver to continue her outside employment with Indiana University Health Physicians as a supplemental or contract physician working at Methodist Hospital for IU Health, continuing her appointment as a volunteer assistant professor of Indiana University School of Medicine, and hold a non-voting position as a member of the Indiana American College of Emergency Medicine Physicians while employed as the Chief Medical Officer for ISDH.

Dr. Weaver will join ISDH after serving as an assistant professor of clinical emergency medicine at the Indiana University School of Medicine and practicing emergency medicine at Methodist Hospital in Indianapolis. She is board certified in both emergency medicine and hospice and palliative care medicine. Dr. Weaver commenced working at ISDH on February 3, 2020. She has agreed not to work any shifts after her start date at ISDH, until she receives a formal advisory opinion from the State Ethics Commission indicating that it would not be a conflict of interest for her to continue her outside employment activities.

The Chief Medical Officer position is a clinical executive position that reports to the State Health Commissioner. The Chief Medical Officer's primary role is to provide the Commissioner, executive team and divisions with medical guidance, support and advocacy of agency initiatives based on best medical practices. As the Chief Medical Officer, Dr. Weaver will provide medical oversight, expertise and leadership to

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projects and operations within the Agency, including policy advising and program planning. Her duties will not include any contract administration or rulemaking.

Dr. Weaver would like to continue to work one shift per week in the emergency department at Methodist Hospital while employed as the Chief Medical Officer of ISDH. Dr. Weaver believes that it is important for her to continue working in the emergency room to maintain her skills through patient contact because it will aid her in her performance as Chief Medical Officer.

Dr. Weaver's medical malpractice insurance will be paid by IU Health Physicians as that is their standard practice. Dr. Weaver will pay her own licensing fees and certifications. Furthermore, she will not serve in a supervisory or leadership role with Methodist Hospital or Indiana University Health Physicians. Rather, she will serve as an independent contractor to Methodist Hospital through Indiana University Health Physicians. She will not charge patients nor will she bill insurance. She will be paid by Indiana University Health Physicians on an hourly basis.

Indiana University Health Physicians is affiliated with Indiana University Health ("IU Health") and ISDH's various divisions have six active contract with IU Health, Indiana University and related entities. The contracts are at the division level in ISDH. The division directors are the owners of the contracts. Dr. Weaver, as Chief Medical Officer, would not be in a position to negotiate or sign these contracts. Per Dr. Weaver, to avoid a potential conflict under IC 35-44.1-1-4, Indiana University Health Physicians will not use funds from these contracts with ISDH to pay her; her fees will be paid from general patient revenue. Given that Dr. Weaver has no leadership role with Indiana University Health Physicians or IU Health, and that she would only be staffing the emergency room once per week, this should ensure that there is not even an appearance that she is deriving a profit from, or has a pecuniary interest in any of the IU Health contracts with the State.

Dr. Weaver would not be in a position to make decisions regarding specific providers and any direction she would provide regarding protocols, policies or procedures that might impact external stakeholders would apply to all clinical specialists, hospital administrators, and any other providers uniformly. Therefore, it is unlikely ISDH would make a decision that would have a unique impact on Methodist Hospital, Indiana University Health Physicians, IU Health, or their related entities. If the situation presented itself, ISDH would screen Dr. Weaver from participating in any such decision by having the Commissioner delegate full authority to another employee to handle such matters independently.

In addition to working as an independent contractor for Methodist Hospital, Dr. Weaver would like to hold a non-voting position as a member of the Indiana Chapter of the American College of Emergency Medicine Physicians while employed as the Chief Medical Officer for ISDH. She formerly held a voting position with the Indiana Chapter, but relinquished it upon acceptance of state employment.

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Dr. Weaver would also like to continue with her appointment at the Indiana University School of Medicine while employed by ISDH. Dr. Weaver is an assistant professor of clinical emergency medicine and would not be required to participate in any of the other duties expected of assistant professors; however, she will be required to continue to abide by the professional standards of the medical school to remain a faculty member in good standing.

Dr. Weaver understands and agrees that she may not use State time to work at Methodist Hospital. Additionally, she is confident that she will meet the 37.5 hour work-week requirement despite seeing working a clinical shift each week.

Based on the information presented, I do not believe that Dr. Weaver's outside employment activities would be incompatible with her duties as Chief Medical Officer. Rather, Dr. Weaver's outside employment activities will help maintain and build upon her professional skills such that she may better be able to meet the essential functions of her position as Chief Medical Officer, including identifying opportunities to collaborate and develop clinical integration initiatives with other stakeholders in the State to achieve effective and affordable outcomes and participating as a spokesperson to the public and health care professionals.

Sincerely,



Deana M. Smith  
Staff Attorney and Ethics Officer