

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
April 13, 2023**

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 were Katherine Noel, Chair; Corinne Finnerty; Sue Anne Gilroy; and Rafael Sanchez. 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; Mark Mitchell, Director of Investigations; and Mike Lepper, Special Agent.

Others present were Jessica Keyes, Ethics Officer, Family and Social Services Administration; Matheus Mitchell, Compliance and Ethics Specialist, Indiana Department of Revenue; Amie Durfee, Deputy General Counsel, Indiana Department of Workforce Development; Chris Serak, Ethics Officer, Indiana Department of Transportation; George Dremonas, Ethics Officer, Indiana Department of Financial Institutions; Evan Bartel, General Counsel, Indiana Professional Licensing Agency; James French, Ethics Officer, Indiana Department of Environmental Management; Rachel Russell, Ethics Officer, Indiana Department of Child Services; Christine MacDonald, Internal Affairs Officer, Indiana Department of Child Services; Dr. David Geeslin, Superintendent; Indiana School for the Deaf; Jeremy Hawk, Ethics Officer, Indiana School for the Deaf; and Anna Ruble, Interpreter, Indiana School for the Deaf.

II. Adoption of Agenda and Approval of Minutes

Commissioner Sanchez moved to adopt the agenda, Commissioner Gilroy seconded the motion, and the Commission passed the agenda (4-0).

Commissioner Gilroy moved to approve the Minutes of the March 9, 2023, Commission Meeting, and Commissioner Sanchez seconded the motion, which passed (4-0).

**III. Consideration of Agency Limited Use of State Property/Resources Policy
Presented by Rachel Russell, Ethics Officer, Indiana Department of Child Services**

Rachel Russell, Ethics Officer for the Indiana Department of Child Services presented a Limited Use of State Property/Resources Policy to the Commission for approval.

After discussion, Commissioner Gilroy moved to approve the Limited Use of State Property/Resources Policy and Commissioner Finnerty seconded the motion which passed (4-0).

IV. Request for Formal Advisory Opinion

2023-FAO-003

Dr. David Geeslin, Superintendent/CEO

Jeremy Hawk, Ethics Officer

Indiana School for the Deaf

Dr. David Geeslin serves as Superintendent and Chief Executive Officer for the Indiana School for the Deaf (ISD). Dr. Geeslin also serves as a Board Member for the Indiana Deaf Children Foundation (IDCF), a 501(c)(3) charitable organization. Based on the information provided, ISD established IDCF exclusively for the benefit of ISD, as IDCF will provide funding to enhance academic, social and cultural opportunities for deaf children.

ISD instituted a new policy, effective March 30, 2023, titled “Standards for the Indiana School for the Deaf Employees Who Perform Work on Behalf of the Foundation” (ISD Policy). The ISD Policy allows for the use of ISD employees’ time and state-owned resources to participate in fundraising efforts on behalf of IDCF. The ISD Policy permits certain ISD employees to serve on the IDCF Board of Directors, provide administrative support to IDCF and engage in fundraising activities on behalf of IDCF. The ISD Policy specifies that these activities are part of the authorized employees’ official state duties.

Dr. Geeslin explains that ISD’s relationship with IDCF is similar to that of the Indiana Destination Development Corporation (IDDC) and the Indiana Destination Development Foundation (Foundation). The Commission issued [2022-FAO-010](#) related to the IDDC’s relationship with the Foundation. In that opinion, the Commission noted that the legislators who sponsored the creation of the IDDC intended to introduce legislation to allow the IDDC to create the Foundation. The Commission noted that the General Assembly passed such legislation during the 2023 legislative session.

During Dr. Geeslin’s presentation to the Commission, he stated that public schools have foundations to help raise funds for the schools. He also stated that ISD would seek legislative approval for the creation of IDCF and the use of state resources and personnel for IDCF business.

On behalf of ISD, Dr. Geeslin requested the Commission’s formal advisory opinion on the applicability of the Code to ISD’s use of state property and employees to carry out IDCF’s fundraising and administrative activities.

The analysis stated the following:

Dr. Geeslin’s request for a formal advisory opinion invokes consideration of the provisions of the Code pertaining to Use of State Property, Ghost Employment and Gifts. The application of each provision to ISD employees is analyzed below.

A. Use of State Property and Ghost Employment

IC 4-2-6-17, the use of state property rule, prohibits a state officer, employee or special state appointee 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 the Commission has approved.

Likewise, 42 IAC 1-5-13, the ghost employment rule, prohibits a state officer, employee or special state appointee from engaging in, or directing 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.

If performing certain work for IDCF is part of an ISD employee's official duties, then the work would not implicate either the use of state property or ghost employment rules. If performing certain work for IDCF is not part of an ISD employee's official duties, then it would implicate these rules.

Based on the information provided, IDCF was created exclusively for the benefit of ISD as it will provide funding to enhance academic, social and cultural opportunities for deaf children. The ISD Policy permits certain ISD employees to serve on the IDCF Board of Directors, provide administrative support to IDCF and engage in fundraising activities on behalf of IDCF. The ISD Policy specifies that these activities are part of the authorized employees' official state duties.

Based on the information provided in ISD's formal advisory opinion request and during testimony provided in the public meeting, the Commission determined that ISD currently does not have specific statutory authority for creation of IDCF. The Commission highly encourages ISD to seek legislative approval for creation of IDCF in the future.

The Commission finds that ISD may utilize ISD resources and personnel for the fundraising and administrative support activities supporting IDCF, as outlined in the ISD Policy, with the understanding that ISD would pursue and secure legislation to formally recognize ISD's creation and use of IDCF to support ISD functions.

So long as ISD employees who use state time and state property to perform work for IDCF do so in accordance with the ISD Policy, such activities would not violate the use of state property and ghost employment rules.

B. Gifts Rule

The Gifts rule prohibits state employees from knowingly soliciting or accepting any gift, favor, service, entertainment, food, drink, travel expenses or registration fees from:

- 1) a person who has a business relationship with the employee's agency; or

- 2) a person who is seeking to influence an action by the employee in his or her official capacity.

Based on the information provided, ISD created IDCF exclusively for the benefit of ISD to provide funding of enhanced academic, social and cultural opportunities for deaf children. Pursuant to prior formal advisory opinions issued by the Commission, the Gifts rule does not prohibit an agency from accepting gifts. As a result, so long as gifts are made for the benefit of IDCF or ISD as an agency and not for any individual employees or appointees, IDCF or ISD could accept donations without violating the Gifts rule. Also, ISD employees cannot solicit donations from persons with a business relationship with ISD or from any person seeking to influence an action by the ISD employee in his/her official capacity.

The ISD Policy identifies several positions as Authorized Employees who can engage in fundraising activities on behalf of IDCF. The ISD Policy specifically prohibits the solicitation of any person or entity that has a business relationship with ISD. The Commission finds that the ISD Policy is sufficient to protect employees from violating the Gifts rule.

Commissioner Sanchez moved to approve the Commission's findings, and Commission Chair Noel seconded the motion, which passed (3-1).

V. Ethics Director's Report

State Ethics Director Sean Gorman reported 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. He went on to state that changes to the State's Open Door Law which will require public meetings to be livestreamed is expected to be signed by Governor Holcomb. The effective date of the law will be July 1, 2025.

Director Gorman continued that since the last Ethics Director's Report in March, 14 Informal Advisory Opinions have been issued concerning the usual issues regarding application of the gifts rule, post-employment issues, outside employment/professional activities issues, and related potential conflicts of interest.

Finally, Director Gorman reported that during the 1st quarter of 2023, OIG had 52 total requests for Informal Advisory Opinions, issuing 43. OIG attorneys frequently have to reach out and request additional information from a requester to obtain additional information in order to analyze the potential issues under the Ethics Code, and in this process sometimes individuals decide they no longer wish to pursue our guidance. During this first quarter, OIG attorneys have taken an average of 1.9 business days to issue the informal advisory opinion from the time that we have the information necessary to complete our analysis.

VI. Adjournment

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

The public meeting adjourned at 10:29 a.m.